

Justice Committee

Domestic Abuse (Scotland) Bill: Stage 2

Written submission from Professor Mandy Burton, University of Leicester

Emergency Barring Orders for Domestic Abuse: An Overview

Drawing upon research evidence from other European countries, an assessment can be made of how Emergency Barring Orders (EBOs) work in practice and the lessons that can be learned about successfully implementing such measures.¹ This overview provides a summary of some of the key issues drawing on studies from Austria, Germany and, in particular, England and Wales.

Background

- EBOs enable third parties, such as the police, to apply for a perpetrator of domestic abuse to be excluded from a home shared with the victim. Article 52 of the Council of Europe Convention on Combating Violence Against Women and Domestic Violence (known as the Istanbul Convention)² recommends that parties to the Convention have provisions for EBOs. It does not specify who should make the order, the criteria for making or duration of the EBO.
- EBOs have been available in some European countries, such as Austria and Germany, for more than a decade. A Council of Europe study suggests that EBOs are now fairly widespread across Europe, although there is great diversity in the scope of the orders and the legal regimes for them. The European Commission funded a comparative evaluation of EBOs in six European countries.³ England and Wales was included in the research although, at the time, EBOs were only at a very early stage of development; the Westminster Parliament legislated for them in 2010.⁴
- EBOs were piloted and rolled out across England and Wales in 2014, following a Home Office funded evaluation.⁵ In England and Wales, EBOs, which are called Domestic Violence Prevention Notices and Orders (DVPNs and DVPOs), are available on the civil standard of proof and have civil sanctions for breach. The DVPN, which is authorised by a senior police officer, is intended to last for 48 hours whilst the police apply to the courts for a longer DVPO to be made.

¹ M. Burton 'Emergency Barring Orders in Domestic Violence Cases; What can England and Wales learn from other European countries?' (2015) CFLQ, 25.

² www.coe.int/t/dghl/standardsetting/convention-violence

³ R Romkens and L Sosa, 'Protection, Prevention and Empowerment. Case Study of Emergency Interventions across Europe to Protect Victims of Intimate Partner Violence', in L Kelly, C Hagermann-White, T Meysen and R Romkens, *Realising Rights: Case studies on state responses to violence against women and children in Europe* (Child and Women Abuse Studies Unit, London Metropolitan University, 2011), at pp 51-109.

⁴ Sections 24-33 of the Crime and Security Act 2010,

⁵ L Kelly, J Alder, M Howarth, J Lovett, M Coulson, D Kernohan and M Gray, *Evaluation of the Pilot of Domestic Violence Protection Orders*, Home Office Research Report 76 (TSO, 2013)

Key Issues

- **Grounds for making an order**

The grounds for issuing barring orders varies widely across Europe; some require a threat of serious violence accompanied by a history of actual violence, in others a threat of violence suffices. In England and Wales a threat of violence suffices; the police can issue a DVPN when they have reasonable grounds for believing violence has been used or threatened and an EBO is necessary to protect from further threats or violence. It was anticipated that this might plug a gap left by the more restrictive criteria applying to denying or imposing conditions upon bail. In addition, EBOs can be used where no criminal proceedings (hence bail) are pending. *Including threats of violence in the criteria for making an EBO may be helpful in plugging gaps in the existing criminal justice response.*

- **Terms of the order**

The basic provision for an EBO is exclusion from the home, but in some countries EBOs may extend to exclusion from other places that the victim regularly visits. In England and Wales, EBOs can contain various prohibitions, including no contact conditions. Conflicts between the terms of an EBO and other court orders is potential issue: in England and Wales this has been a long standing problem where more than one court is hearing matters relating to the same family.

