

# Domestic Abuse (Protection) (Scotland) Bill

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## 1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Section 1 to 21

Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Section 1

#### Humza Yousaf

- 1 In section 1, page 1, line 12, leave out <who is>

#### Humza Yousaf

- 2 In section 1, page 1, line 13, leave out <, and> and insert <who is>

#### Humza Yousaf

- 3 In section 1, page 1, line 14, at end insert <and  
(ii) with whom person A lives some or all of the time,>

#### Humza Yousaf

- 4 In section 1, page 1, line 18, leave out from beginning to <other,>

### Section 3

#### Rachael Hamilton

- 28 In section 3, page 2, line 19, at end insert—  
<( ) behaviour directed at person B that has a substantial adverse effect on person B's ability to—  
(i) acquire, use or maintain money or other property, or  
(ii) obtain goods or services.>

#### Rachael Hamilton

- 44 In section 3, page 2, line 19, at end insert—  
<(ab) disclosing, or threatening to disclose, a photograph or film which shows, or appears to show, person B in an intimate situation, where the photograph or film has not previously been disclosed to the public at large, or any section of the public, by person B or with person B's consent,>

**Rachael Hamilton**

45 In section 3, page 2, line 33, at end insert—

<( ) For the purposes of subsection (2)(ab)—

- (a) a person is in an “intimate situation” if—
  - (i) the person is engaging or participating in, or present during, an act which—
    - (A) a reasonable person would consider to be a sexual act, and
    - (B) is not of a kind ordinarily done in public, or
  - (ii) the person’s genitals, buttocks or breasts are exposed or covered only with underwear,
- (b) “film” means a moving image in any form, whether or not the image has been altered in any way, that was originally captured by making a recording, on any medium, from which a moving image may be produced, and includes a copy of the image,
- (c) “photograph” means a still image in any form, whether or not the image has been altered in any way, that was originally captured by photography, and includes a copy of the image.>

**Section 4**

**Humza Yousaf**

5 In section 4, page 3, line 8, leave out from beginning to <A> in line 9 and insert <there is a risk of person A engaging in further behaviour which is abusive of person B immediately and it is necessary to make the notice for the purpose of protecting person B from that behaviour.

(1A) In subsection (1)(c), “immediately” means in the period>

**Rhoda Grant**

46 In section 4, page 3, line 10, at end insert—

<( ) Any child usually residing with person B may apply to a senior constable for a domestic abuse protection notice.>

**Humza Yousaf**

6 In section 4, page 3, line 14, leave out from <take> to end of line 18 and insert—

<(aa) take such steps as are reasonable in the circumstances—

- (i) to establish whether person A has any views in relation to the notice which person A wishes to be taken into account, and if so, to obtain those views,
- (ii) to establish whether person B has any views in relation to the notice which person B wishes to be taken into account, and if so, to obtain those views, and

(ab) take into account—

- (i) any views of which the senior constable becomes aware as a result of paragraph (aa), and

(ii)>

## Section 5

### Humza Yousaf

7 In section 5, page 3, line 37, at end insert—

<(2A) The notice may also require person A—

(a) at the time the notice is delivered to person A under section 6(3), to either—

- (i) provide the constable delivering the notice with an address at which person A may be given notice of the hearing to be held in accordance with section 11(3), or
- (ii) undertake to provide such an address to a constable by a specified time or to attend a specified police station at a specified time for the purpose of being given notice of the hearing, and

(b) to comply with any such undertaking.>

### Humza Yousaf

8 In section 5, page 3, line 39, after <6(3)> insert <(except that the requirement mentioned in subsection (2A) takes effect only if and when person A fails to provide an address in response to a request under section 6(4))>

### Rhoda Grant

10 In section 5, page 4, line 1, at end insert—

<( ) For the avoidance of doubt, any requirement or prohibition imposed by the notice must be complied with notwithstanding any pre-existing court order that makes contrary provision.>

### Humza Yousaf

9 In section 5, page 4, line 1, at end insert—

<( ) In subsection (2A)(a)(ii), “specified” means specified by the constable delivering the notice to person A under section 6(3).>

## Section 6

### Humza Yousaf

11 In section 6, page 4, leave out lines 11 to 13 and insert—

<(iii) there is a risk of person A engaging in further behaviour which is abusive of person B immediately and it is necessary to make the notice for the purpose of protecting person B from that behaviour,>

