

DOMESTIC ABUSE – COURT ORDERS

What kind of court order could I get to protect me from domestic abuse?

Your solicitor can apply to the court for an “interdict”. This would initially be an “interim interdict” to give you urgent protection. This type of court order usually prohibits your partner from behaving abusively towards you (e.g. assaulting or threatening you) and/or from being in a particular place (e.g. calling at your home if you are separated, or going to your children’s school if he might try to remove them). The exact order will depend on your particular situation. An interdict is not effective until the person concerned has received a copy of it.

There is another type of court order called an “exclusion order”. This type of order can be made whether or not you are separated from your partner. It excludes your partner from the family home. If necessary he could be evicted by Sheriff Officers. Before granting an exclusion order, the court has to consider whether it is necessary for your protection, or for the protection of your children. You should consult one of our solicitors, who can advise you whether you may be able to get an exclusion order.

I am not married to my partner. Can I get a court order to protect me from abuse?

Yes, partners in both married and unmarried couples can obtain interdict and exclusion orders for protection from abuse. So can partners in civil partnerships.

Same-sex couples who are not civil partners can also obtain protective court orders, though the exact orders which can be obtained may be different. You should discuss this with one of our family law team.

Can my partner be arrested if he breaks a court order?

This would not happen automatically, but your solicitor can ask the court to attach a “power of arrest” to an interdict granted by the court.

Before adding a power of arrest to an interdict, the court will allow your partner the opportunity to be heard or represented in court, and will consider whether the power of arrest is necessary in the circumstances. However, some types of court order must have a power of arrest attached to them if granted. Your solicitor can advise you about this.

What happens if there is a power of arrest and a court order is broken?

If there is a power of arrest attached to your court order, the police can arrest if they suspect that the order has been broken. If the person is arrested, he will usually be held overnight to appear in court the next day. The court can then decide whether to detain him for a further two days.

Whether or not the person breaking the order is detained by the court, you can take court action, through your solicitor, for “breach of interdict”, and the Sheriff has the power to punish the abuser for breaching the interdict

Can I get a non-harassment order?

This type of order can be obtained to prevent stalking generally, but is also a possibility where there is domestic abuse of a particular kind, usually where the behaviour complained of is not in itself unlawful e.g. repeatedly sending unwanted gifts, phone calls, texts etc. Breach of a non-harassment order is a criminal offence.

If you are subject to abuse from your partner, you should call the police in any emergency situation, and report any assaults or threats to the police – see our factsheet “Domestic Abuse – Emergency Action”.