- **Duration of EBOs**

The duration of EBOs varies widely across Europe. In England and Wales the police can issue a two day EBO whilst they apply to the courts for an order to last for up to 28 days. During the 15 month pilot of EBOs in England and Wales in total less than 500 DVPNs and DVPOs were made in the three areas studied, which was lower than expected, The researchers concluded the short duration of DVPNs may have contributed to the under-use of DVPOs. They suggested that time pressures and bureaucracy resulted in police officers struggling to comply with application requirements and recommended consideration be given to extending the duration of DVPNs to between four and seven days. This seems sensible: no other country in Europe where police-issued barring orders are available has a period of exclusion as short as the two-day period in England and Wales. In Austria, for example, the EBO lasts for two weeks and can last up to four weeks where the victim is applying for a longer protection order. *Making the police issued EBO last for at least one week may enhance its utilisation.*

- **Listening to Victims**

In most European countries with EBOs the victim's consent is not required for an order to be made. In England and Wales the police should consult the victim but may issue a DVPN and apply for a DVPO without her consent. It is doubtful whether an EBO will be effective where applied for without the

victim's consent as enforcement is likely to be dependent upon their cooperation.

- **Enforcement of EBOs**

In some countries breach of an EBO is a criminal offence, but not in England and Wales. There are pros and cons to criminalising the breach of a civil order, but a significant minority of respondents in the Home Office evaluation of EBOs in England and Wales expressed the view that breaches should be criminalised.

- **Police training**

An important lesson to be learned from the Austrian experience of EBOs is that introducing barring orders is not a panacea for historical problems of policing domestic violence, arising from cultural reluctance to engage with domestic violence as serious work and a policing priority. Research in Austria shows cultural resistance to intervening in domestic violence, particularly in rural communities, and this was a barrier to effective implementation of EBOs in Austria. The Home Office evaluation of EBOs in England and Wales also identified cultural attitudes of the police as a barrier to effective implementation and recommended further training to encourage greater use of EBOs. *Training is needed to address police officers' perceptions of domestic abuse and to encourage appropriate use of barring orders.*

- **Support Services**

EBOs do not operate in a vacuum. In some countries, such as Austria, Czech Republic and Netherlands, automatic referral to support services within a short time of the order being made is built into the legal regime for the EBO. State funded intervention centres exist to facilitate multi agency support. However, in other countries, for example Germany, referral to support services is not mandatory on the making of an EBO. Whilst in Germany the use of EBOs did seem to increase the take up of multi-agency support, it was found that speedy police referral was more effective than relying on the victim to seek help. Referral to support services is not part of the statutory regime for EBOs in England and Wales, this could be seen as a weakness. *EBOs work best as part of an effective multi agency response.*

Are EBOs effective at reducing repeat victimisation?

Very few research studies have attempted to assess the impact of EBOs on repeat victimisation, but the Home Office evaluation is an exception. Using repeat calls to the police (an acknowledged imperfect measure of recidivism) it was found that, in the pilot of EBOs in England and Wales, the orders did result in reduced further call outs, particularly where there was a more substantial history of attendance by the police prior to the EBO.

Do EBOs reduce the use of the criminal law?

One concern about introducing EBOs that they may result in the police inappropriately diverting cases which would have resulted in a prosecution. In England and Wales, EBOs were intended as a supplement rather than a replacement to the criminal law. Reliable evidence has not been gathered on the potential replacement effect of EBOs, but the German experience suggests it is an issue which ought to be monitored.

Conclusion

The Council of Europe promotes EBOs as best practice but there are various models for implementing such orders amongst European countries that have adopted them. Whilst what works in one country will not necessarily work in another, lessons can be learned about the potential benefits of EBOs and obstacles to effective implementation by comparative analysis. EBOs can be a useful addition to the legal regime for responding to domestic abuse, however care must be taken to ensure that the police are given appropriate resources and training to implement them. EBOs are likely to work best as part of wider multi agency support. It is also important to acknowledge that victims of domestic abuse may still need further assistance to access longer term protection under the civil and criminal law.

Professor Mandy Burton
Leicester Law School
University of Leicester
8 October 2017