**Humza Yousaf**

12 In section 6, page 4, line 29, at end insert—

<( ) In subsection (2)(a)(iii), “immediately” has the meaning given by section 4(1A).>

**Before section 8**

**Liam Kerr**

29\* Before section 8, insert—

**<Supporting agency**

- (1) The Scottish Ministers may by regulations establish a list of statutory and voluntary organisations to be known as supporting agencies that may apply to the sheriff for a domestic abuse protection order in relation to a person in any case.
- (2) Regulations under this section are subject to the negative procedure.>

**Section 8**

**Liam Kerr**

30 In section 8, page 5, line 10, at end insert—

<(1A) A supporting agency may apply to the sheriff for a domestic abuse protection order in relation to a person in any case.>

**Rhoda Grant**

47 In section 8, page 5, line 10, at end insert—

<( ) Any child usually residing with person B may apply to the sheriff for a domestic abuse protection order.>

**Humza Yousaf**

13 In section 8, page 5, line 11, after <if> insert <—

(a) the sheriff is>

**Humza Yousaf**

14 In section 8, page 5, line 12, after <B,> insert—

<(ii) there is an immediate or imminent risk of person A engaging in further behaviour which is abusive of person B,>

**Humza Yousaf**

15 In section 8, page 5, line 14, at end insert <, and

(b) person B consents to the order being made.>

**Humza Yousaf**

16 In section 8, page 5, line 15, leave out <(2)(a)> and insert <(2)(a)(i)>

**Humza Yousaf**

17 In section 8, page 5, line 16, at end insert—

<( ) The abusive behaviour referred to in subsection (2)(a)(iii) must include, but need not be limited to, the behaviour referred to in subsection (2)(a)(ii).>

**Liam Kerr**

31 In section 8, page 5, line 18, after <subsection (1)> insert <or (1A)>

**Liam Kerr**

32 In section 8, page 5, line 19, after <constable,> insert <the supporting agency,>

**Liam Kerr**

33 In section 8, page 5, line 22, after <constable> insert < , the supporting agency>

**Humza Yousaf**

18 In section 8, page 5, leave out lines 28 to 30 and insert—

<(6A) Subsection (6B) applies where, on an application under subsection (1), the sheriff is considering making provision in an order which would relate directly to a child.

(6B) The sheriff must—

5 (a) take such steps as are reasonable in the circumstances to give the child an opportunity to express views in relation to the matter, and

(b) take into account any views of the child of which the sheriff is aware (whether as a result of paragraph (a) or otherwise).

10 (6C) In taking account of views of the child under subsection (6B)(b), the sheriff must take into account the child’s age and understanding.>

**Rhoda Grant**

18A As an amendment to amendment 18, line 8, at end insert—

<( ) presume that the child is capable of expressing a view, and

( ) give the child the opportunity to express the child’s views in—

(i) the manner the child prefers, or

(ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child’s preference.>

**Rhoda Grant**

19 In section 8, page 5, line 30, at end insert—

<( ) For the purposes of taking the matters in paragraphs (c) and (d) of subsection (6) into account, the sheriff must—

(a) presume that the child is capable of expressing a view, and

(b) give the child the opportunity to express the child’s views in—

- (i) the manner the child prefers, or
- (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference.>

**Humza Yousaf**

- 20 In section 8, page 5, line 31, leave out subsection (7)

**Section 9**

**Rhoda Grant**

- 34 In section 9, page 6, line 5, leave out <two> and insert <six>

**Section 10**

**Humza Yousaf**

- 21 In section 10, page 6, line 22, at end insert <,  
( ) without the consent of person B.>

**Humza Yousaf**

- 22 In section 10, page 6, line 30, leave out <15> and insert <14>

**Section 11**

**Humza Yousaf**

- 23 In section 11, page 7, line 3, leave out <in accordance with section 6(4)> and insert <(whether given in accordance with section 5(2A) or 6(4) or otherwise in connection with the giving of notice under this subsection)>

**Humza Yousaf**

- 24 In section 11, page 7, line 5, at beginning insert <giving it to person A on person A attending a police station in accordance with section 5(2A) or otherwise>

