

**Update in relation to domestic abuse cases during the Covid-19 crisis**  
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In all cases when a person is arrested and in police custody there is a presumption of liberty. The police must consider in every case whether it is reasonable or necessary to keep that person in custody.

The Lord Advocate's Guidelines on Liberation (LAGs) confirm that officers should keep an accused in custody where there is a substantial risk to a victim, witness or the public which cannot be mitigated by undertaking conditions.

Given the particular risks associated with domestic abuse cases, in some cases, it will be both reasonable and necessary to hold a person in custody pending the submission of a report to the Procurator Fiscal. The LAGs confirm that police officers must have regard to the terms of the Domestic Abuse Protocol when considering release of persons arrested for domestic abuse offences. Whilst there is a general presumption to liberty, the Protocol sets out the factors to be considered and applied in each case.

Where it is proposed to release a suspect in a domestic abuse case on undertaking, consideration must be given to imposing appropriate further conditions of undertaking, having regard to risk and safety considerations.

**New approach**

As a result of the public health advice relating to covid-19, SCTS have now closed the majority of courts and custody cases are being dealt with at the following designated courts - Glasgow, Edinburgh, Dundee, Falkirk, Paisley, Kilmarnock, Inverness, Aberdeen, Hamilton and Dumfries. Where possible, undertakings will also call in these 10 courts to reduce the number of courts which have to open.

An issue has arisen in relation to undertakings with some accused failing to appear for their undertaking hearings due to covid-19 related reasons, for example self-isolating or being unable to travel to the court due to public health advice and travel restrictions.

The legal provisions relating to undertakings don't allow the undertaking hearing to be continued and the undertaking conditions expire the day the case calls unless a warrant is granted for the accused's arrest for failing to appear. COPFS have encountered difficulties in some cases in obtaining warrants for the accused's failure to appear at the hearing where it appears there may be legitimate reasons for that failure to appear. The effect of this is that protective undertaking conditions expire that day and no bail conditions are imposed to replace them. This raises risk and safety considerations for victims.

In order to mitigate that risk of protective conditions falling during this period when there is a high probability of some accused being unable to attend at court due to covid-19, it has been decided that all undertakings, including domestic abuse cases, will be fixed to call within 90 days of liberation. This ensures the protective conditions are in place for victim safety during this period and will be enforced by the police in the usual way. Breach of undertaking is a criminal offence similar to breach of bail.

Undertaking cases will continue to be reported quickly to Procurators Fiscal, with domestic abuse cases to be reported within 14 days of the accused's liberation, to allow for early consideration and review by the PF.

This new approach will be kept under review in light of the developing picture with covid-19 and relevant public health advice.