

# DOMESTIC ABUSE BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Domestic Abuse Bill as introduced in the House of Commons on 16 July 2019 (Bill 422).

- These Explanatory Notes have been provided by the Home Office, Ministry of Justice and Ministry of Housing, Communities and Local Government in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 In June 2017, the Government was elected with a manifesto commitment to deliver “protections for victims of domestic abuse in law through a new landmark Domestic Violence and Abuse Bill”. The manifesto included further specific commitments, including to “enshrine a definition of domestic violence and abuse in law” and “create a domestic violence and abuse commissioner in law”. The Bill contains a number of provisions to support the delivery of those commitments.
- 2 The purpose of the Bill is raise awareness and understanding of domestic abuse and its impact on victims, to further improve the effectiveness of the justice system in providing protection for victims of domestic abuse and bringing perpetrators to justice, and to strengthen the support for victims of abuse provided by other statutory agencies.
- 3 The Bill is in five Parts.
- 4 Part 1 makes provision in relation to domestic abuse in England and Wales. Chapter 1 provides for a statutory definition of domestic abuse which underpins other provisions in this Part. Chapter 2 creates the office of Domestic Abuse Commissioner, sets out the functions and powers of the Commissioner and imposes a duty on specified public authorities to co-operate with the Commissioner. Chapter 3 provides for a new civil preventative order regime - the Domestic Abuse Protection Notice (“DAPN”) and Domestic Abuse Protection Order (“DAPO”). Chapter 4 confers on victims of domestic abuse automatic eligibility for special measures in the criminal courts; enables domestic abuse offenders to be subject to polygraph testing as a condition of their licence following their release from custody; places the guidance supporting the Domestic Violence Disclosure Scheme on a statutory footing; and ensures that persons with secure or assured lifetime tenancies are granted a secure lifetime tenancy where the new tenancy is being granted for reasons connected to domestic abuse.
- 5 Part 2 makes provision in relation to domestic abuse in Northern Ireland and, in particular, provides for a new domestic abuse offence.
- 6 Part 3 prohibits perpetrators of certain offences from cross-examining their victims in person in the family courts in England and Wales (and vice versa) and gives family courts the power, in certain circumstances, to appoint a legal representative to conduct the cross-examination on behalf of the prohibited person.
- 7 Part 4 extends the extra-territorial jurisdiction of the criminal courts in England and Wales, Scotland and Northern Ireland to further violent and sexual offences.
- 8 Part 5 makes supplementary and general provisions, including a power for the Secretary of State to issue statutory guidance to practitioners in England and Wales about tackling domestic abuse.

## Policy background

- 9 Domestic abuse remains one of the most prevalent crimes in England and Wales. An estimated two million adults aged 16 to 59 experienced domestic abuse in the year ending

March 2018, two-thirds of whom were women.<sup>1</sup> The police recorded 1.2 million domestic abuse-related incidents and crimes in the same period and of these, 50% were recorded as domestic abuse-related crimes; domestic abuse-related crimes recorded by the police accounted for 33% of violent crime. Of the 400 domestic homicides recorded by the police between April 2014 and March 2017, 293 of the victims were women.<sup>2</sup>

- 10 Domestic abuse is not limited to physical violence. It can include repeated patterns of abusive behaviour to maintain power and control in a relationship. The current non-statutory [cross-government definition](#) of domestic violence and abuse recognises this and defines domestic abuse as:

“Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. It can encompass, but is not limited to, the following types of abuse:

psychological;

physical;

sexual;

financial;

emotional.

#### **Controlling behaviour**

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

#### **Coercive behaviour**

Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.”

- 11 From 8 March to 31 May 2018 the Government ran a [public consultation](#) on the Government’s approach to tackling domestic abuse. The aim of the proposals in the consultation is to prevent domestic abuse by challenging the acceptability of abuse and addressing the underlying attitudes and norms that perpetuate it. The consultation asked questions under four main themes with the central aim of prevention running through each:

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<sup>1</sup> [Domestic abuse in England and Wales: year ending March 2018](#) – Office of National Statistics.

<sup>2</sup> [Domestic abuse in England and Wales: year ending March 2018](#) – Office of National Statistics (table 15).

- **Promote awareness** – to put domestic abuse at the top of everyone’s agenda, and raise public and professionals’ awareness;
  - **Protect and support** – to enhance the safety of victims and the support that they receive;
  - **Pursue and deter** – to provide an effective response to perpetrators from initial agency response through to conviction and management of offenders, including rehabilitation;
  - **Improve performance** – to drive consistency and better performance in response to domestic abuse across all local areas, agencies and sectors.
- 12 The consultation sought views on a number of legislative and non-legislative measures under each of these themes. The legislative measures, now incorporated in this Bill, included:
- introducing a new statutory definition of domestic abuse (Chapter 1 of Part 1);
  - establishing a Domestic Abuse Commissioner in law (Chapter 2 of Part 1);
  - creating a new domestic abuse protection notice and order (Chapter 3 of Part 1);
  - creating a legislative assumption that domestic abuse victims are to be treated as eligible for special measures in criminal proceedings (Clause 53);
  - putting the guidance underpinning the Domestic Violence Disclosure Scheme on a statutory footing (Clause 55);
  - prohibiting perpetrators of domestic abuse cross-examining their victims in family court proceedings (Clause 75);
  - extending the extra-territorial jurisdiction of the criminal courts in England and Wales to cover further violent and sexual offences (Clause 76 and Part 1 of Schedule 2).
- 13 Some 3,150 responses were received to the consultation. In its response, published on 21 January 2019 alongside a draft Bill, the Government committed to legislate to introduce these measures.
- 14 The draft Bill was subject to pre-legislative scrutiny by a Joint Committee of both Houses of Parliament, chaired by the Rt. Hon. Maria Miller MP. The Joint Committee published its [report](#) on 14 June 2019. The Government response to the Joint Committee’s report was published alongside the introduction of the Bill in the House of Commons.

## Civil protection orders

- 15 Sections 24 to 33 of the Crime and Security Act 2010 provide for domestic violence protection notices (“DVPNs”) and domestic violence protection orders (“DVPOs”). They were implemented across England and Wales from 8 March 2014 following a one year [pilot](#) in the West Mercia, Wiltshire and Greater Manchester police force areas.
- 16 A DVPN is an emergency non-molestation and eviction notice which can be issued by the police, when attending to a domestic abuse incident, to a perpetrator. Because the DVPN is a police-issued notice, it is effective from the time of issue, thereby giving the victim the immediate support they require in such a situation. Within 48 hours of the DVPN being served on the perpetrator, an application by the police to a magistrates’ court for a DVPO must be heard. A DVPO can prevent the perpetrator from returning to a residence and from having contact with the victim for up to 28 days. This allows the victim a degree of

breathing space to consider their options with the help of a support agency. Both the DVPN and DVPO contain a condition prohibiting the perpetrator from molesting the victim. The Home Office has issued [guidance](#) to police forces on the operation of DVPNs and DVPOs.

- 17 In addition to the DVPN and DVPO other civil orders, including restraining orders (as provided for by section 5 of the Protection from Harassment Act 1997), non-molestation orders (Part IV of the Family Law Act 1996) and occupation orders (Part IV of the Family Law Act 1996), can be made in varying circumstances. These orders differ in terms of who can apply for them, the courts in which the orders may be made, the conditions that may be attached to an order and the consequences of breach. This can lead to confusion for victims and practitioners in domestic abuse cases and problems with enforcement.
- 18 The Government consultation proposed the creation of a new DAPN, which could be given by the police, and a DAPO, which could be made by the courts in a wide range of domestic abuse-related circumstances (not just in cases involving violence or the threat of violence). Chapter 3 of Part 1 of the Bill provides for the DAPN, modelled closely on the existing DVPN, and for the DAPO which will have the following key features:
  - be available in a variety of courts on application by the police, the victim, persons or bodies specified in regulations or other person with the leave of the court;
  - be available to protect a person from domestic abuse, or the risk of domestic abuse, carried out by another person to whom they are personally connected;
  - enable the imposition of any requirements (including, prohibitions and restrictions) on the perpetrator that are necessary to protect the victim; and
  - breach of a DAPO will be a criminal offence, punishable by up to five years' imprisonment (or as a contempt of court, in the alternative).

## Special measures

- 19 Many witnesses experience stress and fear during the investigation of a crime and when attending court and giving evidence. Stress can affect the quality of communication with, and by, witnesses of all ages. Some witnesses may have particular difficulties attending court and giving evidence due to their age, personal circumstances, fear of intimidation or because of their particular needs. In such circumstances, where witnesses are considered to be vulnerable or intimidated, "special measures" can improve the quality of their experience by helping them to give their "best evidence".
- 20 The Youth Justice and Criminal Evidence Act 1999 ("YJCEA 1999") introduced a range of measures that can be used to facilitate the giving of evidence by vulnerable and intimidated witnesses in criminal proceedings in England and Wales. The measures are collectively known as "special measures".
- 21 Special measures are a series of provisions that help vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. Special measures under sections 23 to 30 of the YJCEA 1999 are available to prosecution and defence witnesses, but not to the accused and are subject to the discretion of the court.
- 22 Vulnerable and intimidated witnesses are eligible for the special measures in sections 23 to 28 of the YJCEA 1999. The use of intermediaries or communication aids under sections 29 and 30 of the YJCEA 1999 is only available for vulnerable witnesses; that is witnesses

who need assistance on grounds of age or incapacity.

- 23 Intimidated witnesses are eligible for special measures by reason of section 17 of the YJCEA 1999. Generally, in order for a witness to be eligible under that section, the court must be satisfied that the quality of the witness's evidence is likely to be diminished due to the witness's fear or distress in relation to testifying in the case. Complainants in sexual offences and modern slavery offences are, by section 17(4), automatically assumed to fall into this category unless they wish to opt out (section 17(5)). Currently, complainants in domestic abuse-related offences may be eligible for special measures under section 17 if the court is satisfied the quality of their evidence is likely to be diminished by their fear or distress about testifying, but they do not automatically fall into this category. Clause 53 puts victims of domestic abuse in England and Wales in the same position as victims of sexual offences and modern slavery offences and witnesses in relation to certain offences involving guns and knives.
- 24 Being eligible for special measures does not mean that the court will automatically grant them. The court has to satisfy itself that the special measure or combination of special measures is likely to improve the quality of the witness's evidence before granting an application (section 19(2) of the YJCEA 1999). In making this assessment, the court must consider all the circumstances of the case, including in particular any views expressed by the witness and whether the measure or measures in question might tend to inhibit the witness's evidence being effectively tested by a party to the proceedings (section 19(3)).
- 25 The victim of a domestic abuse-related offence will be eligible for special measures as an intimidated witness and, with the agreement of the court, this could include one or a combination of:
- **Screens** (available for vulnerable and intimidated witnesses): screens may be made available to shield the witness from seeing the accused (section 23 of the YJCEA 1999).
  - **Live link** (available for vulnerable and intimidated witnesses): a live link enables the witness to give evidence during the trial from outside the court through a televised link to the courtroom. The witness may be accommodated either within the court building or in a suitable location outside the court (section 24 of the YJCEA 1999).
  - **Evidence given in private** (available for some vulnerable and intimidated witnesses): exclusion from the court of members of the public and the press (except for one named person to represent the press) in cases involving sexual offences, modern slavery offences or intimidation by someone other than the accused (section 25 of the YJCEA 1999). Clause 53(3) makes this special measure available in cases involving domestic abuse.
  - **Removal of wigs and gowns by judges and barristers** (available for vulnerable and intimidated witnesses at the Crown Court) (section 26 of the YJCEA 1999).
  - **Video-recorded interview** (available for vulnerable and intimidated witnesses): a video recorded interview with the witness may be admitted by the court as the witness's evidence-in-chief (section 27 of the YJCEA 1999).

- **Pre-recorded cross-examination** (available for vulnerable and intimidated witnesses, although currently only partially commenced<sup>3</sup>): cross-examination (and re-examination) of the witness may be pre-recorded in advance of the trial, and the recording then played during the trial in place of live evidence (section 28 of the YJCEA 1999).

## Polygraph testing

- 26 Sections 28 to 30 of the Offender Management Act 2007 (“the 2007 Act”) make provision for polygraph testing of certain sex offenders as a condition of their licence following their release from custody. Any offender released from custody with such a condition would be required to undertake polygraph tests as part of their duty to comply with their licence conditions. The polygraph is a device that measures certain physiological responses such as heart rate, breathing rate, blood pressure and skin resistance, changes in which are thought to indicate whether the subject is lying. A “polygraph condition” requires the offender, on release, to take part in regular “polygraph sessions”, as instructed by their offender manager. The imposition of the condition allows compliance with other licence conditions to be monitored and gives information about an offender’s behaviour that will improve the effectiveness of how an offender is managed during the licence period. Section 30 of the 2007 Act makes it clear that the results of a polygraph examination cannot be used in proceedings against the released person for an offence. Polygraph testing of the most serious sexual offenders has operated across the whole of England and Wales since January 2014. Clause 54 extends these provisions of the 2007 Act to cover domestic abuse offenders.

## The Domestic Violence Disclosure Scheme

- 27 The Domestic Violence Disclosure Scheme, often referred to as “Clare’s Law”<sup>4</sup>, was implemented across all police forces in England and Wales in March 2014.
- 28 The scheme has two elements: the “right to ask” and the “right to know”. Under the scheme an individual or relevant third party can ask police to check whether a current or ex-partner has a violent past. This is the “right to ask”. If records show that an individual may be at risk of domestic abuse from a partner or ex-partner, the police will consider disclosing the information.
- 29 The “right to know” enables the police to make a disclosure if they receive indirect information regarding the current or ex-partner that may impact the safety of the individual, such as information arising from a criminal investigation, through statutory or third sector agency involvement, or from another source of police intelligence.

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<sup>3</sup> Pre-recorded cross-examination and re-examination under section 28 of the YJCEA 1999 is being rolled out in England and Wales using a phased approach. Currently, section 28 has been commenced for vulnerable witnesses in nine Crown Courts, and for complainants of sexual offences and modern slavery offences in three Crown Courts.

<sup>4</sup> Named after Clare Wood who was murdered in 2009 by her former partner, George Appleton, who had a record of violence against women.

- 30 A disclosure can be made lawfully by the police under the scheme if the disclosure is based on the police's common law powers to disclose information where it is necessary to prevent crime and if the disclosure also complies with data protection legislation, the Rehabilitation of Offenders Act 1974 ("the 1974 Act") and the Human Rights Act 1998. It must be reasonable and proportionate for the police to make the disclosure based on a credible risk of violence or harm.
- 31 For the year ending March 2018 there were 6,313 and 4,655 applications under the right to know and right to ask respectively. For these, there were 3,594 and 2,055 disclosures respectively ([Office of National Statistics](#)).
- 32 Non-statutory guidance for the police on the operation of the scheme was first published by the Home Office in July 2012 and which, following an [assessment report](#) of the pilot scheme in November 2013, was updated in December 2016. The purpose of the guidance is to support the delivery of the scheme and assist front line officers and those who work in the area of public protection with the practical application of the scheme. The updated [guidance](#) took into account the findings of an [assessment](#) by the Home Office of the first year's operation of the scheme.
- 33 Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services domestic abuse thematic reports, published in [2015](#) and [2017](#), concluded that "opportunities were being missed [through the scheme] to provide better support and protection for victims". Both reports identified inconsistencies surrounding the use of the scheme by police forces and noted the low volume of disclosures. The 2017 report concluded that "it is important that both members of the public and officers are aware of the scheme's purpose and the application process". The Government aims to drive greater use and consistent application of the scheme by putting the guidance underpinning the scheme on a statutory footing and placing a duty on the police to have regard to the guidance (see Clause 55).

