

# DOMESTIC ABUSE BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to the Lords amendments to the Domestic Abuse Bill as brought from the House of Commons on 7 July 2020.
- 2 These Explanatory Notes have been prepared by the Home Office and Ministry of Justice in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 124, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Most amendments were tabled in the name of the Home Office Lords Minister, Baroness Williams of Trafford, or the Ministry of Justice Lords Minister, Lord Wolfson of Tredegar QC.
- 6 Lords Amendments 34, 44, 49 and 55 were tabled by Baroness Lister of Burtersett, and were supported by the Government.
- 7 Lords Amendments 35, 50, 56, 67 and 85 were tabled by Baroness Morgan of Cotes, and were supported by the Government.
- 8 Lords Amendments 36, 45, 51, 57, 66, 69 and 86 were tabled by Baroness Newlove, and were supported by the Government.
- 9 Lords Amendments 1, 2 and 3 tabled by Baroness Campbell of Surbiton, Lords Amendment 9 tabled by Baroness Finlay of Llandaff, Lords Amendment 33 tabled by Baroness Helic, Lords Amendments 37 and 38 tabled by Baroness Kennedy of The Shaws, Lords Amendment 40 tabled by Baroness Meacher, Lords Amendment 41 tabled by The Lord Bishop of Gloucester, Lords Amendment 42 tabled by Baroness Royall of Blaisdon, and Lords Amendment 43 tabled by Baroness Hamwee were opposed by the Government.
- 10 In the following Commentary, an asterisk (\*) appears in the heading of any paragraph that deals with a non-Government amendment.

## Commentary on Lords amendments

### **\*Lords Amendment to Clause 2: Extension of definition of "personally connected" to carers**

#### Lords Amendment 1 to 3

- 11 These amendments would bring the relationship between a disabled person and their carer within the definition of "personally connected" in Clause 2 of the Bill, applying it to both paid and unpaid carers.

### **Lords Amendment to after Clause 16 "Duty to send conclusions of domestic homicide review to Commissioner"**

#### Lords Amendment 4

- 12 Section 9 of the Domestic Violence, Crime and Victims Act 2004 provides for the police, local and health authorities and probation providers to undertake Domestic Homicide Reviews so that lessons can be learnt from them to prevent future deaths. The guidance issued under section 9 requires a final copy of the report to be shared with the Home Office.
- 13 Lords Amendment 4 would amend section 9 of the Domestic Violence, Crime and Victims Act 2004 Act to require that all completed Domestic Homicide Review reports are sent to the Domestic Abuse Commissioner.

### **Lords Amendments to after Clause 18 "Duty to report on domestic abuse services in England" and Lords Amendment to Clause 76**

#### Lords Amendments 5 and 61

- 14 Lords Amendment 5 would insert a new Clause which would require the Domestic Abuse Commissioner to prepare and publish a report on the need for certain domestic abuse services in England and the provision of such services. The report must be published no later than 12 months after this new Clause comes into force.
- 15 Lords Amendment 61 is consequential on Lords Amendment 5.

### **Lords Amendments to Clauses 33 and 34: Domestic Abuse Protection Orders**

#### Lords Amendment 6 and 7

- 16 Clause 33 sets out the types of conditions that may be imposed by a Domestic Abuse Protection Order ("DAPO"). Such conditions may include a requirement that the person against whom the DAPO is made (the perpetrator) from coming within a specified distance of the home of the person to be protected by the order (the victim). Amendment 6 would enable a court making a DAPO to prohibit the perpetrator from coming within a specified distance of other premises, such as the victim's place of work, in addition to those where the victim lives.

