

*Tieslietu ministrija*

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**Conference „Commensurability of human rights and conception of coercive preventive measures”**

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# Legal framework in Scotland

Sanita Sīle  
PROVIDUS researcher  
assistant

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# Regulatory framework in Scotland

 Regulatory framework of preventive coercive measures in Scotland includes:

 Anti-social Behaviour Act

 Protection from Harassment Act 1997

 Domestic Abuse (Scotland) Act 2011

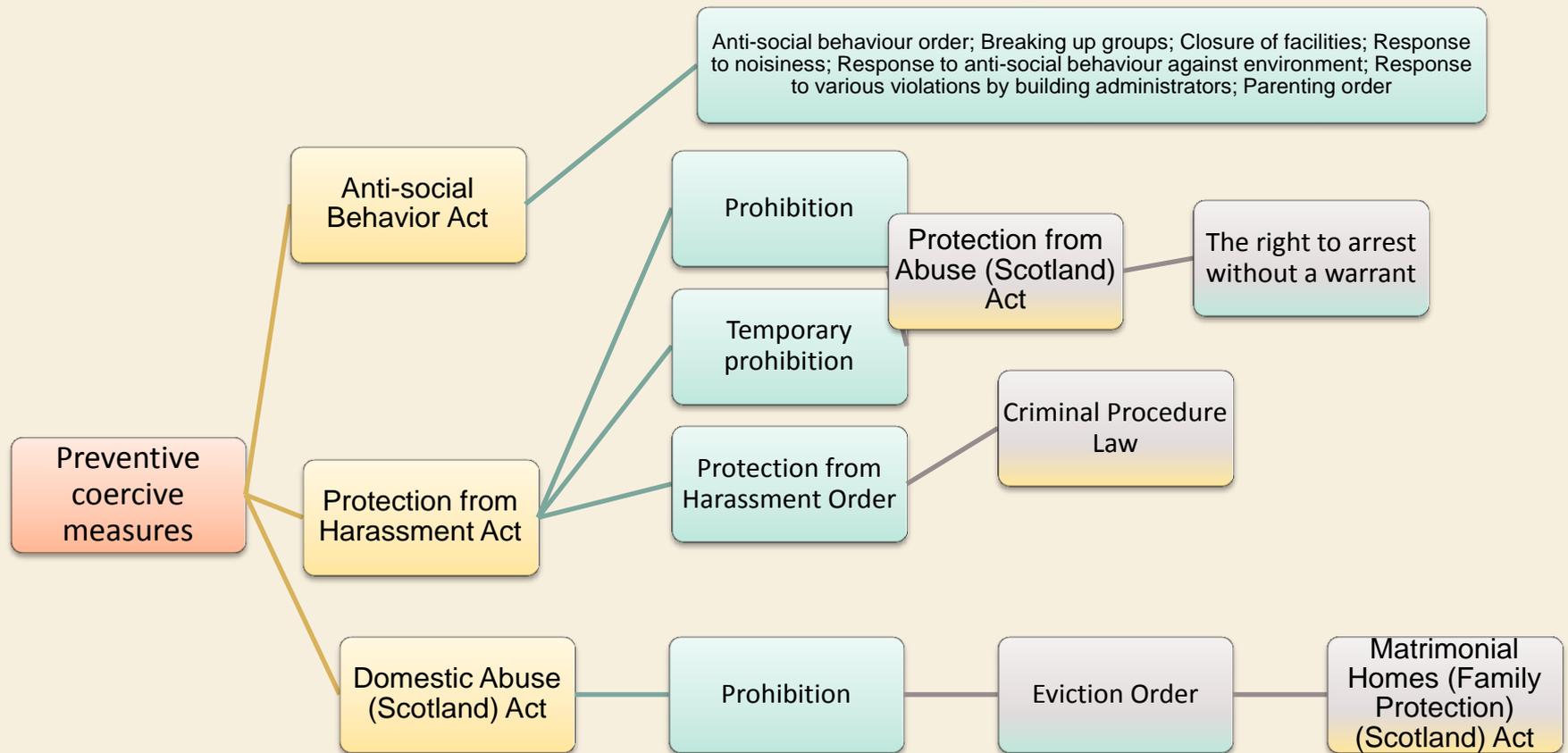
 Protection from Abuse (Scotland) Act 2001

 Matrimonial Homes (Family Protection) (Scotland) Act 1981



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# System of preventive coercive measures



# Anti-social Behaviour Act

## Preventive coercive measures prescribed in the Anti-social Behaviour Act:

-  Breaking up groups; Closure of facilities; Response to noisiness; Response to anti-social behaviour against environment; Response to various violations by building administrators.

