

Karen Adam MSP  
Convenor  
Equalities, Human Rights and Civil  
Justice Committee  
The Scottish Parliament  
EH99 1SP



Dear Ms Adam

## **Non-implementation of Acts of the Scottish Parliament Domestic Abuse Protection (Scotland) Act 2021**

We are in receipt of your letter of 8 November 2024 seeking contributions from relevant stakeholders in relation to the delay in implementing several Acts of the Scottish Parliament, including the Domestic Abuse Protection (Scotland) Act 2021 (“the 2021 Act”).

Police Scotland has been working with the Scottish Government and justice partners (Crown Office and Procurator Fiscal Service, Scottish Courts and Tribunals Service and Scottish Legal Aid Board) regarding the operational implementation of the 2021 Act for several years. Four ‘walk-through’ sessions have been carried out by the DAPS Operational Working Group (comprising representatives from the aforementioned stakeholders), which have identified a number of challenges with the legislation in its current format, as detailed more fully herein.

Following the most recent walkthrough session in March 2024, we understood that the Scottish Government would be considering draft amendments to the legislation, which would be disseminated to partners. Police Scotland has received no further communication since that time and is not sighted on what amendments, if any, are being made to the legislation.

Whilst Police Scotland are cognisant of the importance of the subject matter of the 2021 Act and are wholly committed to protecting victims of domestic abuse, there are a number of fundamental challenges which require to be addressed prior to implementation. The extent of any legislative amendments will determine further action and timescales for implementation and operational readiness of Police Scotland.

### **Overview of the 2021 Act**

The 2021 Act creates two new civil mechanisms to protect victims of domestic abuse. The first is the power for a senior police constable to issue a Domestic Abuse Protection Notice (“DAPN”), and the second is for the court to make a Domestic Abuse Protection Order (“DAPO”) on the application of the Chief Constable.

A DAPN can be made by a senior constable (holding the rank of Inspector or above) where it is necessary to protect a person from an abusive behaviour, and where there is an immediate risk of further abusive behaviour from that person's partner or ex-partner. Once a DAPN has been issued, it must be followed by an application to the Sheriff Court by the Chief Constable for a DAPO to be made. The Chief Constable may also apply for a standalone DAPO in circumstances where a DAPN has not been issued. Both DAPNs and DAPOs are oppressive orders and any breach of the conditions therein, without a reasonable excuse, is a criminal offence.

The current iteration of the legislation presents some specific risks and challenges for Police Scotland and our justice partners. These have been raised and discussed with the Scottish Government on a number of occasions, and it is our understanding that the amendments required to address these challenges are under consideration. A high-level overview of some of these risks and challenges are outlined below.

## **Summary of Risks and Issues**

### **Volume of cases**

The definition of "abusive behaviour" within the legislation is very broad. It may include incidents where no crime is established, and it may be a single incident. This makes it difficult to project anticipated demand. Police Scotland has carried out a comprehensive dip sampling exercise which has identified an estimated annual demand figure of 4226 cases per year in which a DAPN may be issued. A demand of this level will have significant financial and resource implications.

### **Timescales & resourcing challenges**

The legislation prescribes that once a DAPN has been issued, an application for a DAPO must be lodged with the court no later than the first court date after the DAPN has been issued. Furthermore, a hearing must then be held no later than the first court day after the day on which the application is made. This process requires the involvement of a solicitor to draft the application, submit this to the court, and appear at the hearing the following day (and any subsequent hearing thereafter). In addition, arrangements must be made for the service of court papers by Sheriff Officers.

Timescales of this nature are virtually unheard of in civil court procedure, and we have significant concerns regarding the workability of such timescales. Our understanding is that the Scottish Courts and Tribunals Service ("SCTS") will also face significant logistical challenges in this regard. For example, we understand that civil courts do not sit every day (and in some more rural locations, even less). Courts may also require to postpone other court business at short notice in order to accommodate the statutory timescales.