## Secure tenancies

- 34 Under the Housing Act 1985 ("the 1985 Act"), local authority landlords may grant their tenants either secure periodic tenancies, or secure flexible tenancies. Secure periodic tenancies have no fixed end date and can only be brought to an end by the landlord obtaining a possession order on one of the grounds for possession set out in Schedule 2 to the 1985 Act, which are mainly fault grounds. Flexible tenancies, which were introduced by the Localism Act 2011, are tenancies granted for a fixed term of no less than two years. Currently it is for the landlord to decide which type of tenancy to grant and in which circumstances they grant flexible tenancies.
- 35 Schedule 7 to the Housing and Planning Act 2016 ("the 2016 Act") amends the 1985 Act to prevent the creation in future of secure periodic tenancies (referred to in the 2016 Act as "old-style secure tenancies"), except in limited circumstances. It also removes the power to grant new tenancies and instead requires that new-style fixed term tenancies should generally be granted. The 2016 Act includes a power for the Secretary of State to prescribe in regulations the circumstances in which a local authority may still grant an old-style secure tenancy.
- 36 The Secure Tenancies (Victims of Domestic Abuse) Act 2018 ("the 2018 Act") amended Schedule 7 to the 2016 Act to deliver on a 2017 Manifesto commitment to ensure "that victims who have lifetime tenancies and flee violence are able to secure a new lifetime tenancy automatically".
- 37 The Government has since decided not to implement the 2016 Act provisions at this time,

which means that the grant of fixed term tenancies will remain at a local authority's discretion and the 2018 Act will also not be brought into force at this time.

- 38 The Government's Social Housing Green Paper, [A new deal for social housing](#) (Cm 9671), published on 14 August 2018, includes a commitment (at paragraph 188) to legislate to put in place similar protections for victims of domestic abuse where local authorities offer fixed term tenancies at their discretion in order to deliver on the Manifesto commitment. Clause 56 gives effect to that commitment.

### Criminal liability for domestic abuse in Northern Ireland

- 39 The Department of Justice in Northern Ireland launched a [consultation](#) on 5 February 2016 seeking views on the creation of a specific offence to capture patterns of coercive or controlling behaviour in intimate relationships. The consultation closed on 13 May 2016; 44 written responses were received. A [summary](#) of the responses was published on 28 October 2016; the majority of responses were supportive of the creation of a specific domestic abuse offence to capture coercive and controlling behaviour. Part 2 provides for a new domestic abuse offence in Northern Ireland. Section 76 of the Serious Crime Act 2015 ("the 2015 Act") and section 1 of the Domestic Abuse (Scotland) Act 2018 provides for analogous offences criminalising controlling or coercive behaviour in England and Wales and Scotland respectively.

### Cross-examination in family proceedings

- 40 Courts hearing family proceedings do not have a specific power to prevent an alleged perpetrator of abuse from cross-examining their alleged victim in person, nor do they have the power to order that an advocate be appointed (and funded) to ask questions on behalf of a litigant in person.
- 41 The fact that it is possible at present for perpetrators (alleged or otherwise) to cross-examine their victims in person in family proceedings has attracted criticism, including from the All-Party Parliamentary Group on Domestic Violence.<sup>5</sup> It is widely accepted that such cross-examination can cause the victim significant distress and, as the President of the Family Division has said, "can sometimes amount, and on occasion quite deliberately, to a continuation of the abuse".<sup>6</sup> Clause 75 prohibits cross-examination in person in certain circumstances in family proceedings in England and Wales and makes provision for the court, where it is considered necessary in the interests of justice, to appoint a legal representative to carry out the cross-examination on behalf of the prohibited party. The clause also allows the Lord Chancellor to make regulations concerning the payment of legal representatives in these circumstances.

### The Istanbul Convention – extra-territorial jurisdiction

- 42 The "[Istanbul Convention](#)" is the Council of Europe Convention on preventing and combating violence against women and domestic violence. Article 1 sets out the purpose

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<sup>5</sup> [Domestic Abuse, Child Contact and the Family Courts](#)

<sup>6</sup> The [annual lecture](#) of The Wales Observatory on Human Rights of Children and Young People delivered by Sir James Munby, President of the Family Division at the College of Law, Swansea University on 25 June 2015

of the Convention as follows:

- protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;
- contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;
- design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;
- promote international co-operation with a view to eliminating violence against women and domestic violence;
- provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.

- 43 The United Kingdom (“UK”) Government signed the Convention on 8 June 2012 but has not yet ratified it. In most respects, the measures already in place in the UK comply with or go further than the Convention requires. A key element of the Convention is making sure that ratifying states can use their national law to prosecute offences required by the Convention when they are committed by their nationals or residents overseas. The legal term for powers to allow prosecution in the UK of offences committed by UK nationals or residents overseas is “extra-territorial jurisdiction”. Taking such powers requires primary legislation.
- 44 The courts in England and Wales already have extra-territorial jurisdiction for some of the offences required by the Convention (for example, female genital mutilation (by virtue of section 4 of the Female Genital Mutilation Act 2003) and forced marriage (by virtue of section 121 of the Anti-social Behaviour, Crime and Policing Act 2014)). However, the courts do not have extra-territorial jurisdiction for other offences required by the Convention (under articles 33 to 39), accordingly Clause 76 and Part 1 of Schedule 2 extend extra-territorial jurisdiction to the relevant offences to satisfy the requirements of the Convention. These included certain sexual offences and offences against the person.
- 45 Similarly, the courts in Scotland also already have extra-territorial jurisdiction for some of the offences required by the Convention (for example, female genital mutilation (by virtue of section 4 of the Prohibition of Female Genital Mutilation (Scotland) Act 2005), domestic abuse (by virtue of section 3 of the Domestic Abuse (Scotland) Act 2018) and forced marriage (by virtue of section 122 of the Anti-social Behaviour, Crime and Policing Act 2014)). However, the Scottish courts do not have extra-territorial jurisdiction for other offences required by the Convention (under Articles 33 to 39), and accordingly Part 2 of Schedule 2 to the Bill contains provisions to give domestic effect to the extra-territorial requirements of the Convention in Scotland. These include certain sexual offences and the offences of stalking and assault.
- 46 In Northern Ireland, the courts also have extra-territorial jurisdiction for some of the offences required by the Convention (for example, female genital mutilation (by virtue of section 4 of the Female Genital Mutilation Act 2003) and forced marriage (by virtue of section 16 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015)). However, the Northern Irish courts do not have extra-territorial jurisdiction for other offences required by the Convention (under Articles 33 to 39). Accordingly, clauses 61 and 77 and Part 3 of Schedule 2 to the Bill contains

provisions to give domestic effect to the extra-territorial requirements of the Convention in Northern Ireland. These include a number of sexual and violent offences.

- 47 The Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017 requires the Government to lay an annual report before Parliament on progress toward ratification of the Convention. The second such [report](#) was laid before Parliament on 30 October 2018.

## Legal background

- 48 The legislation relating to domestic abuse in England and Wales is set out in a number of statutes. Generally, such legislation is not bespoke to domestic abuse; instead the general criminal, civil and family law is applied to domestic abuse cases. For example, apart from the offence of controlling or coercive behaviour in an intimate or family relationship (section 76 of the 2015 Act), acts of domestic abuse are prosecuted under general provisions of the criminal law, such as those provided for in the Offences Against the Person Act 1861.
- 49 This Bill amends or repeals the following legislation:
- Part 4 of the Housing Act 1985 which makes provision for secure tenancies and the rights of secure tenants;
  - Section 11 of the Criminal Procedure (Scotland) Act 1995 which provides extra-territorial jurisdiction for certain offences committed outside Scotland;
  - Protection from Harassment Act 1997 which, amongst other things, includes the offences of putting people in fear of violence (section 4) and stalking involving fear of violence or serious alarm or distress (section 4A);
  - Chapter 1 of Part 2 of the YJCEA 1999 which provides for the application of special measures for vulnerable and intimidated witnesses in criminal proceedings in England and Wales;
  - Part 2 of the Criminal Evidence (Northern Ireland) Order 1999 which provides for the application of special measures for vulnerable and intimidated witnesses in criminal proceedings in Northern Ireland;
  - Chapter 1 of Part 12 of the Criminal Justice Act 2003 which makes general provisions about sentencing;
  - Section 72 of the Sexual Offences Act 2003 which provides extra-territorial jurisdiction for the offences listed in Schedule 2 of that Act;
  - Section 28 of the 2007 Act which provides for polygraph testing of certain sex offenders as a condition of their licence;
  - Sections 24 to 33 of the Crime and Security Act 2010 which provide for DVPNs and DVPOs;
  - Part 5 of the 2015 Act which, amongst other things, provides for an offence in relation to controlling or coercive behaviour in an intimate or family relationship.
- 50 There is currently no legislation expressly prohibiting cross-examination in person of a victim of an offence by the perpetrator in family proceedings. There is also no legislation expressly giving courts hearing family proceedings a discretion to prohibit cross-

examination in person, although there may be scope for them to do so using their general case management powers under the Family Procedure Rules 2010 (SI 2010/2955), as long as they provide an alternative to cross-examination. However, there is no legislation giving courts hearing family proceedings the power to appoint a legal representative to undertake cross-examination on behalf of a party, or for the costs of such representatives to be publicly funded. In contrast, provision on these issues is made in relation to proceedings in the criminal courts in sections 34 to 38 of the YJCEA 1999 and section 19(3)(e) of the Prosecution of Offences Act 1985.

## Territorial extent and application

- 51 Clause 84 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 52 The provisions in the Bill for the most part extend and apply to England and Wales only or, in the case of Clause 56 (secure tenancies granted to victims of domestic abuse), to England only. The provisions in Part 2 of Schedule 2 extend and apply to Scotland only, while those in Part 2 and Clause 77 and Part 3 of Schedule 2 extend and apply to Northern Ireland only.
- 53 There is a convention (“the Sewel Convention”) that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. (In relation to Scotland and Wales, this convention is enshrined in law: see section 28(8) of the Scotland Act 1998 and section 107(6) of the Government of Wales Act 2006.)
- 54 The provisions in Part 2 of Schedule 2 extending the extra-territorial jurisdiction of the Scottish courts relate to matters within the legislative competence of the Scottish Parliament. The Cabinet Secretary for Justice has confirmed that he will seek approval from the Scottish Parliament for a legislative consent motion in relation to these provisions.
- 55 The matters to which the provisions of the Bill relate are not within the legislative competence of the National Assembly for Wales. Although the remit of the Domestic Abuse Commissioner (Chapter 2 of Part 1) extends to Wales, the Commissioner may not do anything in pursuance of their general duty that relates to a devolved Welsh authority or otherwise relates to devolved matters, accordingly no legislative consent motion is required.
- 56 The provisions in Part 2 relating to criminal liability for domestic abuse in Northern Ireland and in Clause 77 and Part 3 of Schedule 2 extending the extra-territorial jurisdiction of the Northern Ireland courts relate to matters within the legislative competence of the Northern Ireland Assembly. In the absence of the Executive and a sitting Assembly, and given the pressing need to ensure effective protection for the victims of domestic abuse in Northern Ireland, there is neither the time available nor the practical ability for the Assembly to provide a legislative consent motion. The UK Government is clear, therefore, that the circumstances in which this Bill has been introduced come within the exception allowed by the Sewel Convention.
- 57 If, following introduction of the Bill, there are amendments relating to matters within the legislative competence of the Scottish Parliament or the National Assembly for Wales, the consent of the relevant devolved legislature(s) will be sought for the amendments.

58 See the table at Annex B for a summary of the position regarding territorial extent and application in the UK. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the House of Commons relating to Public Business.

# Commentary on provisions of Bill

## Part 1: Domestic abuse: England and Wales

### Chapter 1: Definition of “domestic abuse”

#### Clause 1: Definition of “domestic abuse”

- 59 This clause defines the term “domestic abuse”. The definition applies for the purposes of the Bill, but it is expected to be adopted more generally, for example by public authorities and frontline practitioners. The definition of domestic abuse is in two parts. The first part deals with the relationship between the abuser and the abused. The second part defines what constitutes abusive behaviour. There are two criteria governing the relationship between the abuser and the abused. The first criterion provides that both the person who is carrying out the behaviour and the person to whom the behaviour is directed towards must be aged over 16. Abusive behaviour directed at a person under 16 would be dealt with as child abuse rather than domestic abuse. The second criterion provides that both persons must be personally connected (as defined in Clause 2).
- 60 Subsections (2)(b) and (3) sets out the types of behaviours that would constitute domestic abuse, if the two relationship criteria above are met. The five behaviours listed are not mutually exclusive. Behaviours that constitute “physical or sexual abuse” and “violent or threatening behaviour” are self-explanatory and likely to be readily understood by the majority of members of public and agencies responding to domestic abuse, but other terms may be less well understood and require further explanation. The reference to “behaviour” covers both a single incident and a course of conduct.
- 61 Subsection (3)(c) refers to “controlling or coercive behaviour”.
- 62 **Controlling behaviour is:** a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
- 63 **Coercive behaviour is:** a continuing act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten their victim.
- 64 Subsection (3)(d) refers to “economic abuse”, the definition of which in subsection (4) provides that behaviours which constitute such abuse must have a substantial and adverse effect on a victim’s ability to acquire, use or maintain money or other property, or to obtain goods or services. The purpose of including the qualification “substantial and adverse effect” is to ensure that isolated incidents, such as damaging someone’s car, or not disclosing financial information, are not inadvertently captured. “Property” would cover items such a mobile phone or a car and “goods and services” would cover, for example, utilities such as heating, or items such as food and clothing.
- 65 Subsection (5) provides that a person may indirectly abuse another person through a third party, such as a child or another member of the same household. For example, the abuser may direct behaviour towards a child in the household, in order to facilitate or perpetuate the abuse of her or his partner.

#### Clause 2: Definition of “personally connected”

- 66 This clause defines the term “personally connected” for the purposes of the relationship criteria in Clause 1(2)(a).

67 Subsection (1) sets out the different types of relationships which would qualify the abuser and the abused as being “personally connected”. Subsection (1)(g) provides that two people are personally connected if they are “relatives”. Subsection (3) defines a “relative” by reference to the definition in section 63(1) of the Family Law Act 1996, namely:

- a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse, former spouse, civil partner or former civil partner, or;
- b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person’s spouse, former spouse, civil partner or former civil partner;

and includes, in relation to a person who is cohabiting or has cohabited with another person, any person who would fall within paragraph (a) or (b) if the parties were married to each other or were civil partners of each other.

## Chapter 2: The Domestic Abuse Commissioner

### Clauses 3 to 5: Domestic Abuse Commissioner

68 Clause 3 provides for the establishment of the Domestic Abuse Commissioner, who will be an independent statutory office holder appointed by the Secretary of State (in practice, the Home Secretary). Clause 4 makes provisions for the funding of the Commissioner and of the Commissioner’s office, including the payment of remuneration and allowances. Clause 5 provides for the staffing of the Commissioner’s office. Such staff will be civil servants seconded to the office of the Commissioner (whether existing civil servants or civil servants specifically recruited for the purpose). Staff working for the Commissioner will be employed by the Home Office and so appointments must comply with civil service terms, conditions, and recruitment practice. Individual appointments will be subject to approval by the Commissioner.

### Clause 6: General Functions of Commissioner

69 Subsection (1) sets out the general functions of the Commissioner, which will be to encourage good practice in the prevention of domestic abuse; the prevention, detection, investigation and prosecution of domestic abuse-related offences; the identification of perpetrators, victims and children affected by domestic abuse; and the provision of protection and support for victims. The reference to identifying the children affected by domestic abuse is in recognition of the adverse impact of domestic abuse on children. The Commissioner will play an important role in raising awareness of this and promoting good practice in identifying and supporting the children affected by domestic abuse.

70 Subsection (2) sets out a non-exhaustive list of activities that the Commissioner may carry out in order to fulfil their general functions. Such activities include assessing and monitoring the provision of services to people affected by domestic abuse. In this context the “provision of services” will cover the provision of specialist services for victims and their children, such as refuges or other specialist support services; mainstream provision of statutory services, such as healthcare, which play a role in identifying victims, children and perpetrators and referring them onto more specialist services; and specialist provision for perpetrators, such as perpetrator behaviour change programmes. In carrying out such activities, the Commissioner is expected to cooperate and consult with specialist third sector organisations, public authorities, and other relevant Commissioners such as the Commissioner for Victims and Witnesses and the Children’s Commissioner for England.