### Anti-social Behaviour Order

-  Solution for situations when someone behaves in a way that causes or most probably will cause anxiety or stress to others.
-  Consequences of ABO violation or non-performance can be imprisonment for up to 5 years, fine or both.

### Parenting order

-  The aim is to deal with parents who deliberately or as a result of irresponsibility do not want to or cannot handle their children.
-  In case such order is issued, the person to whom the order is applied, for up to a year must satisfy particular requirements and is receiving consultations and instructions for up to three months.



# Protection from Harassment Act 1997

## Prohibition and temporary prohibition

-  The aim – to protect a person from harassment which is expressed as a creation of anxiety or suffering in at least two acts of particular behaviour (term *behaviour* also covers speaking).
-  Prohibition and temporary prohibition might establish:
  -  keeping away from the home or work of the victim;
  -  keeping away from the school of victim's children;
  -  prohibition to carry out furniture or other things from the place of residence;
  -  prohibition to threaten, physically or verbally abuse, make insulting phone calls;
  -  Prohibition to do anything that might scare, create anxiety or suffering for the victim or his/her children.
-  In order to speak of harassment, one must identify an intention to harass or conditions that a reasonable person might see as harassment.
-  Prohibition and temporary prohibition is applied according to the civil law, so it is necessary to prove, that the harassment «most probably» is taking place.



# Protection from Abuse (Scotland) Act 2001

- Additional rights to arrest a person violating the aforementioned preventive coercive measures without a warrant can be established both for Prohibition and Temporary prohibition.
  - The right to arrest a person might be established for up to three years by noting a particular date when such right becomes invalid.
- The notion «abuse» has a broad sense –
  - it includes abuse, harassment, threatening behaviour or any other behaviour that causes or most probably could cause physical or psychological injuries, fear, anxiety or stress, besides it also concerns speaking or being in a particular place or area.



# Protection from Harassment Order

**🔗 Protection from Harassment Order issued according to the Civil law** is established in the Protection from Harassment Act 1997.

- 🔗 Order can prescribe refraining from a particular behaviour for a particular period (might be an indefinite period).
- 🔗 Behaviour from which a person wants to protect him-/herself does not have to be illegal or abusive – it is sufficient that the particular behaviour causes fear or anxiety to the person asking for the order.
- 🔗 Order can prohibit, for example, making calls, repeatedly sending SMS, sending letters or following.

**🔗 Protection from Harassment Order might be issued according to the Criminal Law** based on a prosecution's request in case the person is tried for crime including also harassment.

- 🔗 Order might be applied for indefinite period of time and the punishment for violation of this order is imprisonment for up to 5 years or fine, or both.



# Domestic Abuse (Scotland) Act 2011

- 🔗 Civil protection measure established in the law for cases when domestic abuse is identified.
  - 🔗 The protection measure can be applied against the spouse, partner or mate (in case both individuals are living together as spouses or partners) of the applicant or against the person with whom the applicant has sexual relationships (including relationships between a male and a female as well as between two individuals of the same sex).
- 🔗 Unlike in the regulation of Protection from Harassment Act 1997 – victim does not have to prove that there has been a particular „pattern of behaviour” – one act of particular behaviour is enough, besides „behaviour” also concerns speaking or being in a particular place or area.
  - 🔗 Violation of a prohibition is a crime. The punishment for such crime can be imprisonment for up to 5 years or fine, or both.



# Matrimonial Homes (Family Protection) (Scotland) Act 1981

- ❖ Eviction from place of residence Order can be seen as an additional protection measure.
  - ❖ Such Eviction Order can be requested in case partners are married, they have registered their relationships or they are living together as if they would be married or would have registered their relationships, besides they both have a right to live in the particular place of residence.
  - ❖ Eviction Order can be issued in case the partner has done or has threatened to his spouse or children do to something that could cause physical or psychological injuries, and such behaviour can be proven (for example, with a report from police, a letter from a doctor, an evidence from friends, family or neighbours).
  - ❖ It is also evaluated will the injurious behaviour of the partner most probably repeat – is there a particular pattern of negative behaviour.



# Application of coercive preventive measures

- Issues regarding application of coercive preventive measures in Scotland are dealt with by the court of first instance according to the Civil Law.
- Violation of non-performance of coercive preventive measures have consequences according to the Criminal Law – fine or imprisonment, or both.
- It is important not only to punish the violator but also offer this person necessary support measures (emphasis on prevention, integration, involvement and communication)



# Thank you for the attention!

Sanita Sīle

[sanita@providus.lv](mailto:sanita@providus.lv)



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