The aforementioned timescales and anticipated volume of cases will create significant pressures and resource demands for Police Scotland staff, officers and solicitors. Police Scotland's current in-house legal resources would be unable to meet the estimated demand and would therefore necessitate the hiring of a number of additional solicitors and administrative staff to deal with a proportion of the DAPO applications in-house. The remainder of the applications would have to be outsourced to external solicitors, at cost. There was a suggestion from the Scottish Government that a police constable could make and pursue applications to the court, by virtue of section 18 of the Police and Fire Reform (Scotland) Act 2012. Police Scotland discussed this with Scottish Government and provided a written response in October 2022 authored by our

Chief Legal Officer, Duncan Campbell advising of a number of reasons that this would not be appropriate or viable.

In addition to the direct cost of engaging solicitors (in-house or external), there are various other costs associated with civil court procedure (such as Sheriff Officers fees for service, and court dues for lodging applications). Police Scotland have provided Scottish Government with the anticipated financial cost based on the current demand analysis, which is significant.

### **Gaps in protection for suspected victim**

In order for a DAPN to take effect, this must be served on the suspected perpetrator of the abusive behaviour ("person A"). However, the legislation provides no power for police officers to detain person A for the purpose of seeking authorisation from a senior constable for the DAPN to be issued. If person A leaves the scene before a DAPN can be issued, this leaves a gap in protection for the suspected victim of the abusive behaviour ("person B") and any children.

Even if the DAPN has been served, the legislation prescribes that this ceases to have effect after the conclusion of the initial hearing. The Sheriff has the power to impose an interim DAPO at the initial hearing, however, if person A is not at the hearing, then they will be unaware of the terms of this, and the interim DAPO will not be effective until it has been served upon person A. Again, this leaves gaps in protection for the suspected victim. This challenge is compounded by the fact that we may be unaware of the whereabouts of person A, given that they may have been effectively rendered homeless by virtue of the conditions of the DAPN.

### **Disclosure of information in the court papers**

As these orders are being sought in civil court proceedings, person A will be served with a copy of the court papers, including the application which has been submitted to the court. This application may contain sensitive information pertinent to the case, and disclosure of this information could leave the suspected victim (and any child) at an increased risk, particularly if information is included which was not previously known to person A.

### **Absence of Cross Border Powers**

There is an absence of cross border powers. We have concerns that this may have implications, particularly for persons residing close to the border (for example, if the suspected victim resided in Scotland but worked in England, and person A had a condition restricting them from approaching person B in Scotland, there would be nothing to prevent person A from approaching person B whilst at their workplace in England).

### **Obtaining views of children**

The legislation requires that the views of any child whose interests are relevant to the application be taken into consideration by the Sheriff. Taking cognisance of UNCRC we can anticipate an increase in the number of children whose views will require to be captured and considered. There is a lack of clarity regarding who is to arrange / facilitate / fund the process of taking the views of the child. We do not consider this to be an appropriate role for the police in circumstances where we may be removing the child's parent / caretaker from their home (perhaps against the wishes of both parents /

caretakers). We understand independent child advocacy services were proposed to take on this role, but there is inconsistent provision across Scotland, and we understand that Scottish Government were considering what alternative provisions could be made.

### **Lack of civil legal aid provision**

Concerns have been raised regarding the lack of availability of civil legal aid and the implications this may have for persons A, B and any child, all of whom may require legal representation.

### **Special measures for use in civil court hearings**

The Victims, Witnesses and Justice Reform (Scotland) Bill proposes provisions for special measures for taking evidence in civil proceedings and includes a prohibition on personal conduct of a case. Concerns have been raised regarding the potential ECHR implications this might have if person A was unable to secure legal representation (particularly given the timescales and issues with a lack of civil legal aid provision). The timescales for hearings being fixed may cause additional practical difficulties where special measures are required, as these may not be able to be arranged by the court on such short notice.

Police Scotland is committed to protecting victims of domestic abuse and we will continue to work with Scottish Government and justice partners to achieve operational readiness, but we have significant concerns about the risks and challenges which have been identified. Meantime, we continue to manage risk to victims of domestic abuse via our three-tier domestic abuse structure. This includes frontline attendance at domestic abuse calls; victim safety planning; perpetrator management practices; and multi-agency work, including the Disclosure Scheme for Domestic Abuse Scotland (DSDAS), Multi-Agency Risk Assessment Conference (MARAC) and Multi-Agency Tasking and Co-ordination (MATAC).

If we can be of any further assistance, please don't hesitate to contact us.

Yours sincerely

Steve Johnson  
Assistant Chief Constable  
Major Crime, Public Protection and Local Crime