- 71 The remit of the Domestic Abuse Commissioner will extend to England and Wales, however, certain of the Commissioner's functions and powers will apply to England only recognising that the matters within the Commissioner's remit relate to a mix of reserved and devolved matters in Wales. Moreover, in Wales there are two National Advisers for Violence against Women, Domestic Abuse and Sexual Violence appointed by the Welsh Ministers under section 20 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015. Accordingly, subsections (3) to (6) limit the application of the Commissioner's functions in Wales. In England, the Commissioner's responsibilities will cover all services provided by statutory agencies, and in Wales, will cover services provided by statutory agencies which are reserved, principally criminal, civil and family justice agencies such as Police and Crime Commissioners, police forces, the Crown Prosecution Service and the courts. The Commissioner may not assess or monitor services provided by devolved agencies in Wales, such as those responsible for social care or education, or make recommendations to a Welsh authority discharging devolved functions. However, subsection (4) enables the Commissioner to consult with and cooperate with devolved Welsh bodies, such as the National Advisers for Violence Against Women, Gender-Based Violence, Domestic Abuse and Sexual Violence.

## Clause 7: Reports

- 72 Subsection (1) provides the Commissioner with the power to issue reports to the Secretary of State on any matter relating to domestic abuse. The subject matter of such reports is a matter for the Commissioner, but it is expected to be informed by the work programme set out in the Commissioner's strategic plan (see Clause 12). Such thematic reports are distinct from the duty to publish an annual report under Clause 13. All such reports are to be published by the Commissioner (subsection (2)) who must also arrange for them to be laid before Parliament (subsection (6)).
- 73 Subsection (3) requires the Commissioner to send a draft of any report to the Home Secretary prior to its publication. The Home Secretary may, after consultation with the Commissioner, require the Commissioner to omit any material that could risk someone's safety (in the UK or internationally), or which might prejudice any investigation or prosecution of an offence (subsections (4) and (5)). Subject to this, the content of such reports is a matter for the Commissioner.

## Clause 8: Advice and assistance

- 74 Subsection (1) enables the Secretary of State to request advice or assistance from the Commissioner on domestic abuse matters.
- 75 Subsection (2) enables any other person to request advice or assistance from the Commissioner on how they respond to domestic abuse. While it is open to anyone to request such advice, in practice the Commissioner is likely to focus on those agencies where the provision of advice will have the greatest impact, for example, police forces, Police and Crime Commissioners, local authorities and NHS bodies.
- 76 Subsection (3) allows the Commissioner to recoup the costs of such work; the power to charge will mean that the provision of advice or assistance in response to such a request is not at the expense of the Commissioner's wider national role.
- 77 Subsection (4) requires the Commissioner to publish any advice given to any person under subsection (2), subject to omitting any material which the Secretary of State thinks could risk someone's safety (in the UK or internationally), or which might prejudice any

investigation or prosecution of an offence (subsections (5) to (7)).

### Clause 9: Incidental powers

- 78 This clause confers incidental powers on the Commissioner to do anything that they consider would support them in carrying out their functions as set out in Clauses 6 to 8, with the exception of borrowing money.

### Clause 10: Framework document

- 79 This clause makes provision in respect of a framework document. The framework document will in effect be a joint statement of how the Home Secretary and Domestic Abuse Commissioner propose to work together.
- 80 Subsection (2) provides that the framework document will deal with, amongst other things, matters relating to governance (including scrutiny by Parliament), and the funding and staffing of the Commissioner's office; and matters relating to the exercise of functions of the Commissioner (including, for example, working in partnership with the National Advisers appointed under the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015). It is intended that the framework document will, in addition, set out the process by which the Home Secretary exercises the powers in clauses 7(4), 8(6) and 13(4) to direct the Commissioner to remove certain prejudicial information from their reports or advice, including clear time limits for the required consultation with the Commissioner so as not to delay publication.
- 81 Subsections (3) provides that the Commissioner must have regard to the framework document in exercising functions under Chapter 2 of Part 1. Similarly, subsection (4) provides that the Home Secretary must have regard to the framework document when exercising any functions in relation to the Commissioner.
- 82 The Home Secretary must consult and obtain the approval of the Commissioner before issuing any framework document (subsection (6)). Subsection (7) requires the Secretary of State to consult Welsh Ministers in preparing the first framework document or any subsequent revision which is, in the Home Secretary's view, significant.
- 83 The Secretary of State is required to lay the framework document (and any subsequent revisions) before Parliament and arrange for it to be published in the manner which the Home Secretary considers appropriate (subsection (8)). The Welsh Ministers are required to lay a copy of the report before the National Assembly for Wales (subsection (9)).

### Clause 11: Advisory Board

- 84 Subsection (1) requires the Commissioner to establish an Advisory Board, which will provide the Commissioner with advice on the exercise of the Commissioner's functions. Amongst other things, it is expected that such advice would extend to the approach to be taken by the Commissioner in developing their strategic plans (see Clause 12).
- 85 The Advisory Board is to have a membership of at least six and not more than ten persons (subsection (2)). Subsection (4) requires the Commissioner to appoint members of the Advisory Board who represent a range of different sectors who have responsibilities for responding to domestic abuse. The requirement to include a representative from the social care sector includes children's as well as adult social care. They will also be required to have an academic to provide evidence and academic rigour to discussions, as well as someone to represent the interests of victims of domestic abuse. An individual could represent the interests of more than one group (for example, they could represent the interests of victims of domestic abuse, while also representing the interests of specialist charities). In addition to this Board, the Commissioner will be required through their

terms and conditions of employment to establish a Victims and Survivors Advisory Group, to ensure that they engage directly with victims and survivors in their work.

### Clause 12: Strategic plans

86 This clause requires the Commissioner to prepare a strategic plan to provide Parliament, Ministers and the public with information about their priorities, future work programme, and which issues they intend to report on. It is for the Commissioner to determine the content and duration of each strategic plan subject to meeting the minimum requirements specified in subsections (2) and (3). In preparing any plan, the Commissioner is required to consult the Home Secretary, the Advisory Board and any other persons the Commissioner thinks fit (subsection (6)). The Commissioner must arrange to lay the plan before Parliament (subsection (7)). It is open to the Commissioner to revise the plan mid-term, for example to reflect a change of priorities, subject to consultation (subsection (5)).

### Clause 13: Annual reports

87 This clause requires the Commissioner to produce an annual report as soon as possible after the end of each financial year and submit this to the Secretary of State who may, following consultation with the Commissioner, direct that the report omits any material which might jeopardise the safety of any person (in the UK or internationally) or prejudice the investigation of an offence. The Commissioner is required to arrange for the report to be laid before Parliament.

### Clause 14: Duty to co-operate with Commissioner

88 Subsection (1) enables the Commissioner to request a specific public authority (as listed in subsection (3), read with the definitions in subsection (7)) to co-operate with them, and subsection (2) requires that body to comply with such a request where it is reasonably practicable to do so. The duty to co-operate could include, for example, responding to requests for information from the Commissioner in pursuance of their general function of assessing and monitoring the provision of services to victims of domestic abuse. The list of specified public authorities does not include the Secretary of State on the basis that the Secretary of State would in any event be expected to cooperate with the Commissioner without the need for an express statutory duty to do so.

89 The terms of the Commissioner's appointment will require them to approach national NHS bodies, namely NHS England (which is legally the National Health Service Commissioning Board) and NHS Improvement (of which the NHS Trust Development Authority and Monitor are constituent parts), with the same request whenever the Commissioner approach local NHS bodies as defined in subsection (7). This will mean that national NHS strategic bodies are aware of and support requests made to local NHS bodies.

90 Subsections (4) to (6) enable the Secretary of State, by regulations (subject to the negative parliamentary procedure), to add to the list of specified public authorities, remove a public authority so added, or amend the description of a public authority already listed in subsection (3). The Secretary of State is required to consult the Commissioner before making such regulations.

### Clause 15: Duty to respond to Commissioner's recommendations

91 This clause requires a public authority listed in Clause 14 and a Minister in charge of a ministerial government department to respond to any recommendations directed to that authority which is made in a report published by the Commission under Clause 7. The

response must address each recommendation and specifically state what action the authority or Minister has or will take to address the recommendation or give reasons why they do not propose to act on the recommendation.

- 92 A public authority's or Minister's response to any recommendations must be published within 56 calendar days of the date of publication of the Commissioner's report in such a manner as the public authority or Minister, as the case may be, considers to be appropriate (subsections (5) and (6)); they are also required to send the response to the Commissioner and, in the case of public authorities, to the Secretary of State (subsection (7)).

#### Clause 16: Disclosure of information

- 93 This clause provides for a two-way information sharing gateway. Subsection (1) enables the Commissioner to disclose information to another person or organisation where the information was received by the Commissioner in connection with the Commissioner's functions and if such disclosure would support the discharge by the Commissioner of any of the Commissioner's functions. Conversely, any person or organisation may disclose information to the Commissioner for the purposes of supporting the Commissioner in the carrying out of the Commissioner's functions.
- 94 These disclosure powers are subject to the restrictions set out in subsections (4) to (6), namely that they do not override patient confidentiality, data protection legislation or prohibitions on disclosure in the Investigatory Powers Act 2016. Subject to that, a disclosure of information under this clause is not precluded by any other duty of confidentiality, or restriction on the disclosure of information (howsoever imposed) (subsection (3)).
- 95 The operation of this information sharing gateway is without prejudice to any other power that exists to disclose information (subsection (7)).

#### Clause 17: Restriction on exercise of functions in individual cases

- 96 This clause prevents the Commissioner from intervening in individual cases, as their role is not as an individual advocate or to respond to cases but to provide strategic oversight of the national response to domestic abuse and hold public authorities to account. However, subsection (2) makes clear that the Commissioner can still consider individual cases in the course of their work in order to understand the national picture, but should not intervene in such cases.

#### Clause 18: Amendments relating to the Commissioner

- 97 This clause makes two consequential amendments to other enactments, the effect of which are that the Commissioner cannot also be a Member of Parliament and that the Commissioner is subject to the Freedom of Information Act 2000.

### Chapter 3: Powers for dealing with domestic abuse

#### Clause 19: Power to give a domestic abuse protection notice

- 98 This clause creates a power for a police officer to issue a Domestic Abuse Protection Notice ("DAPN") and sets out the conditions and considerations that must be met in order for the police to issue a DAPN. The purpose of a DAPN is to secure the immediate protection of a victim of domestic abuse from future domestic abuse carried out by a suspected perpetrator. A DAPN prohibits the perpetrator from abusing the victim and, where they cohabit, may require the perpetrator to leave those premises. It may also prohibit the perpetrator from coming within a specified distance of the premises where

the victim lives.

- 99 As a form of civil preventative measure, the issue of a DAPN and Domestic Abuse Protection Order (“DAPO”) does not constitute a finding of guilt, but for convenience and to aid understanding of the purpose of these notices and orders, this commentary on clauses refers to the person against whom a notice or order is made as the “perpetrator” and the person whom the notice or order is designed to protect as the “victim”.
- 100 The issue of a DAPN triggers a police-led application for a DAPO in a magistrates’ court. This is an order which can include prohibitions and requirements necessary to protect the victim from future domestic abuse and assist in preventing the perpetrator from carrying out further domestic abuse. Clauses 24 to 46 deal with DAPOs.
- 101 Subsection (1) creates the power for a senior police officer (that is, an inspector or above) to issue a DAPN. The power is available to the 43 territorial forces in England and Wales, the British Transport Police and Ministry of Defence Police.
- 102 Subsection (2) sets out that a notice will be used to protect the victim from domestic abuse committed against them by the perpetrator.
- 103 Subsections (3) and (4) set out the test for issuing a DAPN. A DAPN may be issued where the police officer has reasonable grounds for believing that, firstly, the perpetrator has been abusive towards a person to whom the perpetrator is personally connected (such abuse may have occurred outside England and Wales (subsection (5)), and that, secondly, the issue of a notice is necessary in order to secure the protection of the victim from domestic abuse or the risk of domestic abuse. “Domestic abuse” is defined in Clause 1 and “personally connected” in Clause 2.
- 104 Subsection (6) sets out that the notice may not be given to a person who is under the age of 18.
- 105 Subsection (7) provides that a requirement imposed by a DAPN will have effect throughout the UK. So, for example, if a DAPN required the perpetrator not to make contact in any way with the victim, the perpetrator would breach the DAPN by sending a text message or email while they were in Scotland.

#### Clause 20: Provision that may be made by notices

- 106 This clause sets out an exhaustive list of the type of provision that a DAPN may contain. Such provision may include a prohibition on the perpetrator contacting the victim (including via social media or e-mail) or prohibit the perpetrator from coming within a certain distance (as specified in the DAPN) of the premises lived in by the victim for the duration of the DAPN. Where the perpetrator lives with the victim, provision may be made to prohibit the perpetrator from evicting or excluding the victim from the premises in question; prohibit the perpetrator from entering the premises; or require the perpetrator to leave the premises. It does not matter for these purposes whether the premises are owned or rented in the name of the perpetrator or the victim.

#### Clause 21: Matters to be considered before giving a notice

- 107 This clause sets out particular matters that the police officer must take into consideration before issuing a DAPN. The police office must consider the welfare of any child whose interests the officer considers relevant. The police officer must take reasonable steps to find out the opinion of the victim as to whether the DAPN should be issued. Consideration must also be given to any representation the perpetrator makes in relation to the issuing of the DAPN. Where the DAPN is to include conditions in relation to the occupation of premises lived in by the victim, reasonable steps must also be taken to find

out the opinion of any other person who lives in the premises and is personally connected to the perpetrator (if the perpetrator also lives in the premises) or the victim.

- 108 While the police officer must take reasonable steps to discover the victim's opinion, and must take this into consideration, the issue of the notice is not dependent upon the victim's consent (subsection (4)), as the police officer may nevertheless have reason to believe that the victim requires protection from the perpetrator and the issue of the notice is necessary to secure that protection.

## Clause 22: Further requirements in relation to notices

- 109 Subsection (2) sets out the details that must be specified in a DAPN, which include the grounds for issuing the DAPN; the fact that a power of arrest attaches to the DAPN; the fact that the police will make an application for a DAPO which will be heard in a magistrates' court within a 48 hour period (excluding Sundays and bank holidays); the fact that the DAPN will continue to be in effect until the DAPO application is determined; and the provisions that may be included in a subsequent DAPO.
- 110 A DAPN must be in writing and served on a perpetrator personally by a constable (subsections (1) and (3)).
- 111 Subsection (4) requires the constable serving a DAPN to ask the perpetrator to supply an address in order to enable the perpetrator to be given notice of the hearing for the DAPO application.
- 112 Subsections (5) to (7) provide that where a DAPN is served on a member of the armed forces (in practice, this is likely to be by the Ministry of Defence Police), and the notice prohibits the perpetrator from entering, or requiring them to leave, service accommodation, the senior officer giving the notice must make reasonable efforts to inform the perpetrator's commanding officer that the DAPN has been issued. The definition of service accommodation in the Armed Forces Act 2006 includes any building or part of a building which is occupied for the purposes of any of Her Majesty's forces but is provided for the exclusive use of a person subject to service law, or of such a person and members of his or her family, as living accommodation.