- 17 Clause 34 sets out further provision about requirements that may be imposed by a DAPO. Amendment 7 would make clear that requirements imposed on a perpetrator by a DAPO (such as, for example, requirements prohibiting the person from coming within a specified distance of particular premises) must, so far as practicable, not interfere with the perpetrator's work or with the perpetrator's attendance at an educational establishment

## **Lords Amendments to Clauses 55 and 56: Local authority support**

### **Lords Amendment 8, and 10 to 16**

- 18 Part 4 of the Bill places a duty on tier one local authorities in England to provide support to victims of domestic abuse and their children within safe accommodation.
- 19 Clause 55 places a duty on each relevant local authority in England (that is tier one local authorities, namely county councils, unitary district councils, the Greater London Authority and the Council of the Isles of Scilly) to assess the need for "domestic abuse support" for victims and their children within its area, to prepare and publish a strategy for the delivery of the support within its area and to monitor and evaluate the effectiveness of this strategy.
- 20 Lords Amendments 8 and 10 would change the current label of "domestic abuse support" in Clause 55 to "accommodation-based support"; the amendments are consequential on Lords Amendments 11 to 16.
- 21 Lords Amendment 11 would require a relevant local authority that publishes a strategy under Clause 55 to keep under review any effect of that strategy on the provision by the local authority of domestic abuse support in the community as opposed to those residing in safe accommodation.
- 22 Lords Amendment 12 would define "other local authority support" for the purposes of Clause 55.
- 23 Lords Amendment 13 to Clause 55(9) would provide that regulations made under Clause 55(8) may make provision about the frequency with which a relevant local authority must review any effect of its strategy on the provision by the local authority of domestic abuse support in the community as opposed to those residing in relevant accommodation.
- 24 Clause 56 places a duty on relevant local authorities to appoint a domestic abuse local partnership board for the purposes of advising the authority on the exercise of its functions under Clause 55. It also sets out the minimum required members of the board to best represent local agencies. In addition to a representative from the relevant local authority (who is expected to chair the board).
- 25 Lords Amendments 14 and 15 would provide for the Domestic Abuse Local Partnership Board appointed under Clause 56(1) to also advise a relevant local authority about the provision of other local authority support in the authority's area.
- 26 Lords Amendment 16 would provide that "other local authority support" has the same meaning as in Clause 55 (see Lords Amendment 12).

## **\*Lords Amendments to Clause 55: Accreditation of child contact centres**

### **Lords Amendment 9**

- 27 Lords Amendment 9 would provide that each local authority in England must ensure that all child contact centres and organisations that offer child contact services are accredited in accordance with national standards in relation to safeguarding and preventing domestic abuse. The standards would be set by regulations made by the Secretary of State.

## **Lords Amendment to Clause 62: Special measures in civil proceedings: victims of specified offences**

### **Lords Amendment 17**

- 28 Clause 62 provides that Court Rules must make provision to enable the court to make a special measures direction in relation to victims and alleged victims of offences (to be specified in regulations made by the Lord Chancellor), and to require the court to consider whether the quality of their evidence or their participation in the proceedings is likely to be diminished by reason of their vulnerability.
- 29 Lords Amendment 17 would ensure that rules of court made by virtue of Clause 62(1) must make provision such that those at risk of domestic abuse are to be included in the categories of those who may be eligible for special measures in civil proceedings.

## **Lords Amendments to Clause 63: Prohibition of cross-examination in family proceedings**

### **Lords Amendments 18 to 23**

- 30 Clause 63 inserts a new Part 4B (comprising new sections 31Q to 31Z) into the Matrimonial and Family Proceedings Act 1984, to prohibit perpetrators or alleged perpetrators of abuse from cross-examining their victims in person (and vice-versa) in certain circumstances in family proceedings in England and Wales.
- 31 Lords Amendments 18 to 23 are minor and technical in nature and would amend the part of the clause which relates to the automatic prohibition of cross-examination in person where a party has been convicted of, given a caution for, or charged with, a specified offence against a witness.
- 32 Lords Amendment 18 would make a minor drafting change to the definition of "conviction".
- 33 Amendment 19 would ensure that, in relation to service disciplinary proceedings, a finding of guilt and a finding that a charge has been proved in summary proceedings before an officer, are included in the definition of "conviction". This also brings the definition of "conviction" in line with that used in the Sentencing Act 2020.
- 34 Lords Amendments 20 to 22 would expand the definition of "service disciplinary proceedings" to include proceedings under the arrangements put in place during the transition to the Armed Forces Act 2006 from earlier service disciplinary legislation.

- 35 Lords Amendment 23 would correct an incorrect cross-reference to the Sentencing Code in the previous text of the Bill, from "Section 80" to "Section 82".

