

PROTECTION FROM ABUSE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 2: Duration, extension and recall

20. Unless otherwise provided for, court orders generally come into effect when they are granted. Subsection (1) sets out that a power of arrest under the Act will only come into effect once it and any other documents prescribed by rules of court are served on the interdicted person. Such documents could include a copy of the writ or summons. This rule ensures that a power of arrest will not come into effect until the person in respect of whom it was granted is made aware that it has been granted.
21. Subsection (2) sets out when a power of arrest, once granted, ceases to have effect.
22. As paragraph (a) makes clear, the power of arrest will last until the date of expiry set by the court. Paragraph (b) makes clear that if the power of arrest is recalled, it ceases to have effect from the time of recall.
23. Paragraph (c) provides that a power of arrest is terminated either when the interdict to which it is attached is varied or when it is recalled. The rationale for the power terminating where an interdict is varied is that the power was initially granted having regard to the terms of the interdict. If the interdict is varied, the appropriateness of the power would also require to be reconsidered. In any application to have an interdict varied by the person who originally obtained the interdict there would be nothing to stop that person also applying for the grant of a new power of arrest in respect of the varied interdict.
24. If an interdict ceases to exist (which is what recall means in this context) then any order attached to it must also terminate.
25. Subsections (3) and (4) deal with applications for extending the duration of a power of arrest. An application for an extension is made by the person who obtained the power of arrest. Again, in accordance with normal civil rules, where a representative acted for a child or an adult without capacity when the power of arrest was granted, the child or adult is regarded as the person who obtained the power of arrest. An application for an extension may therefore be made by their representative, or, alternatively, they may make the application themselves if they have capacity to do so. The test applied by the court in deciding whether or not to grant the application is identical to that applied in deciding whether or not to allow the application for the power in the first place under section 1(2)(c). As with the original application for the power, the interdicted person must be given a reasonable opportunity to be heard by or represented before the court. There is no limit to the number of times an application may be made to extend the duration of a power of arrest although the maximum duration that may be granted at any one time is restricted to three years by subsection (4).

*These notes relate to the Protection from Abuse (Scotland) Act
2001 (asp 14) which received Royal Assent on 6 November 2001*

26. Subsection (5) sets out two further requirements with regard to extending the duration of a power of arrest. The first is that, as with the original power of arrest itself, the extension only comes into effect when it is served on the interdicted person. This is to ensure that the interdicted person is made aware of any extension to the power of arrest before it comes into effect. Secondly, it provides when any extension of a power of arrest ceases to have effect: this will be in the same circumstances as an original award and is achieved by applying subsection (2).
27. Subsection (6) makes clear that the same requirements covering the duration, intimation and test for the granting of an initial extension apply to any further extensions that might be sought.
28. Subsection (7) sets out requirements on applications for recall of a power of arrest. The court must recall the power of arrest if requested by the person who obtained it. In any application for a recall of a power of arrest by the interdicted person, the person who obtained the power of arrest must be given an opportunity of opposing the application. In order to allow the application, the court must be satisfied that the power is no longer necessary to protect that person from a risk of abuse (i.e. that the test for granting the power is no longer satisfied).