## Clause 23: Breach of notice

- 113 Should the subject of a DAPN breach the conditions of the notice, then a constable may arrest the person without warrant.
- 114 Subsection (2) requires that if the perpetrator is arrested, he or she must be held in custody and brought before a magistrates' court that will hear the application for the DAPO. The perpetrator must be brought before this court at the latest within a period of 24 hours (excluding Sundays and bank holidays – see subsection (4)) beginning with the time of arrest (subsection (2)(a)). However, if the DAPO hearing has already been arranged to take place within that 24-hour period, then the perpetrator is to be brought before the court for that hearing (subsection (2)(b)).
- 115 If the court adjourns the DAPO hearing, by virtue of Clause 26(8) the court may remand the person either in custody or on bail (subsection (5)). When remanding the perpetrator on bail, the court may impose requirements which appear to the court as necessary to ensure that the person does not interfere with witnesses or otherwise obstruct the course of justice (subsection (7)).
- 116 Subsection (8) enables a person who has been arrested for breach of a DAPN to be brought before a magistrates' court (under subsection (2)(a)) via a live link from the place they are being held in custody.

117 Subsection (9) amends section 17 of the Police and Criminal Evidence Act 1984 to give the police a power of entry to effect an arrest for breaching a DAPN if there are reasonable grounds for believing that there has been a breach.

#### Clause 24: Meaning of “domestic abuse protection order”

118 This clause describes a DAPO for the purposes of Chapter 3 of Part 1, namely an order containing prohibitions or requirements for the purpose of preventing the perpetrator from being abusive towards his or her victim (who must be aged over 16 and personally connected to the perpetrator (see Clause 2 of the Bill)).

#### Clause 25: Domestic abuse protection orders on application

119 A DAPO may be obtained through a variety of routes. First, a DAPO may be granted by a court on application by certain categories of person (subsection (2)). Second, where a DAPN has been given to a perpetrator by a member of a police force, there is a duty on the relevant chief officer of police of that force to apply to a magistrates’ court for a DAPO (subsection (3) and Clause 26). Third, a DAPO may be made by a family court, criminal court or (in prescribed circumstances) county court during any ongoing proceedings (Clause 28).

120 In the case of a DAPO made on application, subsection (2) provides that an application may be made by: (a) the person for whose protection the order is sought (namely the victim); (b) the appropriate chief officer of police (as defined in subsection (4)); (c) a person specified in regulations (subject to the negative procedure) made by the Secretary of State; or (d) any other person with the leave of the court. Regulations under subsection (2)(c) may, for example, specify, local authorities, probation service providers, independent domestic abuse advisers and specialist non-statutory support services (for example, refuge workers).

121 Subsections (5) to (7) specify the appropriate court to which an application for a DAPO is to be made. Where an application is made by the police, whether following the issue of a DAPN or as a standalone matter, the application will be to a magistrates’ court. Where both the perpetrator and the victim are parties to family or civil proceedings, and it would be open to the court to make a DAPO in those proceedings (see Clause 28), the victim may apply to the family or county court as the case may be. In all other cases, for example where the applicant is the victim (not involved in existing proceedings) or a specified third party such as a local authority, an application is to be made to the family court.

122 Subsection (8)(a) provides that a magistrates’ court may adjourn the hearing of an application for a DAPO. Subsection (8)(b) modifies the application of section 97 of the Magistrates’ Court Act 1980. That section requires a magistrate to issue a summons to a witness to give evidence where the magistrate is satisfied that the person is likely to be able to give material evidence or produce any document or thing likely to be material evidence for the purpose of any proceedings before the court and the magistrate is satisfied that it is in the interests of justice to issue the summons. Under subsection (8)(b), section 97 is disapplied in respect of a hearing of an application for a DAPO such that the victim cannot be compelled to attend the hearing or answer questions unless the victim has given oral or written evidence at the hearing.

#### Clause 26: Applications where domestic abuse protection notice has been given

123 This clause covers the steps to be taken by the police to apply for a DAPO following issue of a DAPN. This follows on from the requirement set out in Clause 25(3) for a chief officer of police to apply to a magistrates’ court for DAPO once a DAPN has been issued.

124 Subsections (2) and (3) require that the application for a DAPO must be heard in a magistrates' court within 48 hours (excluding Sundays and bank holidays) of the DAPN being issued.

125 Subsections (4) to (6) cover the steps to be taken to give the perpetrator notice of the DAPO hearing. Under subsection (4), notice of the hearing must be given to the perpetrator. If the perpetrator gave an address for the purposes of service at the point of issue of the DAPN, then the notice is deemed given if it is left at that address. Where no address has been given by the perpetrator, then under subsection (6) the court may still hear the application if satisfied that reasonable efforts have been made to give the perpetrator notice of the hearing.

126 Where a court adjourns the hearing of an application for a DAPO, the DAPN is to continue to have effect until the application for a DAPO is determined by the court or is withdrawn (subsection (7)). Where the perpetrator has been arrested for breach of a DAPN and is brought before a court, subsection (8) enables the court to remand the perpetrator whether in custody or on bail and the provisions in Clause 27 apply.

### Clause 27: Remand under section 26(8) of person arrested for breach of notice

127 This clause makes provision for the remand, whether on bail or in custody, of a perpetrator arrested for breach of a DAPN and brought before the court at the hearing of the application for a DAPO. A magistrates' court's powers for dealing with the perpetrator in such circumstances derive from the provisions in the Magistrates' Courts Act 1980 (sections 128 to 131 of which deal with remand). Subsection (2) modifies the application of section 128(6) of the Magistrates' Courts Act 1980 for these purposes. Subject to certain exceptions, section 128(6) prohibits a magistrates' court from remanding a person for more than eight days. One such exception is where a person is remanded on bail, in such a case the person can be remanded for longer than eight days where he or she and the other party consents. In this context, the other party for these purposes is the senior police officer who issued the DAPN.

128 Subsections (3) to (5) give the court the power to remand the perpetrator for the purposes of allowing a medical report to be made. In such a case, the adjournment may not be for more than three weeks at a time if the perpetrator is remanded in custody and not for more than four weeks at a time if the perpetrator is remanded on bail.

129 Subsection (6) gives the court the same power as it has in respect of an accused person to make an order under section 35 of the Mental Health Act 1983 if it suspects that the perpetrator is suffering from a mental disorder. Section 35 of that Act enables a court to remand an individual to a hospital specified by the court for a report on his or her mental condition. Such a remand may not be for more than 28 days at a time or for more than 12 weeks in total.

130 Under subsection (7), when remanding a person on bail, the court may impose requirements which appear to the court as necessary to ensure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

### Clause 28: Domestic abuse protection orders otherwise than on application

131 This clause enables a family court, criminal court or (in prescribed circumstances) county court to make a DAPO during ongoing proceedings where, in the course of such proceedings, the court becomes aware of the need to protect a person from domestic abuse. In the case of criminal proceedings in a magistrates' court or the Crown Court, it is open to the court to make a DAPO on the conviction or acquittal of the accused.

132 There are a wide range of civil proceedings which may be considered by the county courts, including for example, property and housing disputes. Given the wide range of proceedings and the probability that, in the majority of civil proceedings, allegations of domestic abuse may not be raised, subsection (7) restricts the type of civil proceedings in relation to which the county court could make a DAPO to those that are prescribed in regulations (subject to the negative procedure). Initially the Government intends to specify only housing-related proceedings where domestic abuse is most likely to be alleged or revealed in evidence.

### Clause 29: Conditions for making an order

133 This clause sets out the conditions for making a DAPO. Two conditions must be met, namely that the court is satisfied, on the balance of probabilities (that is, the civil standard of proof), that the perpetrator has carried out domestic abuse in relation to the person to be protected by the DAPO (the victim) and that the court considers that the making of a DAPO is necessary and proportionate to protect the victim from domestic abuse or the risk of domestic abuse carried out by the perpetrator (subsections (2) and (3)). An order may therefore be made where domestic abuse has already occurred, and the victim needs protecting from continuing abuse or the threat of abuse or where such abuse occurred outside England and Wales (subsection (4)).

134 Subsection (5) provides that a DAPO can only be made against a person who is aged 18 or over.

### Clause 30: Matters to be considered before making an order

135 This clause specifies particular matters a court must consider prior to making a DAPO. These are: the welfare of any child whose interests the court considers relevant to the DAPO; the opinion of the victim; and, where the DAPO is to include conditions in relation to the occupation of premises lived in by the victim, the opinion of any other person who lives in the premises and is personally connected to the victim or the perpetrator (if the perpetrator also lives in the premises).

136 It is not necessary that the victim consents to the order. Subsection (3) specifies that a court may make a DAPO regardless of whether or not the victim consents.

### Clause 31: Making of orders without notice

137 Before making a DAPO a court would normally give notice to the perpetrator to inform them of the proceedings and of the hearing at which the application for a DAPO will be considered. However, this clause allows a court to make a DAPO without notice where it would be just and convenient to do so. The clause does not, however, apply in the case where a perpetrator has been given a DAPN as Clause 26(6) makes separate provision for the making of a DAPO without notice in such cases (subsection (2)). Without notice applications would, in practice, only be made in exceptional or urgent circumstances and the applicant would need to produce evidence to the court as to why a without notice hearing was necessary.

138 It may, for example, be appropriate to make a DAPO without giving notice of the application or hearing to the perpetrator where there is reason to believe that the perpetrator may seek to cause significant harm to the victim, or intimidate the victim such that she or he would withdraw the application, or may deliberately seek to evade service of notice of the proceedings. If an order is made without notice, the perpetrator must be given an opportunity, as soon as just and convenient, to make representations about the order at a return hearing on notice (subsection (4)).

## Clause 32: Provision that may be made by orders

- 139 This clause sets out the types of conditions that may be imposed by a DAPO.
- 140 Subsections (1) and (2) provides that a DAPO may include any requirements, both prohibitions and restrictions, that the court thinks are necessary to protect the victim from the various forms of domestic abuse set out in the definition of domestic abuse in Clause 1 or the risk of such abuse. This could include, for example, specific requirements to protect the victim from physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour, or psychological, emotional or economic abuse.
- 141 Subsection (3) provides that whilst subsections (4) to (6) contain examples of the type of provision that may be made by a DAPO, they are not to be taken as exhaustive. The examples covered by subsections (4) to (6) include prohibitions relating to occupation of premises, contact with the victim and electronic monitoring. However, a court may decide that other requirements, such as requiring the perpetrator to attend a behavioural change programme or drug or alcohol treatment programme, may be necessary to protect the victim from domestic abuse.
- 142 Subsection (4) specifies that a DAPO may prohibit the perpetrator from contacting the victim (this relates to all forms of contact, including online contact) or prohibit the perpetrator from coming within a certain distance (as specified in the DAPO) of the premises lived in by the victim.
- 143 Subsection (5) specifies that where the perpetrator and the victim share living premises, the DAPO may: prohibit the perpetrator from evicting or excluding the victim from the premises; prohibit the perpetrator from entering the premises; or require the perpetrator to leave the premises. Such provision may be made irrespective of who owns the premises.
- 144 Subsection (6) provides that a DAPO may include a requirement for the perpetrator to submit to electronic monitoring in order to monitor the perpetrator's compliance with other requirements imposed by the order. This may include, for example, electronic monitoring of the perpetrator's whereabouts to monitor his or her compliance with restrictions on their proximity to the victim's home or to the victim themselves. This may also include the electronic monitoring of alcohol consumption, in order to monitor compliance with a requirement not to consume alcohol.

## Clause 33: Further provision about requirements that may be imposed by orders

- 145 The requirements attached to a DAPO must not, so far as practicable, conflict with the perpetrator's religious beliefs, interfere with the perpetrator's normal working pattern or attendance at an educational establishment (so, for example, a prohibition on the perpetrator entering a defined area should not normally cover his or her place of work during working hours), or conflict with another court order (subsection (1)). If it is not practicable to avoid the conflict, given the necessity to protect the victim, then the court may still impose the requirement.
- 146 Where a DAPO imposes requirements on the perpetrator, it must specify the person (an individual or an organisation) who is responsible for supervising compliance (subsection (2)). Such individuals or organisations could, for example, include the local authority or a recognised provider of substance misuse recovery services. The court must receive evidence on the suitability and enforceability of a requirement from this person (subsection (3)). The person responsible for supervising compliance with the requirements

is subject to certain duties as specified in subsection (5), including a duty to notify the police if the perpetrator has complied with the requirements or failed to do so. In the first instance, it may be appropriate depending on the nature of the requirement to make an application to vary or discharge the DAPO and in the latter instance the perpetrator could be charged with an offence of breach of the order (see Clause 36 below). The perpetrator is under a duty to keep in touch with the person responsible for supervising compliance with the requirement (subsection (7)).

### Clause 34: Further provision about electronic monitoring requirements

- 147 This clause sets out the conditions that must be satisfied to enable an electronic monitoring requirement to be attached to a DAPO.
- 148 An electronic monitoring requirement may be imposed to support the monitoring of an individual's compliance with other requirements of the order (for example, the operation of an exclusion zone around the victim's home). Electronic monitoring is undertaken using an electronic tag usually fitted to the subject's ankle.
- 149 An electronic monitoring requirement cannot be imposed on a perpetrator in his or her absence, this is because the perpetrator must be present in court whilst the application to consider electronic monitoring is decided upon, to provide the court of the perpetrator's address for the purpose of the fitting and installation of the electronic monitoring equipment and in order to allow the court to make the enquiry required by subsection (3) (subsection (2)).
- 150 Subsection (3) specifies that where another person's cooperation is required in order to secure the electronic monitoring, the monitoring cannot be required without that person's consent. This may include, for example, the occupier of the premises where the perpetrator lives or other persons living in the same premises as the perpetrator.
- 151 Subsection (4) obliges the court to ensure that electronic monitoring arrangements are available in the relevant local area (as defined in subsection (5)) before imposing an electronic monitoring requirement. In practice, the court would be notified of the availability of such arrangements by the Ministry of Justice.
- 152 Subsection (6) provides that a DAPO which includes an electronic monitoring requirement must specify the person who is responsible for the monitoring ("the responsible person").
- 153 Subsection (7) provides that the responsible person must be of a description specified in regulations made by the Secretary of State (such regulations are not subject to any parliamentary procedure).
- 154 Subsection (8) sets out the requirements for installation and maintenance of the electronic monitoring apparatus, including the requirements for the perpetrator to submit to monitoring apparatus being fitted or installed, inspected or repaired. This subsection also prohibits the perpetrator from interfering with the monitoring apparatus and requires the perpetrator to take steps to keep the apparatus in working order, including keeping the equipment charged as directed. Failure to adhere to these requirements would constitute a breach of the DAPO (as to which see Clause 36).

### Clause 35: Duration and geographical application of orders

- 155 Subsections (1) and (2) provide that a DAPO has effect from the day it is made, unless the perpetrator is already subject to an existing DAPO in which case the new order may take effect when the existing order ceases to have effect.

156 Subsection (3) allows a court to make an order for a period specified in the order, until an event specified in the order or until a further order is made. Particular provisions of an order, for example an electronic monitoring requirement, may apply for a more limited period than the order itself (subsection (4)). Where a DAPO or a requirement of a DAPO is time limited, the duration of the order or requirement, as the case may be, may be extended on the variation of the DAPO under Clause 41.

157 Subsection (7) provides that a requirement imposed by a DAPO will have effect throughout the UK. So, for example, if a DAPO required the perpetrator not to make contact in any way with the victim, the perpetrator would breach the DAPO by sending a text message or email while they were in Scotland.

### Clause 36: Breach of order

158 This clause provides that it is an offence to breach any requirement of a DAPO without reasonable excuse (subsection (1)). In the case of a DAPO made against a perpetrator who was not given notice of the proceedings, the offence only operates from the time he or she was made aware of the order (subsection (2)).

159 The maximum penalty for breach on conviction in a magistrates' court ("summary conviction") is imprisonment for a term not exceeding six months, or a fine, or both. The maximum penalty for breach on conviction in a Crown Court ("conviction on indictment") is imprisonment for a maximum term of five years, or a fine, or both (subsection (5)).

160 Subsection (6) provides that a conditional discharge is not an option open to the court in respect of the offence. A conditional discharge means that if the offender commits another crime, they can be sentenced for the first offence and the new one.