## **Lords Amendments to Clause 64: Prohibition of cross-examination in person in civil proceedings**

### **Lords Amendments 24 to 31**

- 36 Clause 64 inserts Part 7A (comprising sections 85E to 85J) into the Courts Act 2003 to make provision about the cross-examination of vulnerable witnesses in civil proceedings in England and Wales. It makes provision to enable regulations to give civil courts the power to appoint a publicly-funded qualified legal representative to conduct cross-examination in the interests of the party prohibited from cross-examining in person.
- 37 Lords Amendment 24 would insert new sections 85EA to 85EC into the Courts Act 2003 which would provide for an automatic prohibition in civil proceedings on the cross-examination of witnesses in person in certain cases, similar to the provisions in Clause 63 (which apply to family proceedings).
- 38 New section 85EA of the Courts Act 2003 would provide that any person involved in family proceedings who has an unspent conviction or caution (as defined in new section 85EA(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 civil proceedings. The section would also provide that the victim or alleged victim cannot cross examine in person the perpetrator or alleged perpetrator. The prohibition would not apply if the conviction is spent (under the Rehabilitation of Offenders Act 1974 ) 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).
- 39 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.
- 40 New section 85EA(6) would make clear that the prohibition applies even where an order has been made for discharge, whether absolute or conditional.
- 41 The offences that are relevant here would be specified in regulations to be made by the Lord Chancellor under the power in new section 85EA(5). It is intended to use regulations to specify a comprehensive list of domestic abuse-related and other violent and sexual offences, including child abuse offence, 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. In addition, it is intended to make provision in relation to any similar domestic abuse-related, violent or sexual service disciplinary offences.
- 42 New section 85EB of the Courts Act 2003 would make 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 directly 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 directly by the person protected by the injunction.

- 43 New section 85EB(5) would set out what is meant by “on notice” for these purposes.
- 44 The first instance would be where the court is satisfied that there has been a hearing at which the person against whom the injunction was made 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 (a “without notice” injunction). If there has since been a hearing which the person against whom the injunction was made was informed about, and at which that person could have asked the court to vary or remove the order, then that injunction will be considered “on notice” for the purpose of this section.
- 45 The second instance would be 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.
- 46 New section 85EB(4) provides that “protective injunctions” would be specified in regulations made by the Lord Chancellor. It is intended to use those regulations to specify a comprehensive list of protective injunctions or similar, based on the definition of “protective injunction” in paragraph 22 of Schedule 1 to the Civil Legal Aid (Procedure) Regulations 2012, as amended.
- 47 New section 85EB(3) would confirm 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.
- 48 New section 85EC of the Courts Act 2003 would make provision for a prohibition on cross-examination in person where “specified evidence” is adduced that a witness in the proceedings has been the victim of domestic abuse perpetrated by a party to the proceedings (or vice versa). Domestic abuse would have the meaning given in Clause 1 of the Bill.
- 49 New section 85EC(3) provides that “specified evidence” would be evidence specified, or of a description specified, in regulations made by the Lord Chancellor. It is intended to broadly replicate the list of evidence that is currently specified for the purposes of accessing civil legal aid (set out in Schedule 1 to the Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098), as amended). Such evidence includes, for example, a copy of a finding of fact made in legal proceedings in the UK, a letter or report from a health professional, a letter from any person who is a member of a local safeguarding forum or a letter from an independent domestic violence advisor.
- 50 Lords Amendments 25 to 31 are consequential on Lords Amendment 24.

## **Lords Amendments to after Clause 64 "Orders under section 91(14) of the Children Act 1989" and Lords Amendment to the Title**

### **Lords Amendments 32 and 84**

- 51 Section 91(14) of the Children Act 1989 allows family courts to bar individuals from making further specified applications under that Act without permission of the court. These orders are known as section 91(14) orders or sometimes ‘barring orders’.