**Section 12**

**Liam Kerr**

- 35 In section 12, page 7, line 25, at end insert—  
<( ) a supporting agency,>

**Liam Kerr**

- 36 In section 12, page 7, line 31, after <constable,> insert <the supporting agency,>

**Liam Kerr**

37 In section 12, page 7, line 32, after <constable> insert <, the supporting agency>

**Liam Kerr**

38 In section 12, page 7, line 35, after <constable> insert <, the supporting agency>

**Humza Yousaf**

25 In section 12, page 8, leave out lines 3 to 6 and insert—

<(4A) Subsection (4B) applies where, on an application under subsection (1), the sheriff is considering—

5 (a) extending or discharging an order which includes provision which relates directly to a child, or

(b) varying an order to—

(i) include provision which would relate directly to a child, or

(ii) remove or alter provision which relates directly to a child.

(4B) The sheriff must—

10 (a) take such steps as are reasonable in the circumstances to give the child an opportunity to express views in relation to the matter, and

(b) take into account any views of the child of which the sheriff is aware (whether as a result of paragraph (a) or otherwise).

15 (4C) In taking account of views of the child under subsection (4B)(b), the sheriff must take into account the child's age and understanding.>

**Rhoda Grant**

25A As an amendment to amendment 25, line 13, at end insert—

<( ) presume that the child is capable of expressing a view, and

( ) give the child the opportunity to express the child's views in—

(i) the manner the child prefers, or

(ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference.>

**Rhoda Grant**

39 In section 12, page 8, line 6, at end insert—

<( ) For the purposes of taking the matters in paragraphs (c) and (d) of subsection (4) into account, the sheriff must—

(a) presume that the child is capable of expressing a view, and

(b) give the child the opportunity to express the child's views in—

(i) the manner the child prefers, or

- (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child's preference.>

### **Section 13**

#### **Rhoda Grant**

- 40 In section 13, page 8, line 20, leave out from beginning to <order,> in line 22

#### **Rhoda Grant**

- 41 In section 13, page 8, line 25, leave out subsection (3) and insert—
- <( ) The maximum period for which an interim order may have effect, including any period for which it is extended, is three weeks.
  - ( ) On an application under section 12(1) to extend a domestic abuse protection order, other than in the case of an interim order, the sheriff may not extend the order so that it has effect beyond the date when the sheriff considers that—
    - (a) alternative arrangements are, or are expected to be, in place, and
    - (b) as a result of such arrangements, the order is, or is expected to be, no longer required to protect person B from abusive behaviour by person A.>

### **Section 14**

#### **Liam Kerr**

- 42 In section 14, page 9, line 18, after <constable,> insert <the supporting agency,>

#### **Liam Kerr**

- 43 In section 14, page 9, line 20, after <constable,> insert <the supporting agency,>

### **Section 15**

#### **Humza Yousaf**

- 26 In section 15, page 9, line 37, leave out from <made> to <application> and insert <considered the application for a domestic abuse protection order which resulted (whether or not after appeal) in the making of the domestic abuse protection order or interim domestic abuse protection order to which the application under section 12(1)>

### **After section 15**

#### **Humza Yousaf**

- 27 After section 15, insert—
- <Effect of making of appeal on decision appealed against**



- (1) A decision of a sheriff mentioned in subsection (2) is, for the purposes of section 110 of the Courts Reform (Scotland) Act 2014 (the “2014 Act”), a decision constituting final judgment in civil proceedings.
- (2) The decisions referred to in subsection (1) are—
  - (a) a decision to make, or refuse to make, a domestic abuse protection order,
  - (b) a decision to extend, vary or discharge, or refuse to extend, vary or discharge, a domestic abuse protection order.
- (3) Subsection (5) applies where a decision mentioned in subsection (4) is appealed against under section 110 of the 2014 Act.
- (4) The decisions referred to in subsection (3) are—
  - (a) a decision mentioned in subsection (2),
  - (b) a decision to make, or refuse to make, an interim domestic abuse protection order,
  - (c) a decision to extend, vary or discharge, or refuse to extend, vary or discharge, an interim domestic abuse protection order,
  - (d) a decision to extend or vary, or refuse to extend or vary, on an interim basis a domestic abuse protection order or an interim domestic abuse protection order.
- (5) The decision appealed against continues in effect until the appeal is disposed of, unless suspended by—
  - (a) the Sheriff Appeal Court, or
  - (b) where the appeal is remitted to the Court of Session under section 112 of the 2014 Act—
    - (i) the Sheriff Appeal Court, or
    - (ii) the Court of Session.
- (6) Subsection (7) applies where a decision of the Sheriff Appeal Court in an appeal under section 110 of the 2014 Act against a decision mentioned in subsection (4) is appealed against under section 113 of that Act.
- (7) The decision appealed against continues in effect until the appeal is disposed of, unless suspended by—
  - (a) the Sheriff Appeal Court, or
  - (b) the Court of Session.
- (8) But where the decision appealed against under section 113 of the 2014 Act is a decision to remit the case back to the sheriff, the sheriff may not take any further action in the case until the appeal under that section is disposed of.>