161 As an alternative to prosecution for the offence under subsection (1), breach of a DAPO may be dealt with as a contempt of court (the maximum penalty for which is two years' imprisonment except in a magistrates' court where the maximum penalty is two months' imprisonment). Subsection (3) and (4) set out that where any breach has been punished as a contempt of court, it may not also be punished as an offence under this clause, and vice-versa. This is to ensure that the subject of a DAPO is not punished twice for the same failure to comply with the requirements of the order.

### Clause 37: Arrest for breach of order

162 As breach of a DAPO is a criminal offence, the perpetrator may be arrested, without warrant, by a constable exercising powers under section 24 of the Police and Criminal Evidence Act 1984 (see subsection (9)).

163 Where a complainant (for example, the victim) wants a breach to be dealt with as a civil matter, that is as a contempt of court, this clause provides for a power of arrest in such cases. A person may apply to the court to issue an arrest warrant if the applicant thinks that the perpetrator has breached the DAPO. Once the perpetrator has been arrested and brought before the court, the court may either deal with the contempt of court there and then or remand the perpetrator, whether in custody or on bail, for the case to be dealt with at a later date.

### Schedule 1: Further provision about remand under section 37

164 Schedule 1 makes provision for the remand, whether on bail or in custody, of a person arrested for breach of a DAPO.

165 Paragraph 5 gives the court the power to remand the perpetrator for the purposes of

allowing a medical report to be made. In such a case, the adjournment may not be for more than three weeks at a time if the perpetrator is remanded in custody and not for more than four weeks at a time if the perpetrator is remanded on bail.

- 166 Paragraph 5(5) gives the court the same power as it has in respect of an accused person to make an order under section 35 of the Mental Health Act 1983 if it suspects that the perpetrator is suffering from a mental disorder. Section 35 of that Act enables a court to remand an individual to a hospital specified by the court for a report on his mental condition. Such a remand may not be for more than 28 days at a time or for more than 12 weeks in total.
- 167 Under paragraph 8, when remanding a person on bail, the court may impose requirements which appear to the court as necessary to ensure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

### Clause 38: Notification requirements

- 168 This clause requires the perpetrator to notify the police of their name, including any aliases, and home address within three days beginning with the date of the making of the DAPO. Any change of name or home address, or any adoption of a new name, must also be notified to the police within three days of the event. Such information will assist the police in monitoring compliance with the DAPO and in managing the risk posed by the perpetrator.
- 169 The perpetrator's "home address" for these purposes is defined in Clause 52(1) as meaning either the person's sole or main residence or, where they have no such residence, the address or location where they can regularly be found. If a person can regularly be found at two or more locations (for example at a family home at the weekend and at a flat near their work during the week) they would need to select one of these places and provide details of its address. Equally, if a person is homeless they would need to provide details of one location where they can regularly be found. Subsection (6) requires a person to notify the police if they cease to have a home address as defined in Clause 52(1) (for example, if they leave the UK to live abroad). Clause 52(3) provides that references to changing home address include cases where a person acquires a home address in the UK after a period in which they did not have such an address (for example, if they have returned to the UK after a period living abroad).
- 170 Subsection (7) enables the Secretary of State, by regulations (subject to the affirmative procedure), to specify further notification requirements which a court may impose, on a case-by-case basis, when making or varying a DAPO. Where additional notification requirements are imposed by a court, the perpetrator must supply the required information to the police in the manner prescribed in the regulations.
- 171 Certain sex offenders and persons subject to a stalking protection order are already subject to notification requirements by virtue of provisions in the Sexual Offences Act 2003 and the Stalking Protection Act 2019, accordingly where the subject of a DAPO is already liable to one or other of these notification requirements (or already the subject of another DAPO), the provisions in this clause do not apply to avoid unnecessary duplication (subsection (8)). However, if the notification requirements under one or other of these enactments or another DAPO cease to apply to the subject of a DAPO then the requirements of this clause will instead apply. In such a case, the perpetrator would need to notify the police of his or her name(s) and home address within three days of the notification requirements under the Sexual Offences Act, Stalking Protection Act or other DAPO, as the case may be, ceasing to apply (subsection (9)).

## Clause 39: Further provision about notification under section 38

- 172 This clause sets out where and how the subject of a DAPO must notify the police depending on where their home address is located, how notification must be acknowledged, and the police powers to verify the perpetrator's identity when they attend at a police station to notify.
- 173 Subsections (1) and (2) set out that if the defendant's home address is in England or Wales, then they must attend at a police station in their local police area to notify. Where the perpetrator's home address is outside of England or Wales, then they must attend at a police station in the local police area in which the court which made the DAPO in respect of them is located. This will be a police station in England or Wales. A scenario in which this provision may apply is if the perpetrator moves to Scotland or Northern Ireland.
- 174 Where the perpetrator is notifying the police of a change of address as required by Clause 38(5), the notification must be made at a police station within the police area where the perpetrator now resides.
- 175 Subsection (4) provides that a notification must be acknowledged in writing and in such form as the Secretary of State may direct.
- 176 Subsection (5) and (6) enables the police to take the fingerprints and/or a photograph of the perpetrator to verify his or her identity when the perpetrator attends a police station under the provisions of this clause.

## Clause 40: Offences relating to notification

- 177 This clause provides that it is a criminal offence to fail to comply with the notification requirements without reasonable excuse or knowingly to provide the police with false information. It will be for a court to decide what constitutes a reasonable excuse in a particular case.
- 178 This is an either way offence, meaning that it can be heard in either a magistrates' court or the Crown Court depending on the seriousness of the offence. The penalty for breach on conviction by a magistrates' court ("summary conviction") is imprisonment for a term not exceeding six months, or a fine, or both (subsection (3)(a)). The penalty for breach on conviction by a Crown Court ("conviction on indictment") is imprisonment for a maximum term of five years, or a fine, or both (subsection (3)(b)).

## Clause 41: Variation and discharge of orders

- 179 This clause sets out how a DAPO may be varied or discharged, who may apply for such variation or discharge and to which court an application should be made. A variation could include simply extending the duration of an order which has been made for a specified period.
- 180 Subsection (2) provides that a court may vary or discharge an order either on application by a person listed in subsection (3) or by the court of its own volition (if it would have been open to the court to make a DAPO in the circumstances provided for in Clause 28). The court must hear from specified interested parties before making a decision to vary or discharge an order (subsections (4) and (5)). In cases where an application is made to vary or discharge a DAPO the court must hear from any relevant chief officer of police who wishes to be heard (subsection (4)(a)) and in cases where the victim is applying to have the order discharged or made less onerous, the court must also hear from the victim (subsection (4)(b)). This is in order to help the court assess whether the victim is being coerced or intimidated.

181 The court in determining an application under this clause, or determining of its own volition to vary or discharge a DAPO, may make such an order as it considers appropriate (subsection (8)), but before making a decision to vary a DAPO (by removing a requirement imposed by it or by making such requirement less onerous) or discharge a DAPO, the court must consider and be satisfied that doing so would not compromise the safety of the victim from abuse by the perpetrator (subsections (11) and (13)).

#### Clause 42: Variation and discharge: supplementary

182 This clause sets the relevant court at which proceedings in relation to the variation and discharge of a DAPO are to take place. Generally, such proceedings are to take place in the court where the original DAPO was made, but this is subject to certain exceptions, for example where a DAPO was made in a magistrates' court, proceedings to vary or discharge the order may take place in any other magistrates' court acting in the local justice area in which that court acts (subsection (2)). The reference to "the court" in subsection (1) is to a particular legal jurisdiction rather than a physical court building. The family court, the Crown Court and the county court each constitute a single jurisdiction so, for example, where a DAPO was made in the family court, proceedings in respect of the variation or discharge of an order can, if necessary, take place at any location where the family court sits.

183 Subsection (10) provides that where a DAPO is varied and the perpetrator is not given notice of the variation, the perpetrator can only breach the order in relation to non-compliance with any new requirement from the time when they are aware of the variation.

#### Clause 43: Appeals

184 This clause sets out the circumstances in which an affected person may appeal against a decision of a court in respect of a DAPO.

185 Subsections (1) to (6) provide that the perpetrator, victim, a person who made the application for a DAPO or the police may appeal against a court's decision to make or decline to make an order, or a decision to vary or discharge an order, or a decision to decline to vary or discharge an order. Subsections (1) and (2) provide firstly that either the applicant or victim may appeal against any decision of a court following an application made under Clause 25 and, secondly, that the perpetrator may appeal against the making of a DAPO made on application under that clause. Subsections (3) and (4) provides that the perpetrator may appeal against the making or variation of a DAPO made or varied in a criminal court during ongoing proceedings as described in Clause 28; and in such a case, the making or variation of an order would be treated as a sentence for the purposes of the appeal. Subsection (5) provides that those named in subsection (6) may appeal against a decision of the court made under Clause 41 on an application to vary or discharge a DAPO. In all other cases, in particular appeals against decisions made by the family or civil courts, no express provision is made here as the existing rights of appeal against decisions made in those courts will apply.

186 Subsection (7) sets out the court to which an appeal is to be made. Appeals from a decision of a family or county court judge should be made in accordance with existing provision (see in particular the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2014 (SI 2014/602), as amended, and the Access to Justice Act 1999 (Destination of Appeals) Order 2016 (SI 2016/917) which are summarised in table format in the Family Procedure Rules 2010 (Practice Direction 30A) and Civil Procedure Rules 1998 (Practice Direction 52, respectively). For appeals from a criminal court, the destination of appeal is as follows:

- For a decision made by a magistrates' court – the Crown Court;
- For a decision made by the Crown Court – the Court of Appeal.

#### Clause 44: Further provision about appeals

187 In any case where the relevant chief officer of police is not the appellant, subsections (1) and (2) provides that the court must afford them the opportunity to be heard before determining an appeal; the relevant chief officer of police would automatically have such a right to be heard in any case where they are the appellant (as would any other appellant).

188 Subsections (3) and (4) set out the powers of the Crown Court or Court of Appeal (Criminal Division) when hearing an appeal under Clause 43. Similar powers are conferred on the other appellate courts by existing procedure rules. Unless the court orders otherwise, an appeal will be a review of the lower court's decision rather than a rehearing.

189 The effect of subsection (5) is that where an appellate court confirms or varies a DAPO on appeal, or makes a DAPO on appeal, subsequent proceedings in relation to a further variation or discharge of the order should be issued in the lower court.

#### Clause 45: Nature of certain proceedings under this Chapter

190 Subsection (1) provides that proceedings before a magistrates' court or the Crown Court in respect of the making of a DAPO on the conclusion of criminal proceedings, or in respect of the variation or discharge of a DAPO made in such circumstances, are civil proceedings.

191 Subsection (2) provides that, a magistrates' court or the Crown Court, may, in deciding whether to make a DAPO on the conclusion of criminal proceedings, consider evidence which was inadmissible in the criminal proceedings. This could include hearsay or bad character evidence.

192 Subsection (3) enables a magistrates' court or the Crown Court to adjourn proceedings, for example after passing sentence on a perpetrator, to enable further enquiries to be made before determining whether to make a DAPO.

193 Subsection (4) provides that where a perpetrator has been convicted of an offence but is conditionally discharged, it is still open to the court to make or vary a DAPO in respect of that person. Where a conditional discharge is given, this means that if the offender commits another crime, they can be sentenced for the first offence and the new one.

#### Clause 46: Special measures for witnesses

194 This clause applies, with appropriate modifications, the special measures provisions in Chapter 1 of Part 2 of the YJCEA 1999 to proceedings under Chapter 3 of Part 1 of the Bill. This means that victims of domestic abuse would be eligible for special measures (see paragraph 25 above) when giving evidence in relation to proceedings in respect of a DAPO.

#### Clause 47: Guidance

195 This clause places a duty on the Secretary of State to issue guidance to the police and other persons eligible to apply for a DAPO by virtue of being specified in regulations made under Clause 25(2)(c) (subsections (1) and (2)). Such persons are under a duty to have regard to the guidance when exercising functions under this Chapter (subsection (3)).

196 Amongst other things, the statutory guidance will provide information about how the various pathways for applications for a DAPO work and provide practical toolkits for professionals to use when making applications.

#### Clause 48: Data from electronic monitoring: code of practice

197 This clause requires the Secretary of State to issue a code of practice relating to the processing of data gathered in the course of electronic monitoring of individuals under electronic monitoring requirements imposed by DAPOs.

198 The processing of such data will be subject to the requirements in the General Data Protection Regulation and the Data Protection Act 2018. The code of practice issued under this clause is intended to set out the appropriate tests and safeguards for the processing of such data, in order to assist with compliance of the data protection legislation. For example, it is envisaged that the code will set out the length of time for which data may be retained and the circumstances in which it may be permissible to share data with the police to assist with crime detection.

#### Clause 49: Powers to make other orders in proceedings under this Chapter

199 Subsection (1) inserts a reference to Chapter 3 of Part 1 of the Bill into section 8(4) of the Children Act 1989. By doing so, the Bill would amend the Children Act 1989 to state that proceedings under Chapter 3 of Part 1 of the Domestic Abuse Act 2019 are “family proceedings” for the purposes of the Children Act 1989. This would thereby enable a judge (sitting in the family court or Family Division of the High Court) hearing an application to make or vary a DAPO to make an interim care order, or exercise other powers available to the court under the Children Act 1989, in the same set of proceedings. This enhances the court’s ability to protect children who are exposed to domestic abuse at the point of dealing with such abuse, and without requiring the issue of separate applications and fresh proceedings (as would otherwise be the case). An interim care order means that the local authority would have the power to make decisions about where the child lives and the welfare of the child.

200 Subsection (2) inserts a reference to Chapter 3 of Part 1 of the Bill into section 63(2) of the Family Law Act 1996. By doing so, the Bill would amend the definition of “family proceedings” for the purposes of Part 4 of the Family Law Act 1996 to include within the definition proceedings under Chapter 3 of Part 1 of the Domestic Abuse Act 2019. This would thereby enable a judge (sitting in the family court or Family Division of the High Court) hearing an application to make or vary a DAPO to make an occupation or non-molestation order, a force marriage protection order or an FGM protection order, in the same set of proceedings.

#### Clause 50: Proceedings not to be subject to conditional fee agreements

201 This clause amends section 58A of the Courts and Legal Services Act 1990 so as to add proceedings under Chapter 3 of Part 1 that take place in the family court or the Family Division of the High Court to the list of proceedings that cannot be the subject of an enforceable conditional fee agreement. Conditional fee agreements allow clients to agree with their lawyers that the lawyer will not receive all or part of his or her usual fees or expenses if the case is lost; but that, if it is won, the client will pay an uplift to the solicitor in addition to the usual fee.

#### Clause 51: Repeal of provisions about domestic violence protection notices and orders

202 This clause repeals provisions in the Crime and Security Act 2010 which made provision

for the precursor domestic violence protection notices and orders. Notices and orders made under those provisions will continue to have effect notwithstanding the repeal.

### Clause 52: Interpretation of Chapter 3

203 This clause defines terms used in Chapter 3 of Part 1.

## Chapter 4: Other provision about domestic abuse

### Clause 53: Special measures directions in cases involving domestic abuse

204 This clause extends the eligibility for assistance given to intimidated witnesses in criminal proceedings to complainants of any offence where it is alleged that the behaviour of the accused amounted to domestic abuse (as defined by Clause 1 of the Bill). As a result, complainants of offences involving domestic abuse are to be automatically treated as eligible for special measures on the grounds that they are in fear or distress about testifying. This is unless they tell the court that they do not want to be so eligible.

205 Special measures apply to witnesses who are giving evidence in criminal courts. In respect of intimidated witnesses, these measures include screening the witness from the accused, giving evidence by live link, giving evidence in private, removal of wigs and gowns, video recorded evidence in chief and video recorded cross-examination or re-examination<sup>7</sup>.