- 52 Lords Amendment 32 would insert a new section 91A into the Children Act 1989 which would make further provision about the circumstances in which the court may make an order under section 91(14) of that Act.
- 53 This Lords Amendment follows recommendations made by the Ministry of Justice's Expert Panel in their report titled 'Assessing Risk of Harm to Children and Parents in Private Law Children Cases', published in June 2020.
- 54 New section 91A(2) would provide that the circumstances in which the court may make such an order include where the court is satisfied that the making of a further application under that Act, by any person to be named in the order, would put the child concerned, or another individual, at risk of harm.
- 55 New section 91A would therefore clarify that barring orders are available to parents and children to protect them where further proceedings would risk causing them harm, in particular where proceedings could be a form of continuing domestic abuse.
- 56 The broad concept of 'harm' is used, as defined in section 31(9) of the Act, so as to include but not limit the circumstances to domestic abuse.
- 57 New section 91A(3) would provide for a narrower definition of 'harm' to be applied by the court where the person referred to in section 91A(2) is not a child i.e. ill-treatment or the impairment of physical or mental health. This is because the definition of 'harm' in the Act includes elements specific to a child, such as impairment of development.
- 58 New section 91A(4) would make it clear that where a person who has been named in any barring order subsequently applies for leave, the court must consider whether there has been a material change of circumstances since the barring order was made.
- 59 New section 91A (5) would clarify that a section 91(14) order can be made by the court of its own initiative, or pursuant to an application by a person who could be put at risk of harm by a further application, by or on behalf of the child concerned or by any other person who is a party to the application. New section 91A(6) would clarify that the child concerned is the child referred to in section 91(14).
- 60 Lords Amendment 84 is consequential on Lords Amendment 32.

## **\*Lords Amendment to after Clause 64 "Training"**

### **Lords Amendment 33**

- 61 Lords Amendment 33 would insert a new clause which would provide for a requirement that all judges and magistrates in the family courts undergo specialist training in relation to rape, sexual and domestic abuse, and coercive control in accordance with a strategy and timetable published by the Secretary of State.
- 62 Subsection (1) would introduce a requirement that the Secretary of State publish a strategy for providing, and a timetable for delivering, this training within six months of Royal Assent. The timetable must provide for all judges and magistrates who are already hearing or are to be appointed to hear family cases to receive this training. It must also provide for continuing professional development training for all such judges and magistrates.
- 63 Subsection (2) would set out matters which must be addressed by this training while making clear that this is not an exhaustive list of subjects which may be covered. It must cover the

impact on victims and witnesses (adult and child) of the trauma of rape, sexual and domestic abuse, and coercive control; the risks and difficulties to them in giving evidence and taking part in proceedings involving these matters; and the risks and difficulties to them in being involved in proceedings relating to these matters where one or more parties may be the perpetrators of such matters or be connected to the perpetrators.

- 64 Subsection (3) would place a requirement on the Secretary of State to consult specified persons before publishing the strategy and timetable for training provided for in subsection (1).
- 65 Subsection (4) would place a further requirement on the Secretary of State to ensure that no family cases are heard by judges or magistrates who have not successfully completed the training provided for in this clause. This requirement must be introduced within two years of Royal Assent.

## **\*Lords Amendments to before Clause 65 "Controlling or coercive behaviour in an intimate or family relationship" and Lords Amendments to Clauses 73, 74 and 75**

### **Lords Amendments 34, 44, 49 and 55**

- 66 Section 76 of the Serious Crime Act 2015 provides for the offence of controlling or coercive behaviour in an intimate or familial relationship. The offence was created to close a gap in the law around patterns of controlling or coercive behaviour during a relationship where person A and person B are "personally connected", as defined in section 76(2) and (6), as intimate partners; former partners who still live together; or family members who live together.
- 67 Lords Amendment 34 would amend the definition of "personally connected" in section 76 of the Serious Crime Act 2015 to align it with that in Clause 2 of the Bill. The effect of the amendment would be to remove the current requirement for A and B to live together if they are former intimate partners or family members in order to be "personally connected", so that the offence would apply regardless of whether persons A and B live together in the same household. It would therefore no longer be a requirement of the section 76 offence for ex-intimate partners or family members to live together in order to be considered "personally connected", thereby bringing within the ambit of the offence controlling or coercive behaviour by a former intimate partner that takes place post-separation or by a family member who does not live with the victim.
- 68 Lords Amendments 44, 49 and 55 are consequential on Lords Amendment 34.

