

Interdicts- what they are, what they do, and how to get them?

In this factsheet you can find out more information on;

- What an interdict can do
- Applying for an interdict
- Making the interdict more effective – power of arrest and domestic abuse interdict
- What happens if your partner breaks an interdict

A women's aid worker, your solicitor, or a citizen's advice worker can help to support you through this process.

What is an interdict?

An interdict is a court order that bans someone from specific behaviour such as:

- Coming near your home, your work, or your child's school
- Taking items from your home or destroying them
- Threatening or physically assaulting you
- Phoning, e-mailing, or texting you

It can be obtained against your current or ex-partner/spouse, their family members, or someone who is stalking or harassing you.

An interdict can prevent your partner from entering the house or coming near it if they are not living there. You can apply for an interdict if you are living together, but it won't be used to put them out of the house if they have occupancy rights.

Applying for an interdict

In an emergency, you can apply to the court for a temporary interim interdict which your solicitor should be able to get within 24 to 48 hours. There will be a court hearing within about seven days afterwards to decide what should happen next.

Your solicitor will have to give the court evidence such as an affidavit (a written statement on oath) from you, friends, family, or neighbours, as well as any police reports, and any other information that is relevant.

There are different types of interdict available depending upon your personal circumstances and an adviser or a solicitor can tell you which is best.

Making the interdict more effective

When applying for an interdict, your solicitor should also ask the court for a power of arrest to be attached to the interdict and also that the court makes a determination that the interdict is a domestic abuse interdict.

Power of arrest - what it is, what it does, and how long it lasts for

Your solicitor should ask the court to attach a further order, called a power of arrest, to the interdict. Having a power of arrest means that the police can arrest your partner/ex-partner without a warrant if he breaks, or breaches, the interdict.

The power of arrest can be granted for a period of up to 3 years and can be renewed more than once.

The police have to be told that you have a power of arrest before they can use it for your protection, so your solicitor must send a copy of both the interdict and the power of arrest to your local police station.

If the police arrest your partner/ex-partner for breach of interdict in these circumstances, this is only for breaking the conditions of the order, and he is not being arrested for a criminal offence. However, once arrested for breach, your partner/ex-partner will be detained by the police and go back before the court. The court can order your partner/ex-partner to be kept in police custody for another two days.

However, your partner can be arrested and prosecuted for any separate criminal offences such as alarming, threatening, or assaulting you at the time they breach the interdict, so tell the police if this has happened.

Domestic abuse interdict - what it is

If you apply for, or already have, an interdict specifically to protect you against abuse by your spouse, civil partner, intimate partner or co-habiting partner, then you can ask the court to make the determination that the interdict is a domestic abuse interdict under the Domestic Abuse (Scotland) Act 2011.

What does a domestic abuse interdict with a power of arrest do?

If your interdict is declared as being a domestic abuse interdict and the court also gives you a power of arrest, or you already have a power of arrest that's still in force, a breach of the domestic abuse interdict becomes a criminal offence. It will stay an offence as long as the power of arrest and the determination are in effect.

This is very important protection to have because, in these circumstances, breach of the interdict is a criminal offence; meaning your partner may face criminal charges and prosecution. Your solicitor must send the interdict, power of arrest, and determination document to your local police station.

If your partner/ex-partner is convicted of breaching a domestic abuse interdict in the sheriff court, they could be imprisoned for up to 12 months, receive a fine, or both. If convicted by a judge or sheriff sitting with a jury, they could be imprisoned for up to 5 years, receive a fine, or both.

IMPORTANT

- If the court grants an interdict, and any of these orders, they are only effective once your partner/ex-partner actually receives the papers.
- Make sure that you have a copy of any of these court orders to show the police when you call them.

If your partner breaks the interdict when there is;

No power of arrest attached to the interdict

- Contact your solicitor and tell them what has happened. You will have to go back to court to have them deal with the breach.
- Call the police if your partner/ex-partner assaults or threatens you/ carries out any other criminal behaviour, because the police can take action against him.

Power of arrest attached to the interdict

- Contact the police and tell them that you have an interdict with a power of arrest. The police can arrest your partner/ex-partner without a warrant for simply breaking the terms of the interdict.
- Your partner will have to go back before the court and could be held in police custody for another 2 days because of the breach.
- The Fiscal can also take criminal action against him for any criminal behaviour he carried out when breaching the interdict.
- Contact your solicitor and tell them what has happened. You will have to go back to court to have them deal with the breach.

Power of arrest attached and the court has made the interdict a domestic abuse interdict

- Contact the police and tell them that your interdict is a specific domestic abuse interdict and that you have power of arrest attached to the interdict.
- Breach of a domestic abuse interdict is a criminal offence. The police can arrest without warrant for this breach, and your partner may face a criminal charge and prosecution. You do not have to go back to court to have them deal with the breach but let your solicitor know anyway.
- If your partner/ex-partner commits any other criminal offence at the time of breaching the interdict, he may face additional criminal charges and prosecution.