206 Complainants of sexual offences and modern slavery offences as well as witnesses in relation to certain offences involving guns and knives are already deemed to be automatically eligible on grounds of fear and distress (unless the witness does not want to be eligible). The effect of this clause, in practice, is to extend coverage to complainants of offences involving domestic abuse so that they are also automatically eligible for special measures (if they want to be).

207 Clause 53 also provides that a special measures direction providing for the witness's evidence to be given in private can be given in cases where the proceedings relate to domestic abuse. Currently, such a direction can only be made in cases relating to sexual offences or modern slavery offences, or where it appears to the court that there are reasonable grounds for believing that any person other than the accused has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings (section 25 of the YJCEA 1999).

### Clause 54: Polygraph conditions for offenders released on licence

208 This clause amends section 28 of the 2007 Act to allow the Secretary of State to include a polygraph testing condition in the licence of a person who has committed a domestic abuse-related offence.

209 Section 28 of the 2007 Act permits a polygraph condition to be included in the licence of an offender convicted of a specified sexual offence who is released from custody into the

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<sup>7</sup> Pre-recorded cross-examination and re-examination under section 28 of the YJCEA 1999 is being rolled out in England and Wales using a phased approach. Currently, section 28 has been commenced for vulnerable witnesses in nine Crown Courts, and for complainants of sexual offences and modern slavery offences in three Crown Courts.

community on licence. Any offender released from custody with such a condition would be required to undertake polygraph tests.

210 The term “licence” refers to the conditions which apply to an offender when conditionally released from prison. Failure to abide by the conditions may lead to their recall to prison. Licence conditions are imposed on offenders under section 250 of the Criminal Justice Act 2003 for determinate offences, and under section 31 of the Crime (Sentencing) Act 1997 for indeterminate offenders. Section 250 of the Criminal Justice Act 2003 provides that the licence of any prisoner serving a determinate sentence must include the standard conditions (as set out in the Criminal Justice (Sentencing) (Licence Conditions) Order 2015 (SI 2015/337)) and may include any condition authorised under the electronic monitoring legislation and the polygraph condition legislation (namely, Part 3 of the 2007 Act). Article 6 of the 2015 Order sets out the standard conditions that must be included in an offender’s licence where the offender is subject to a polygraph condition. Article 6(2) provides that:

“While subject to a polygraph condition an offender must–

- a) attend a polygraph testing session and examination as instructed by the supervising officer, and comply with the process;
- b) comply with any instruction given during a polygraph session by the person conducting the polygraph;
- c) not frustrate the polygraph testing process.”

211 Subsections (2) and (4) inserts new subsections (2A), (4A) and (4B) into section 28 of the 2007 Act, the effect of which is to extend the provisions of that section so that they not only apply to offenders released from custody having served a sentence for a relevant sexual offence, but also to offenders released from custody having served a sentence for a relevant offence involving domestic abuse (as defined in new section 28(4B) – the definition includes offences relating to breach of a restraining order or a DAPO which may not, of themselves, involve domestic abuse). A polygraph condition may only be applied to offenders who are aged 18 or over on the day of their release from custody (new section 28(2A)(b)).

212 Imposing polygraph examinations on certain domestic abuse perpetrators would assist National Probation Service offender managers by providing them with additional information (through self-disclosure by the offender) about the offender’s risk that would not otherwise be available, for example details of any contact with their victims and whether or not they are forming new relationships. In addition, risk factors such as alcohol consumption that may be related to the offender’s behaviour can be monitored and addressed. Such additional information would enable the offender manager to monitor compliance with other conditions of the offender’s licence and improve risk management plans (see section 29(1)(a) of the 2007 Act). Under section 30 of the 2007 Act, any statement made by a person during a polygraph session or any physiological reaction made during such a session may not be used in criminal proceedings in which that person is the defendant. Any statement made by a person during a polygraph session could, however, be used as the basis for recalling the offender to prison for breach of a licence condition.

### Clause 55: Guidance about the disclosure of information by police forces

213 This clause requires the Secretary of State (in practice, the Home Secretary) to issue statutory guidance to the police about the disclosure of police information by police forces for the purposes of preventing domestic abuse, that is about the exercise of their functions

under the Domestic Violence Disclosure Scheme (“DVDS”), commonly referred to as “Clare’s Law”. Such guidance is currently issued on a non-statutory basis (see paragraph 32 above).

214 Subsection (2) requires chief officers of police to have regard to any guidance issued under this clause. This means that the police must take the guidance into account during the exercise of their functions under the DVDS and that, if they decide to depart from the guidance, they must have good reasons for doing so.

215 Subsection (4) sets out with which parties the Secretary of State must consult before issuing or revising guidance under this clause.

216 Subsection (6) provides that any guidance issued or revised under this clause must be published.

217 Topics which the Government would expect to be covered in such statutory guidance include:

- Recommended minimum levels of knowledge and experience required by practitioners to discharge their functions under the DVDS effectively;
- Suggested step-by-step processes and timescales for the two disclosure routes under the scheme (the “right to ask” and the “right to know”), including example scenarios for each route;
- Minimum standards of information to be obtained from the applicant;
- Minimum standards of intelligence checks to be completed;
- Guidance on effective engagement with a multi-agency forum such as a Multi-Agency Risk Assessment Conference to inform decision-making;
- Guidance on robust risk assessment and safety planning in order to safeguard the individual or individuals potentially at risk of domestic abuse;
- Suggested types of information which may be disclosed under the scheme, such as details of allegations, charges, prosecutions and convictions for relevant offences;
- Guidance on what constitutes a “reasonable and proportionate” disclosure in line with relevant human rights and data protection legislation and the 1974 Act; and
- Suggested forms of wording for communicating outcomes at each stage of the DVDS process.

### Clause 56: Grant of secure tenancies in cases of domestic abuse

218 This clause amends the 1985 Act to require local authorities, when re-housing a person, or offering a person a new sole tenancy in the same home, where that person has or had a “lifetime tenancy” of social housing (whether under a secure tenancy other than a flexible tenancy or under an assured tenancy, granted by a private registered provider of social housing, by the Regulator of Social Housing or by a housing trust which is a charity, other than an assured shorthold tenancy), to grant such a person a new lifetime secure tenancy if the person, or a member of their household, is or has been a victim of domestic abuse (as defined by Clause 1 of the Bill) carried out by another person, and the new tenancy is being granted for reasons connected with that abuse.

219 This clause will have effect until Schedule 7 to the 2016 Act and the 2018 Act are brought into force, after which the equivalent provisions will be those contained in the 2018 Act

(see paragraphs 34 to 38 above).

## Part 2: Domestic abuse: Northern Ireland

### Clause 57: The domestic abuse offence

- 220 This clause makes it an offence for a person to engage in a course of behaviour (defined in subsection (3)(a) as behaviour on at least two occasions) which is abusive of another person with whom they are (or have been) personally connected (see clause 60 for the meaning of personally connected). For the purpose of this commentary on clauses these persons will be referred to as “the accused” and their “partner/connected person”.
- 221 Subsection (2) set out that the offence is subject to two further conditions being met. The first condition is that a reasonable person would consider that the course of behaviour would be likely to cause the partner/connected person to suffer physical or psychological harm, which includes fear, alarm and distress (see subsection (3)(b)). The court would also be entitled to take account of any particular vulnerability of the partner/connected person, in considering whether the accused’s behaviour would be likely to cause them to suffer physical or psychological harm.
- 222 The second condition is that the accused must either intend that the behaviour causes their partner/connected person to suffer harm or is reckless as to this. This condition could be met, for example, where the accused is persistently verbally abusive and demeaning towards their partner/connected person but claims that they did not intend the behaviour to cause harm, and the court is satisfied that the accused’s behaviour was such that they were, at the very least, reckless as to whether their behaviour would cause such harm to their partner/connected person.
- 223 Subsection (4) provides that the partner/connected person need not have actually suffered harm for the offence to be committed. It also clarifies that this provision does not prevent evidence being presented of actual harm, as a result of the alleged course of behaviour, or of effects that the behaviour actually had on the partner/connected person.

### Clause 58: What constitutes “abusive” behaviour

- 224 This clause sets out what constitutes abusive behaviour for the purpose of the offence. The description is non-exhaustive and it therefore remains open to the court to decide in any individual case that the accused’s behaviour was abusive in some other way, outside those described.
- 225 Subsection (2) provides that abusive behaviour includes conduct which is violent or threatening (including both physical and sexual violence). It also covers behaviour directed at an individual, their child or any other person where the purpose of the behaviour has certain effect(s) on the partner/connected person (subsection (3)) or where a reasonable person would consider it likely to have one or more of those effects. Abusive behaviour may give rise to several of the listed effects.
- 226 Subsection (3) provides, in connection with the offence, a list of effects that are relevant in order to indicate behaviour is abusive. This is intended to ensure that, for example, psychological abuse, or controlling or coercive behaviour that could not currently be prosecuted under existing offences falls within the definition of abusive behaviour.
- 227 Subsection (3)(a) deals with behaviour which makes the connected person dependent on or subordinate to the accused. This could include, for example, preventing the partner/connected person from having access to money, forcing the partner/connected person to leave their job or education, taking charge of household decision-making to the

exclusion of the partner/connected person or treating them as a domestic slave.

- 228 Subsection (3)(b) covers behaviour which has the effect of isolating a person from friends, family members or other sources of social interaction or support. This could include, for example, controlling a partner's or connected person's movements; access to their phone or other forms of communication; not allowing visits from or to the partner's or connected person's friends or family, or deliberately failing to pass on messages from friends or family.
- 229 Subsection (3)(c) refers to behaviour which has the effect of controlling, regulating or monitoring the day-to-day activities of a partner/connected person. This could include, for example, checking their phone, e-mail or social media use, controlling what clothes they can or cannot wear, or placing unreasonable requirements on them, for example, to prepare meals in a particular way at a particular time every day or to answer the phone within three rings.
- 230 Subsection (3)(d) deals with behaviour which has the effect of depriving or restricting the freedom of action of a partner/connected person is behaviour. This addresses behaviour which strips that person of their autonomy, for example, preventing them from attending work or college, preventing them from leaving the house alone, insisting on accompanying them to medical appointments, or taking decisions for them in relation to private, individual matters that a person would normally decide for themselves.
- 231 Subsection (3)(e) refers to behaviour which has the effect of frightening, humiliating, degrading or punishing a partner/connected person. This could include, for example, abusive name-calling, threats of self-harm, playing mind games that cause the partner/connected person to doubt their sanity, controlling a partner/connected person's access to the toilet or forcing them to eat food off the floor.
- 232 Subsection (4)(a) provides that references to violent behaviour includes both physical and sexual violence. It is considered that non-violent sexually abusive behaviour would be covered under subsections (2)(b) and (3) where it is behaviour that is intended, or likely to have, one of the effects; for example, behaviour which has the effect of making the accused's partner of a connected person feel frightened, humiliated, degraded, punished or intimidated.
- 233 Subsection (4)(b) provides that reference to a child means someone under 18 years of age.
- 234 Subsection (5) states that it is not necessary to prove that the effects of the behaviour under subsection (3) (such as dependency, subordination, isolation, control, etc.) have to have been actually suffered by the partner/connected person, their child or another person for the offence to have been committed. It also clarifies that this provision does not prevent evidence being presented of effects that the behaviour actually had on the partner/connected person, their child or another person.

### Clause 59: Further provision about "behaviour"

- 235 The clause further explains what is meant by behaviour for the purposes of Part 2.
- 236 Subsection (2) provides that behaviour includes saying or otherwise communicating something as well as doing something (including an intentional failure to do, say, or otherwise communicate something). This could include, for example, a failure to pass on times and dates of appointments or social occasions, a failure to feed a family pet or a failure to speak to or communicate with an individual.
- 237 Subsection (3) clarifies that behaviour is "directed at" a person if it is directed in any way. This would include, for example, behaviour towards property or behaviour that affects

the ability to acquire, use, maintain money or other property or to obtain goods or services. This could relate to shared property or property belonging to parents. Property will also include pets or other animals (for example agricultural livestock) whether belonging to the victim or others.

238 The clause also provides that behaviour directed at a person includes behaviour carried out with or through a third party, for example by spying on or reporting on the activities of a partner/connected person. The third party's involvement could possibly be unwitting or unwilling, as they may be entirely unaware that their behaviour was helping the accused to abuse their partner/connected person or they may have been coerced into participating in the abuse.

### Clause 60: Definition of “personally connected”

239 This clause defines “personally connected” for the purposes of Part 2. Subsection (1) provides that two people are personally connected if they are, or have been, married or in a civil partnership or they live together (or have lived together) as if they were married or in a civil partnership. Two people would also be personally connected if they are or have been in an intimate personal relationship with each other or are family members. The term “intimate personal relationship” is intended to cover relationships between two individuals (including young/teenage and same-sex relationships), although the relationship need not be sexual, nor long-term.

240 Subsection (2) sets out that a family member covers a person's parent, grandparent, child, grandchild or sibling. Subsection (3) provides that a family member also covers the parent, grandparent, child, grandchild or sibling of the person that they are in a relevant relationship with. Subsection (4) defines a relevant relationship as a spouse, civil partner, or someone they live with as they are married or in a civil partnership.

241 Subsection (5) makes provision for the inclusion of half-blood relationships, relationships by affinity and stepchildren when considering family membership.

### Clause 61: Behaviour occurring outside the UK

242 This clause provides that a course of behaviour can constitute a domestic abuse offence if it consists of or includes behaviour which occurred in a country outside the UK. The offence would need to constitute the domestic abuse offence if it occurred in Northern Ireland and the accused would need to be habitually resident in Northern Ireland or is a UK national (as defined in subsection (3)).

### Clause 62: Exception for persons having responsibility for children

243 Subsection (1) provides that the domestic abuse offence does not apply where a person has parental responsibility for another person who is under 18 years of age. It is considered that there are other provisions that deal with, and should be more appropriately be used for, direct abuse of a child or young person by their parent or other carer. This exception also ensures that the provisions do not criminalise what would be considered normal, and appropriate, parental behaviour. More generally the offence applies where either the accused or the partner/connected is under 18.

### Clause 63: Defence on grounds of reasonableness

244 This clause provides that it is a defence for the accused to show that the course of behaviour was, in the particular circumstances, reasonable. This may apply where, for example, in the particular circumstances, the accused acted to prevent their partner from associating with certain persons or frequenting certain places if they are recovering from alcohol or drug addiction or to restrict their freedom of movement for their own safety

due to the effects of suffering from dementia.

245 Subsection (2) also provides that the accused may bring forward enough evidence to raise an issue as to whether the course of behaviour was reasonable, while the burden on the prosecution will be to disprove the defence offered and prove beyond reasonable doubt that the offence has been committed.

#### Clause 64: Alternative available for conviction

246 This clause provides that where the court is not satisfied that the domestic abuse offence has been committed, that it can convict the accused of a specified alternative offence of harassment or putting people in fear of violence under the Protection from Harassment (Northern Ireland) Order 1997.

#### Clause 65: Penalty for the offence

247 This clause provides that the maximum penalty on summary conviction (that is in a magistrates' court) is 12 months' imprisonment or a fine up to the statutory maximum (that is, £5,000). Where a case is tried on indictment (that is, in the Crown Court) the maximum penalty is 14 years' imprisonment or a fine or both. The nature of the penalties is intended to reflect the cumulative nature of the offence, that it may cover both physical and psychological abuse and also the intimate and trusting nature of the relationships involved.

#### Clause 66: Aggravation of offence where the victim is under 18

248 This clause provides for an aggravator that the accused's partner/connected person was under 18 at the time of any of the behaviour that constituted the domestic abuse offence. This could enable sentencing to be increased up to the maximum available.

249 Subsection (2) and (3) sets out that, where the aggravation is proved, the court must take it into account when determining the sentence, state how it has affected the sentence and in recording the conviction shows it as aggravated by reason of the partner/connected person being under 18.

250 Subsection (4) makes it clear that if the allegation of aggravation is not proved but the charge is proved in all other respects, the accused can still be convicted of the charge.