#### **After section 16**

**Liam Kerr**

**48** After section 16, insert—

#### **<Duty to report**

- (1) The Scottish Ministers must prepare and publish a report on the number of—
  - (a) domestic abuse protection notices which are made under section 4,

- (b) domestic abuse protection orders which are made under section 8,
  - (c) interim domestic abuse protection orders which are made under section 10,
  - (d) offences of breaches of domestic abuse protection notices which are reported under section 7, and
  - (e) offences of breaches of domestic abuse protection orders which are reported under section 16,
- during the reporting period.
- (2) The report must set out, in relation to the number of offences under sections 7 and 16—
    - (a) the number of cases in relation to which relevant criminal proceedings were undertaken during the reporting period, and
    - (b) the number of convictions during the reporting period.
  - (3) The report must, in relation to the making of the notices and orders specified in subsection (1)—
    - (a) include distinct statistics for each of them, and
    - (b) provide details of how many were made in each sheriffdom.
  - (4) The report may include such additional information as the Scottish Ministers consider appropriate.
  - (5) The report must be laid before the Scottish Parliament as soon as practicable after the end of the reporting period.
  - (6) In this section, “the reporting period” is the period of 3 years beginning with the day on which the last of sections 4, 7, 8, 10 and 16 come into force.>

## **Section 18**

### **Rhoda Grant**

**49** In section 18, page 11, line 36, at end insert—

- <(5D) Where a landlord raises proceedings under subsection (1) which include the ground set out in paragraph 15A of schedule 2, the landlord is precluded from raising subsequent proceedings under subsection (1) in respect of person P for a period of no less than 6 months from the date on which person T’s interest in the tenancy is brought to an end
- (5E) In subsection (5D), “person P” and “person T” are to be construed in accordance with paragraph 15A of schedule 2.”.>

### **Rhoda Grant**

**50** In section 18, page 13, line 9 at end insert—

- <( ) Where the court makes an order under subsection (3ZA), the tenancy with person P (within the meaning of paragraph 15A of schedule 2) is to be regarded as a new tenancy from the date on which the court order is made.”.>

### **Rhoda Grant**

**51** In section 18, page 13, line 14, at end insert—

<( ) An order under subsection (2)(d) or (2)(e) must specify that the landlord offers person P a tenancy agreement in respect of the house to which the action relates.”.>

### **Rhoda Grant**

52 In section 18, page 13, line 37, leave out from <for> to the end of line 39

### **After section 18**

### **Rhoda Grant**

53 After section 18, insert—

#### **<Scottish secure tenancies: right to be rehoused**

- (1) The Housing (Scotland) Act 2001 is amended as follows.
- (2) After section 21 (Joint tenancies: abandoning tenant’s recourse to court) insert—

#### *“Right to be rehoused*

#### **Right to be rehoused**

- (1) A person (“person P”) must be offered a different house by the landlord to the one in which person P usually lives if—
  - (a) person P’s only or principal home is a house in relation to which the landlord is party to a tenancy agreement,
  - (b) person T, who is the tenant or one of the joint tenants of the house referred to in (a), has engaged in behaviour which is abusive of person P who is a partner or ex-partner of person T, and
  - (c) person P requests a different house.
- (2) In subsection (1), “person T” and “person P” are to be construed in accordance with paragraph 15A of schedule 2.”.>



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