## **\*Lords Amendment to before Clause 65 "Threats to disclose private sexual photographs and films with intent to cause distress" and Lords Amendments to Clauses 74, 75 and 79 and the title**

### **Lords Amendments 35, 50, 56, 67 and 85**

- 69 Lords Amendment 35 would amend the offence under section 33 of the Criminal Justice and Courts Act 2015, of disclosing a private sexual photograph or film with intent to cause distress to an individual who appears in the photograph or film, so as to include threats to

disclose private sexual photographs or films.

- 70 The new clause would ensure that the prosecution will not have to prove the private sexual photograph or film referred to in the threat exists so long as the individual is said to feature in them.
- 71 The three specific defences to the original substantive offence at section 33 of the Criminal Justice and Courts Act 2015 would be available in relation to any threat to disclose. Those three defences are: was the disclosure for the purposes of preventing, detecting or investigating crime; was made in course of publication of journalistic material and was believed to be in public interest; or the image was previously disclosed by another for reward.
- 72 Subsection (10) of the new clause would make consequential amendments to Schedule 8 to the Criminal Justice and Courts Act 2015.
- 73 Lords Amendments 50, 56, 67 and 85 are consequential on Lords Amendment 35.

## **\*Lords Amendment to before Clause 65 "Strangulation or suffocation" and Lords Amendments to Clauses 73, 74, 75 and 78 and the title**

### **Lords Amendments 36, 45, 51, 57, 65, 66, 69 and 86**

- 74 Lords Amendment 36 would create a new offence regarding the non-fatal strangulation or suffocation of another person.
- 75 The new clause would insert a new sections 75A and 75B into the Serious Crime Act 2015.
- 76 New section 75A(1) would set out that a person commits the offence if, the person "intentionally strangles" another person (new section 75A(1)(a)) or they commit another act that affects the other person's ability to breathe and that act constitutes a battery of the other person (new section 75A(1)(b)).
- 77 "Strangulation" or "strangles" are not specifically defined in the offence and have their ordinary meaning. Battery in this section is a reference to the common law offence of battery. An act that affects the ability of the other person to breathe and constitutes a battery can include, but is not limited to, suffocation.
- 78 New section 75A(2) would make clear that it is a defence for a person accused of the offence to show that the other person consented to the strangulation or other act that affected their ability to breathe. This reflects the current law as set out in the case of *R v Brown* [1993] 2 W.L.R. 556 and subsequent cases, that where a person consents to an act that amounts to no more than a battery, consent of the victim is a valid defence for the person who committed the battery. This subsection has however to be read in conjunction with new section 75A(3).
- 79 New section 75A(3)(a) would provide that the defence set out in new section 75A(2) would not apply when the person suffers "serious harm" as a result of the strangulation or other act that affects their ability to breathe. "Serious harm" is defined in new section 75A(6) as amounting to grievous bodily harm or wounding within the meaning of section 18 of the Offences against the Person Act 1861 or actual bodily harm under section 47 of the 1861 Act. New section 75A(3) reflects the law as set out in *R v Brown* and subsequent cases, which means that where a person consents to an act that causes serious harm, by which is meant

injury that constitutes actual bodily harm or more serious injury, the consent does not give rise to a valid defence. In short, a person cannot validly consent to having serious harm inflicted upon them.

- 80 New section 75A(3)(b) would clarify that serious harm must be intended by the perpetrator, or that the perpetrator is reckless as to the other person suffering serious harm. This means that where a person intends to inflict harm that amounts only to a battery and the other person consents to that act, but where serious harm occurs, a valid defence of consent would only be available where the perpetrator can show that they did not intend to cause serious harm or had not been reckless as to serious harm being caused.
- 81 New section 75A(4) would provide that for the consent defence in new section 75A(2) to be made out sufficient evidence that there was consent has to be provided by the defendant to raise the issue and the contrary is not then proved beyond reasonable doubt by the prosecution.
- 82 The new offence would be triable in either the magistrates' or Crown Court. New section 75A(5) would set out the penalties for the offence. The maximum penalty on summary conviction in the magistrates' court would be 12 months imprisonment (but this should be read as six months' until such time as provisions in the Sentencing Act 2020 come into force) and/or an unlimited fine. On conviction on indictment in the Crown Court the maximum penalty would be five years' imprisonment and/or a fine.
- 83 New section 75A(6) would define "serious harm" for the purposes of new section 75A(3) with reference to existing offences of causing grievous bodily harm, wounding and causing actual bodily harm under sections 18 and 47 of the Offences Against the Person Act 1861.
- 84 Lords Amendment 36 would also insert new section 75B into the Serious Crime Act 2015. New section 75B would make it an offence in England and Wales for a person who is a United Kingdom national (as defined in new section 75B(2)) or is habitually resident in England or Wales to do an act in a country outside the United Kingdom that would amount to an offence under new section 75A if it occurred in England and Wales.
- 85 Lords Amendments 45, 51, 57, 66, 69 and 86 are consequential on Lords Amendment 36.