#### Clause 67: Aggravation of offence where child is otherwise involved

251 This clause provides for an aggravator that the accused committed the domestic abuse offence by demonstrating abusive behaviour towards their partner/connected person, through involving a child (under 18) who is not the accused or the partner/connected person. This includes the child of either person.

252 Subsection (3)(a)(i) provides that the aggravation applies where it is shown that, at any time in committing the offence, the accused directed behaviour at a child. This could include the accused threatening violence towards a child to control or frighten the partner/connected person.

253 Subsection (3)(a)(ii) provides that the aggravation applies where it is shown that, in committing the offence, the accused made use of the child in directing behaviour at their partner/connected person. This could apply where the accused encourages or directs a child to spy on or report on the day-to-day activities of a partner/connected person. The involvement of the child could be unknowingly witting or unwillingly.

254 The aggravation would apply to the involvement of any child in the domestic abuse offence (apart from when the child is the partner/connected person). This would include,

for example, the accused or victim's own child, another child living in or visiting the household, or a neighbour's child.

255 Subsection (3)(b) provides that the aggravation applies where a child sees, hears or is present during a single incident of the course of behaviour. This could, for example, be a verbal abuse incident or a physical assault.

256 Subsections (4) and (5) sets out that, where the aggravation is proved, the court must take it into account when determining the sentence, state how it has affected the sentence and in recording the conviction shows it as aggravated by reason of involving a person being under 18.

257 Subsection (6) makes it clear that if the allegation of aggravation is not proved but the charge is proved in all other respects, the accused can still be convicted of the charge.

### Clause 68: Relationship taken as established if not challenged

258 This clause provides that the matter of two individuals being personally connected will be assumed to be established, unless the personal connection is challenged. It also sets out the process for this.

### Clause 69: Service of notice under section 68

259 This clause provides for the service of notices where a relationship is challenged under clause 68. It sets out the process to be applied and the meaning of key terms and their application.

### Clause 70: No right to claim trial by jury in summary proceedings

260 This clause amends Article 29(1) of the Magistrates' Courts (Northern Ireland) Order 1981, the effect of which is to prohibit those accused of the domestic abuse offence before a magistrates' court from the right to elect for trial by jury at Crown Court.

### Clause 71: No cross-examination by accused in person

261 This clause amends the Criminal Evidence (Northern Ireland) Order 1999, the effect of which is to prohibit the accused from cross-examining a partner/connected person in person, where they are to give evidence. This applies in relation to the domestic abuse offence as well as any connected offence (of whatever nature).

262 Both clauses 70 and 71 are intended to remove the possibility that the processes of the criminal justice system may be used by the accused to further abuse and control a partner/connected person.

### Clause 72: Special measures for witnesses

263 This clause amends Part 2 of the Criminal Evidence (Northern Ireland) Order 1999 to create a statutory assumption that adult complainants of the domestic abuse offence (under clause 57), who are witnesses in the proceedings relating to the offence, are automatically eligible for consideration for special measures (for example, giving evidence via a video link or from behind a screen) if they want such assistance.

264 Subsection (2) amends Article 5(4) (witnesses eligible for assistance on grounds of fear or distress about testifying) of the 1999 Order to ensure that the complainant of a domestic abuse offence is eligible for assistance in relation to those proceedings, unless they have informed the court that they do not wish to be eligible for such assistance.

265 Subsection (3) amends Article 13(4)(a) of the 1999 Order (evidence given in private) to ensure that where proceedings relate to a domestic abuse offence a special measures

direction may provide for the exclusion of persons from court when the witness is giving evidence.

### Clause 73: Guidance about investigation of offence

266 This clause provides that the Department of Justice in Northern Ireland may issue guidance about the investigation of the domestic abuse offence to whoever it considers appropriate. The Department may also revise guidance and must arrange for any guidance issued or revised to be published.

### Clause 74: Application of Interpretation Act (Northern Ireland) 1954

267 The Interpretation Act (Northern Ireland) 1954 sets out general rules of interpretation for legislation in Northern Ireland. This clause provides that the 1954 Act applies for the purposes of this Part.

## Part 3: Prohibition of cross-examination in person in family proceedings

### Clause 75: Prohibition of cross-examination in person in family proceedings

268 This clause inserts new Part 4B (comprising new sections 31Q to 31X) into the Matrimonial and Family Proceedings Act 1984 (“MFPA 1984”) to prohibit perpetrators of abuse from cross-examining their victims in person in the family courts, and vice versa, and give such courts discretion to prevent cross-examination in person in other circumstances where it would affect the quality of the witness’ evidence or cause significant distress. It also gives family courts the power to appoint a qualified legal representative to conduct cross-examination on a party’s behalf where that party is prohibited or prevented from cross-examining in person.

#### **New section 31Q – Prohibition of cross-examination in person: introductory**

269 Section 31Q defines various terms used later in new Part 4B, including providing that “the court” means the family court or the Family Division of the High Court, which are the courts in which family proceedings are heard in England and Wales and a “witness” includes a party to these proceedings.

#### **New section 31R – Prohibition of cross-examination in person: victims of offences**

270 Section 31R provides that any person involved in family proceedings who has an unspent conviction or caution (as defined in subsection (5)) for, or who is charged with, a “specified offence” cannot cross-examine in person the victim of that offence, or alleged offence, during the course of the family proceedings. The section also provides that the (alleged) victim cannot, in person, cross examine the (alleged) perpetrator. The prohibition will not apply if the conviction is spent (under the 1974 Act) unless evidence in relation to the conviction or caution is admissible, or may be required, in the proceedings by virtue of section 7(2), (3), or (4) of that Act (which disapply the provisions of the 1974 Act in respect of specified, or prescribed, criminal or other judicial proceedings, including where justice cannot be done in the case except by admitting or requiring evidence relating to a person’s spent convictions). If cross-examination takes place in breach of the provision, because the court was not aware of the conviction, caution or charge at the time the cross-examination took place, then the validity of decisions made by the court is not affected.

271 Section 31R(6) makes clear that the prohibition applies even where a conviction has been

discharged (either absolutely or conditionally).

272 The offences that are relevant here are to be specified in regulations to be made by the Lord Chancellor under the power in section 31R(5). It is intended to use regulations to specify a comprehensive list of sexual offences, child abuse offences and domestic abuse offences, based on the list of offences set out in [documents](#) issued by the Lord Chancellor as referred to in Schedules 1 and 2 to the Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098). The regulations may also specify offences which have been repealed and replaced but which remain in force insofar as they could be prosecuted in respect of conduct committed prior to their repeal.

### **New section 31S – Prohibition of cross-examination in person: persons protected by injunctions etc**

273 Section 31S makes provision for a prohibition on cross-examination in person when an “on-notice protective injunction” is in place. The person who is protected by the injunction may not be cross-examined by the person against whom the injunction is in force, and the person against whom the injunction is in force may not be cross-examined by the person protected by the injunction.

274 Subsection (5) sets out what is meant by “on notice”.

275 The first instance is where the court is satisfied that there has been a hearing at which the person against whom the injunction was made has had a chance to ask for it to be varied or set aside. This might occur where the court has made an injunction to last for a given period, without the person against whom it was made having been told that the court was considering making the injunction. If there has since been a hearing which the person against whom the injunction was made has been informed about, where that person could have asked the court to vary or remove the order, then the position will be that the injunction will be “on notice”.

276 The second instance is where the injunction was made at a hearing and the court is satisfied that both the person protected by the injunction and the person against whom it was made had been informed about the hearing.

277 Section 31S(4) provides that “protective injunctions” are to be specified in regulations made by the Lord Chancellor. It is intended to use those regulations to specify a comprehensive list of protective injunctions, based on the definition of “protective injunction” in Schedule 1 to the Civil Legal Aid (Procedure) Regulations 2012. It is intended to include, for example, non-molestation orders made under the Family Law Act 1996 and DAPOs made under Chapter 3 of Part 1 of the Bill.

278 Section 31S(3) confirms that if cross-examination takes place in breach of the provision, because the court was not aware of the existence of the on-notice protective injunction at the time the cross-examination took place, then the validity of decisions made by the court is not affected.

### **New section 31T - Direction for prohibition of cross-examination in person: other cases**

279 Section 31T provides that, in addition to the absolute bar on cross-examination in person provided for in section 31R or 31S, there are circumstances where the court has the discretion to prohibit cross-examination in person by giving a direction to that effect. The discretion can be exercised if someone involved in the proceedings applies for this to happen or if the court raises the issue. The court can prohibit the cross-examination in

person if it is satisfied that either the “quality condition” or the “significant distress condition” is met and that it will not be contrary to the interests of justice to direct that cross-examination by a party in person is prohibited.

280 The “quality condition” will be met if the quality of the witness’s evidence on cross-examination would be likely to be diminished if the cross-examination is conducted by a party in person, and that the quality of the evidence would likely be improved if the court prohibited that cross-examination in person.

281 The “significant distress condition” will be met if the cross-examination in person would be likely to cause significant distress to the witness or the party and the distress caused is likely to be greater than if they were cross-examined other than by the party in person.

282 Section 31T(5) sets out factors that the court should consider when deciding whether the “quality condition” or “significant distress condition” is met. This covers views expressed by the witness or the party, the possible content of the questions, any finding of fact that has been made about the party’s or the witness’s behaviour, how the party or the witness is acting and the relationship between the party and the witness. This list is not exhaustive, and the court may have regard to other things when deciding if the “quality condition” or “significant distress condition” is met.

283 Section 31T(6) and (7) explain what is meant by quality of evidence given by the witness.

#### **New section 31U – Directions under section 31T: supplementary**

284 Section 31U provides more detail in relation to directions made by the court under section 31T. This covers how long a direction made under section 31T may last and the circumstances where a court may stop a direction it has given under section 31T.

285 The court should provide their reasons for making, refusing or stopping directions under 31T (section 31U(4)).

286 It is also intended that there should be procedural rules of court in relation to these directions. The Family Procedure Rule Committee will be invited to consider making such rules under existing rule-making powers in the Courts Act 2003.

#### **New section 31V – Alternatives to cross-examination in person**

287 Section 31V makes provision in relation to alternatives to cross-examination in person. It applies where a party is prevented from cross-examining in person under section 31R, 31S or 31T.

288 Firstly, the court must consider whether there is a “satisfactory alternative” means for the witness to be cross-examined, or of obtaining the evidence that the witness might have given under cross-examination. An example of this might include the court putting questions to the witness, where appropriate.

289 If the court concludes that there is no satisfactory alternative means that can be used, the court will ask the party who has been directed not to conduct the cross-examination to arrange, within a specified time, a qualified legal representative (as defined in section 31V(8)(b)) to cross-examine the witness, and to notify the court of the arrangements.

290 If, after the specified time, the party has either notified the court that there is no qualified legal representative to act for them, or the court has not received any notification and it appears to the court that no legal representative will cross-examine the witness, then the

court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a court-appointed qualified legal representative. If the court decides it is necessary in the interests of justice, then it must appoint such a qualified legal representative. This legal representative, chosen by the court, is not responsible to the party.

#### **New section 31W – Costs of legal representatives appointed under section 31V**

291 Section 31W confers a power for the Lord Chancellor to make regulations about the payment of fees and costs of a qualified legal representative appointed under section 31V and to cover related costs connected to their appointment.

#### **New section 31X – Regulations under Part 4B**

292 Section 31X sets out that the regulations made under powers included in new Part 4B will be made via statutory instruments, subject to the negative resolution procedure.

## **Part 4: Offences committed outside the UK**

### **Clause 76: Offences against the person committed outside the UK: England and Wales**

293 This clause extends the circumstances in which certain sexual and violent offences committed abroad may be prosecuted in England and Wales, where the offence is committed by a UK national or a person habitually resident in England and Wales.

294 Subsection (1) makes it an offence in England and Wales for a person who is a UK national (as defined in subsection (8)), or is habitually resident in England and Wales, to commit certain acts in a country outside the UK. The act done must amount to an offence listed in subsection (2) and must also amount to an offence in the country where it was committed.

295 Subsection (3) excludes murder and manslaughter from the ambit of subsection (1) where a person would otherwise be guilty of those offences under other laws, such as sections 9 and 10 of the Offences Against the Person Act 1861 or section 4 of the Suppression of Terrorism Act 1978.

296 Subsection (4) provides that the precise description of the offence does not need to be the same in both countries. For example, the provisions could apply to someone who committed grievous bodily harm in another country although that offence was described differently under the law in that country.

297 Subsections (5) to (7) provide a procedure under which the defendant can challenge the prosecution to prove that what was done was an overseas offence.

### **Clause 77: Offences against the person committed outside the UK: Northern Ireland**

298 This clause makes provision for Northern Ireland analogous to that in Clause 76 in respect of England and Wales. In particular, it makes it an offence in Northern Ireland for a UK national or a person who is habitually resident in Northern Ireland to commit certain acts outside the UK (namely, murder, manslaughter, actual bodily harm, grievous bodily harm, grievous bodily harm with intent, child destruction and administering poison) and the act constitutes an offence in the country where it was committed and would be an offence if it occurred in Northern Ireland.

## Clause 78: Amendments relating to offences committed outside the UK

299 This clause introduces Schedule 2 which further extends the circumstances in which certain sexual and violent offences committed abroad may be prosecuted in England and Wales (Part 1 of Schedule 2), Scotland (Part 2) or Northern Ireland (Part 3) where the offence is committed by a UK national or a person habitually resident in the relevant part of the UK.

## Schedule 2: Amendments relating to offences committed outside the UK

### **Part 1: England and Wales**

300 Paragraph 1 inserts a new section 4B in the Protection from Harassment Act 1997 (“the 1997 Act”).

301 Section 4 of the 1997 Act makes it an offence for a person to pursue a course of conduct which causes another to fear, on at least two occasions, that violence will be used against him or her, and where he or she knows, or ought to know, that his or her course of conduct will cause the victim to fear violence on each occasion. Section 4A of the 1997 Act provides a similar offence in relation to stalking involving fear of violence or serious alarm or distress.

302 New section 4B(1) makes it an offence in England and Wales for a person who is a UK national (as defined in new section 4B(2)) or is habitually resident in England and Wales to pursue, wholly or partly in a country outside the UK, a course of conduct that would amount to an offence under section 4 or 4A of the 1997 Act if it occurred in England and Wales.

303 Paragraph 2 amends section 72 of the Sexual Offences Act 2003. Section 72 already makes it an offence in England and Wales for a UK national or resident (as defined in section 72(9)) to commit certain acts in a country outside the UK. Schedule 2 to the Sexual Offences Act 2003 lists the sexual offences to which section 72 applies.

304 The effect of the amendments to section 72 is to make it an offence in England and Wales for a UK national or resident to commit certain other acts in a country outside the UK. The act done must amount to an offence under any of sections 1 to 4 of the Sexual Offences Act 2003 (namely, rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without consent) where the victim of the offence was aged 18 or over at the time of the offence and must also amount to an offence in the country where it was committed. Consistent with the amendments to section 72, paragraph 2(3) amends Schedule 2 to the Sexual Offences Act 2003 so that, rather than applying to section 72 generally, it instead contains provisions applying to specific subsections of section 72.

305 Paragraph 3 inserts a new section 76A in the 2015 Act. Section 76 of the 2015 Act makes it an offence for a person (A) repeatedly or continuously to engage in behaviour towards another person (B) that is controlling or coercive. The offence applies where, at the time of the behaviour, A and B are personally connected, the behaviour has a serious effect on B and A knows or ought to know that the behaviour will have a serious effect on B.

306 New section 76A(1) makes it an offence in England and Wales for a person who is a UK national (as defined in new section 76A(2)) or is habitually resident in England and Wales to engage in behaviour, wholly or partly in a country outside the UK, that would amount to an offence under section 76 of the 2015 Act if it occurred in England and Wales.

