

Justice Committee

Domestic Abuse (Scotland) Bill: Stage 2

Written submission from Police Scotland

EMERGENCY BARRING ORDERS

What remedies for removing an abuser from the family home already exist or are about to come on-stream?

There are several pieces of legislation currently enacted which might be considered dependant on the circumstances presented. These include:

- The Matrimonial Homes (Family Protection) (Scotland) Act 1981 and the Civil Partnership Act 2004; (Exclusion Orders, Civil Interdicts and Domestic Abuse Interdicts)
- Section 234A of the Criminal Procedure (Scotland) Act 1995; (Non-Harassment Orders)
- Sexual Offences Prevention Orders
- Risk of Sexual Harm Orders
- Children (Scotland) Act 1995; (Exclusion Orders)

Looking ahead, sections of the following legislation may also be considered:

- The Criminal Justice (Scotland) Act 2016; (Investigative Liberation)
- Abusive Behaviour and Sexual Harm (Scotland) Act 2016; (Sexual Harm Prevention orders and Sexual Risk Orders)

At the present time, where officers attend a report of domestic abuse and, following a thorough investigation, find **sufficient evidence to arrest and charge** a perpetrator then they primarily have two options available for removing the accused from the family home. These are:

1. Release the accused on undertaking to appear at court on a later date (normally within 14 days). This decision is preceded by an assessment of risk using nationally agreed guidelines. Police have the power to impose conditions upon the accused which might for instance, exclude their presence at the family home or prohibit them from approaching named persons. Any breach of police undertaking conditions is a criminal offence with a power of arrest. Due consideration must be given to child access in such circumstances.
2. Detain the accused in custody for appearance at court on the next lawful day. On appearance at court bail conditions can be considered by the courts. It must be considered however, that not all cases where an accused is held in custody for court proceed at that stage and an accused may be released prior to appearance.

Where an accused has conditions placed upon them, excluding them from the family home, either by the police or the court, then this can contribute to affording a victim with some time and space. Police currently actively manage accused persons released on bail, carrying out visits to the family home as one of a number of enforcement tactics.

Where, after detailed investigation, police find there is **an insufficiency of evidence to charge**, there are currently no powers available to the police which would prevent a suspect returning to the family home. In such circumstances officers would proactively engage the victim to assess risk and, alongside partner agencies, would consider what measures could be put in place to mitigate risk. This may include the victim electing to leave the family home.

Looking ahead, we anticipate the implementation of the Criminal Justice (Scotland) Act which will be enacted on 25th January 2018 (subject to final parliamentary and ministerial approval). The Act will afford new powers enabling the police to release a suspect from custody on 'Investigative Liberation' prior to charge.

Upon doing so, conditions can be imposed to ensure the proper conduct of the investigation and which might include exclusion from the family home. Careful consideration must be given to child access in these circumstances. This legislation will afford police a new power and Investigative Liberation conditions can prevent suspects from approaching witnesses, victims or specific areas whilst they continue to be subject of police investigations. Breach of Investigative Liberation conditions affords a power of arrest. This new legislation will afford additional powers and will be used in circumstances where, under existing law, a suspect would be released with insufficient evidence and under no form of conditions.

The Committee would be interested in knowing in whether there appears to be a gap in the law that causes hardship to abuse victims and, if so, how best to remedy it.

Where there is a **sufficiency of evidence to charge** a perpetrator, police have means by which they can consider excluding them from their home, if appropriate, through either police undertaking conditions or applying for court bail. Some risk presents if a perpetrator either successfully appeals police undertaking conditions; has them revoked; where they are released prior to court appearance; or where bail conditions sought by police are not applied by the court. In such instances police would seek the assistance of the third sector to support an effective safety plan.

At the current time police do not have powers to exclude a perpetrator from their family home where there is an **insufficiency of evidence to charge**. As a result, officers would work with the victim to inform and implement a risk led safety plan. As part of the plan, police routinely engage with third sectors organisation to explore options for victim safety which may include leaving the family home. Where possible, as a last resort and where no other options are available, officers will seek the cooperation of a perpetrator, through effective communication to find a suitable alternative location for them to reside in the short term. This is not a measure which can be imposed without their consent.

Whilst no cost can be put on victim safety, both actual and perceived, Police Scotland would be concerned by the significant financial impact if a process similar to Domestic Violence Protection Notices and Orders were proposed as utilised in England and Wales. It is hoped that any additional financial demand generated would be represented in the financial memorandum for the Bill.

The Committee would also like to hear about what practical issues have to be considered in these situations, and expects the police to have particular insights into this.

Police Scotland believes these practical considerations have been outlined above however additional information can be provided to the committee as they deem necessary.

In conclusion, whilst Police Scotland welcomes discussion on the safety of victims, some concern exists on the pace of potential implementation given the importance and complexity of any proposed process.

Police Scotland
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