### **Part 2: Scotland**

- 307 Paragraph 4 amends section 11 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), which makes provision for certain offences committed outside the UK, including murder and culpable homicide. Section 11(1) of the 1995 Act makes it an offence for any British citizen or British subject to do any act or make any omission in a country outside the UK which, if done or made in Scotland, would constitute the crime of murder or of culpable homicide.
- 308 Paragraph 4(3) inserts a new section 11(2A) which extends extra-territorial jurisdiction to the common law offence of assault, and makes it an offence in Scotland for any “relevant person” to do any act in a country outside the UK which if done in Scotland would constitute the crime of assault. The act done must also amount to an offence in the country where it was committed.
- 309 Paragraph 4(3) also inserts a new section 11(2B) to define “relevant person,” as a person who is a UK national or is habitually resident in Scotland.
- 310 Paragraph 4(2) makes amendments to the language in section 11 of the 1995 Act to ensure it is consistent with that used in the Convention, substituting “British citizen or British subject” in subsections (1) and (2) with “relevant person,” as defined by new section 11(2B).
- 311 Paragraph 5 amends Part 7 of the Sexual Offences (Scotland) Act 2009 (“the 2009 Act”), which, amongst other things, makes provision for certain sexual offences committed outside the UK. Paragraph 5(2) inserts a new section 54D in the 2009 Act. This makes it an offence in Scotland for a UK national (as defined in new section 54D(4)) or habitual resident of Scotland to commit an act amounting to an offence under any of sections 1 to 4 of the 2009 Act (namely, rape, sexual assault by penetration, sexual assault and sexual coercion) where the victim of the offence was aged 18 or over at the time of the offence and the act constitutes an offence in the country where it was committed. (Section 55 of the 2009 Act already provides Scottish courts with extra-territorial jurisdiction over equivalent offences against a child under the age of 18.)
- 312 The jurisdiction of sheriff courts is territorial and a sheriff court has no jurisdiction to try offences occurring outside the sheriffdom in the absence of a statutory provision conferring that jurisdiction. New section 54D(3) provides that a person accused of committing an offence outside the UK may be prosecuted in a sheriff court in the district in which they are apprehended or held in custody, or in a sheriff court district to be determined by the Lord Advocate.
- 313 Paragraph 6 amends Part 2 of the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”), which makes provision for the offence of stalking as well a number of other offences. Section 39 of the 2010 Act provides for an offence of stalking, which makes it an offence for a person to engage in a course of conduct (conduct on at least two occasions) which causes another to suffer fear or alarm, and where he or she intends to cause the victim to suffer fear or alarm, or knows, or ought in all the circumstances to have known, that engaging in the course of conduct would be likely to cause the victim to suffer fear or alarm.
- 314 Paragraph 6 inserts a new section 39A in the 2010 Act. This makes it an offence in Scotland for a UK national (as defined in new section 39A(3)) or habitual resident of Scotland to pursue, in a country outside the UK, a course of conduct that would amount to an offence under section 39 of the 2010 Act if it occurred in Scotland.
- 315 The jurisdiction of sheriff courts is territorial and a sheriff court has no jurisdiction to try offences occurring outside the sheriffdom in the absence of a statutory provision

conferring that jurisdiction. New section 39A(2) provides that a person accused of committing an offence wholly outside the UK may be prosecuted in a sheriff court in the district in which they are apprehended or held in custody, or in a sheriff court district to be determined by the Lord Advocate.

### **Part 3: Northern Ireland**

- 316 Paragraph 7 inserts a new Article 6A in the Protection from Harassment Order (Northern Ireland) 1997 (“the 1997 Order”).
- 317 Article 6 of the 1997 Order makes it an offence for a person to pursue a course of conduct which causes another to fear, on at least two occasions, that violence will be used against him, and where he knows, or ought to know, that his course of conduct will cause the victim to fear violence on each occasion.
- 318 New section 6A makes it an offence in Northern Ireland for a person who is a UK national (as defined in new section 6A(2)) or is habitually resident in Northern Ireland to pursue, wholly or partly in a country outside the UK, a course of conduct that would amount to an offence under section 6 of the 1997 Order if it occurred in Northern Ireland.
- 319 Paragraph 8 amends Article 76 of the Sexual Offences (Northern Ireland) Order 2008 (“the 2008 Order”) which makes provision for certain sexual offences committed outside the UK. Paragraph 8(b) inserts a new paragraph 76(2A) into the 2008 Order. This makes it an offence in Northern Ireland for a UK national or a person who is habitually resident in Northern Ireland to commit an act outside the UK amounting to an offence under any provision of Part 2 of the 2008 Order (namely, rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without consent) where the victim of the offence was aged 18 or over at the time of the offence and the act constitutes an offence in the country where it was committed. (Article 76 of the 2008 Order already makes provision for extraterritorial jurisdiction over equivalent offences against a child under 18.)

## **Part 5: Supplementary and final provisions**

### **Clause 79: Power of Secretary of State to issue guidance about domestic abuse, etc**

- 320 This clause confers a power on the Secretary of State (in practice, the Home Secretary) to issue guidance about any of the provisions in the Bill that extend to England and Wales and about other matters relating to domestic abuse. Amongst other things, such guidance must provide further explanation of the definition of domestic abuse, including by illustrating the different forms it can take (for example, forced marriage and coercive control related to a victim’s immigration status) and the adverse effect on children. Guidance must also take account of the fact that the majority of victims of domestic abuse are female. Such statutory guidance would help promote understanding amongst public authorities of domestic abuse and the powers available to them to protect and support victims.
- 321 In preparing the guidance, the Secretary of State is under a duty to consult the Domestic Abuse Commissioner, the Welsh Ministers in so far as the guidance is to a body exercising devolved Welsh functions, and such other persons as he or she considers appropriate (for example, the police and other practitioners) (subsection (6)). Persons exercising public functions to whom the guidance is given will be under a duty to have regard to the guidance when exercising such functions and must have good, rational reasons for departing from the guidance (subsection (4)).

## Commencement

- 322 Clause 85(1) provides for the general provisions in Clauses 80 to 86 (powers to make consequential or transitional provision, regulations, financial provisions, extent, commencement and short title) to come into force on Royal Assent. In addition, any power to make regulations under the Bill also comes into force on Royal Assent.
- 323 Clauses 76 and 78(1) and Part 1 of Schedule 2 (offences committed outside the UK: England and Wales) come into force two months after Royal Assent (Clause 85(2)).
- 324 Clause 78(2) and Part 2 of Schedule 2 (offences committed outside the UK: Scotland) will be brought into force by means of commencement regulations made by the Scottish Ministers (Clause 85(3)).
- 325 Part 2 (Domestic abuse: Northern Ireland) and Clauses 77 and 78(3) and Part 3 of Schedule 2 (offences committed outside the UK: Northern Ireland) will be brought into force by means of commencement regulations made by the Department of Justice in Northern Ireland (Clause 85(4)).
- 326 The remaining provisions will be brought into force by means of commencement regulations made by the Secretary of State (Clause 85(5)). Clause 85(7) and (8) enable the provisions in Chapter 3 of Part 1 (DAPNs and DAPOs) and 54 (polygraph testing) to be piloted.

## Financial implications of the Bill

- 327 The main public sector financial implications of the Bill fall to criminal, civil and family justice agencies, including the police, prosecutors, the courts, the Legal Aid Agency, and prison and probation services. In addition, the office of the Domestic Abuse Commissioner will cost an estimated £1.1 million per annum. The best estimate annual cost of the measures in the Bill in respect of England and Wales once fully implemented is £34 to £43 million. The provisions in respect of Scotland and Northern Ireland are currently estimated to cost £680,000 and £1.9 million per annum respectively. These figures are estimated based on a number of assumptions about implementation which are subject to change.
- 328 Further details of the costs and benefits of individual provisions as they apply to England and Wales are set out in the impact assessment published alongside the Bill.

## Parliamentary approval for financial costs or for charges imposed

- 329 A Money resolution will be needed in respect of the Bill. A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new public expenditure. There is potential government expenditure under a number of provisions of the Bill, in particular clause 4 and new section 31W of the MFPA 1984 inserted by clause 75. In addition, a number of provisions such as those in clauses 54 and 55 will result in an increase in expenditure for bodies such as the police and probation services. The House of Commons will be asked to agree that such expenditure is to be paid out of money provided by Parliament.

## Compatibility with the European Convention on Human Rights

330 The Home Secretary, the Rt. Hon. Sajid Javid MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of the Domestic Abuse Bill are compatible with the Convention rights”.

331 The Government has published a separate ECHR memorandum with its assessment of the compatibility of the Bill’s provisions with the Convention rights: this memorandum is available on the Government website.

## Related documents

332 The following documents are relevant to the Bill and can be read at the stated locations:

- [Transforming the Response to Domestic Abuse: Government Consultation](#), HM Government, March 2018.
- [Transforming the Response to Domestic Abuse: Response to Consultation and Draft Bill](#) (CP 15), HM Government, January 2019.
- Joint Committee on the Draft Domestic Abuse Bill, [First Report](#) Session 2017-19, HL Paper 378, HC 2075, 14 June 2019.
- The Government response to the report from the Joint Committee on the Draft Domestic Abuse Bill (CP 137), 16 July 2019.
- [Domestic abuse in England and Wales: year ending March 2018](#), Office of National Statistics, November 2018.
- The [Economic and Social Costs of Domestic Abuse](#), Home Office, January 2019.
- [Violence against Women and Girls Report 2017-18](#), Crown Prosecution Service, September 2018.
- Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence ([Istanbul Convention](#)).
- Ratification of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence (Istanbul Convention) – [2018 Report on Progress](#), Home Office, October 2018.
- [The police response to domestic abuse: an update report](#), Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, February 2019.
- [Impact assessment](#).
- ECHR memorandum.
- Delegated powers memorandum.

*These Explanatory Notes relate to the Domestic Abuse Bill as introduced in the House of Commons on 16 July 2019*

## Annex A – Glossary

Affirmative procedure	Statutory instruments that are subject to the draft “affirmative procedure” must be approved by both the House of Commons and House of Lords to become law.
Convention or Istanbul Convention	Council of Europe Convention on preventing and combating violence against women and domestic violence
DAPN	Domestic abuse protection notice
DAPO	Domestic abuse protection order
DVDS	Domestic Violence Disclosure Scheme
DVPN	Domestic violence protection notice
DVPO	Domestic violence protection order
MFPA 1984	Matrimonial and Family Proceedings Act 1984
Negative procedure	Statutory instruments that are subject to the “negative procedure” automatically become law unless there is an objection from the House of Commons or House of Lords.
The 1974 Act	Rehabilitation of Offenders Act 1974
The 1985 Act	Housing Act 1985
The 1995 Act	Criminal Procedure (Scotland) Act 1995
The 1997 Act	Protection from Harassment Act 1997
The 2003 Act	Criminal Justice Act 2003
The 2007 Act	Offender Management Act 2007
The 2009 Act	Sexual Offences (Scotland) Act 2009
The 2010 Act	Criminal Justice and Licensing (Scotland) Act 2010
The 2015 Act	Serious Crime Act 2015
The 2016 Act	Housing and Planning Act 2016
The 2018 Act	Secure Tenancies (Victims of Domestic Abuse) Act 2018
UK	United Kingdom

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YJCEA 1999	Youth Justice and Criminal Evidence Act 1999
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## Annex B - Territorial extent and application in the United Kingdom

The provisions of Clauses 1 to 55, 75, 76, 78(1) and 79 of, and Schedule 1 and Part 1 of Schedule 2 to, the Bill extend and apply to England and Wales only. Those in Clause 56 (secure tenancies granted to victims of domestic abuse) extend and apply to England only. However, provision is made for DAPNs and DAPOs to have effect throughout the UK (see paragraphs 105 and 157 above).

The provisions in Clause 78(2) and Part 2 of Schedule 2 (extra-territorial offences) extend and apply to Scotland only.

The provisions in Part 2 (Domestic abuse: Northern Ireland) and Clauses 77 and 78(3) and Part 3 of Schedule 2 (extra-territorial offences) extend and apply to Northern Ireland only.

In the view of the Government of the UK, the provisions of the Bill are within the legislative competence of the Scottish Parliament or Northern Ireland Assembly.<sup>8</sup>

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1 and 2	Yes	Yes	No	No	Yes	Yes	Yes	No
Clauses 3 to 5	Yes	Yes	No	No	Yes	Yes	Yes	No
Clause 6	Yes	Yes	No	No	No	Yes	Yes	No
Clauses 7 to 13	Yes	Yes	No	No	Yes	Yes	Yes	No
Clauses 14 and 15	Yes	Yes	No	No	No	Yes	Yes	No
Clauses 16 to 18	Yes	Yes	No	No	Yes	Yes	Yes	No
Clauses 19 to 52	Yes	Yes	No	No	No	Yes	Yes	No

<sup>8</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 53	Yes	Yes	No	No	No	Yes	Yes	No
Clause 54	Yes	Yes	No	No	No	Yes	Yes	No
Clause 55	Yes	Yes	No	No	No	Yes	Yes	No
Clause 56	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 57 to 74	No	No	No	Yes	N/A	N/A	N/A	No
Clause 75	Yes	Yes	No	No	No	Yes	Yes	No
Clause 76	Yes	Yes	No	No	No	Yes	Yes	No
Clause 77	No	No	No	Yes	N/A	N/A	N/A	No
Clause 78	In part	In part	In part	In part	N/A	N/A	N/A	Yes (S)
Clause 79	Yes	Yes	No	No	No	Yes	Yes	No
Clauses 80 to 86	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 1	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 2	In part	In part	In part	In part	N/A	N/A	N/A	Yes (S)

## Minor and consequential effects

Clause 18 makes amendments to the House of Commons Disqualification Act 1975 and to Schedule 1 to the Freedom of Information Act 2000 consequential on the provisions in Part 2 establishing the office of Domestic Abuse Commissioner; these enactments extend to the whole of the UK. The remit of the Commissioner is confined to England and Wales only, accordingly the amendments to these enactments have no practical application in Scotland or Northern Ireland.

## Subject matter and legislative competence of devolved legislatures

The provisions of the Bill deal with the prevention of domestic abuse; the prevention, detection, investigation and prosecution of offences involving domestic abuse (and the prosecution of certain other violent and sexual offences); the management of offenders convicted of domestic-abuse related offences; the cross-examination of domestic abuse and other victims in the family courts; and the provision of housing and other support to victims of domestic abuse and their families. These are all matters within the legislative competence of the Scottish Parliament and Northern Ireland Assembly. Examples of domestic abuse-related legislation enacted by these legislatures include the Domestic Abuse (Scotland) Act 2018 (which creates a specific statutory offence of domestic abuse and makes a number of associated changes to criminal procedure, evidence and sentencing in domestic abuse cases, including provision in respect of extra-territorial jurisdiction) and section 97 of and Schedule 7

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to the Justice Act (Northern Ireland) 2015 (which makes provision for domestic violence protection notices and orders).

The Bill generally deals with reserved matters in Wales, including matters relating to the courts (including, in particular their creation and jurisdiction); civil or criminal proceedings (including, in particular, bail, costs, custody pending trial, disclosure, enforcement of orders of courts, evidence, sentencing, limitation of actions, procedure, prosecutors and remedies); the prevention, detection and investigation of crime; policing; police and crime commissioners; criminal records, including disclosure and barring; and civil remedies in respect of domestic violence, domestic abuse and female genital mutilation (see paragraphs 8(1)(a) and (c), 39, 41, 42, 50 and 179 of Schedule 7A to the Government of Wales Act 2006). In addition, paragraph 4(3)(d) of Schedule 7B to the Government of Wales Act 2006 provides that an Act of the Assembly cannot make modifications of "sentences and other orders and disposals in respect of defendants in criminal proceedings". However, insofar as the Bill does not deal with these matters, the prevention of domestic abuse and the protection of and support for victims of domestic abuse are devolved matters. The Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 makes provision in respect of such devolved matters.

# DOMESTIC ABUSE BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the Domestic Abuse Bill as introduced in the House of Commons on 16 July 2019 (Bill 422).

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