## **\*Lords Amendment to before Clause 69 "Reasonable force in domestic abuse cases"**

### **Lords Amendment 37**

- 86 Lords Amendment 37 would amend section 76 of the Criminal Justice and Immigration Act 2008 ("the 2008 Act") to extend the current degree of force applicable to householders to that where the defendant is also a victim of domestic abuse.
- 87 Subsections (2), (3) and (5) of the new clause would amend subsections (5A), (6), and (9) of section 76 of the 2008 Act. The amendments would extend the terms that are applicable to a householder, i.e. where a householder may use reasonable force to protect themselves, their family or property, to cases where the defendant is also a victim of domestic abuse. Subsection (4) would insert new section 76(8G) and (8H) into the 2008 Act to define a "domestic abuse case" as one where the defence concerns itself with the common law defence of self-defence, where the person charged is (or has been) the victim of domestic abuse (as

defined in Clauses 1 and 2 of the Domestic Abuse Act), and the force used was against the perpetrator of the abuse.

- 88 Section 76(5A) does not, however, provide free rein to use disproportionate force. The provision must be read in conjunction with the other elements of section 76 of the 2008 Act. Amongst these matters are, the reasonableness of the use of force or otherwise and the existence of any circumstances relevant to the question as to whether the belief was genuinely held. If a belief was genuinely held but mistaken, the mistake must be a reasonable one to have been made.

## **\*Lords Amendment to before Clause 69 "Defence for victims of domestic abuse who commit an offence" and new Schedule "Offences to which the defence for victims of domestic abuse who commit an offence does not apply"**

### **Lords Amendments 38 and 83**

- 89 Lords Amendment 38 would provide for a new statutory defence for victims of domestic abuse who may have been coerced, or committed a crime, as a result of being a victim of domestic abuse. However, this provision does not apply to the offences listed in the new Schedule inserted by Lords Amendment 83, referenced in subsection (7) of the new clause.
- 90 Subsection (1) of the new clause would provide that a person, aged 18 or over at the time of the act which constitutes an offence (i.e. not one listed in the new Schedule introduced by Lords Amendment 83), is not guilty of that offence if they commit the offence because they were compelled to do so; they were compelled as a result of other factors, for example, such as exploitation, and a reasonable person with the relevant characteristics in the same position as that person, would have no realistic alternative but to do the same act.
- 91 Subsection (2) of the new clause would provide that a person may be compelled to commit an offence by another person or by the person's circumstances.
- 92 Subsection (3) of the new clause would provide that "compulsion is only attributable to domestic abuse" if it is part of conduct which constitutes another criminal offence, except for those offences listed under the new Schedule and that conduct constitutes relevant conduct, or is a direct consequence of, a person being, or having been a victim of domestic abuse.
- 93 Subsection (4) of the new clause would provide a similar defence for those under the age of 18 as subsection (1) in that it does for those of that age and older, but which excludes the element of requirement to prove compulsion and lowers the threshold for meeting the reasonable person test.
- 94 Under subsection (8) of the new clause, the Secretary of State would have the power to amend, by Regulations, the new Schedule that would be inserted by Amendment 83 which contains the list of offences to which this new clause does not apply. The Secretary of State would be required by subsection (9) to monitor the types of offence under which domestic abuse victims are prosecuted for, and to use that evidence to inform an annual review of the offences listed in the new Schedule.

## **Lords Amendment to after Clause 79 "Prohibition on charging for the provision of medical evidence of domestic abuse" and Lords Amendments to Clauses 73, 74, 75, 76 and 79**

### **Lords Amendments 39, 46, 52, 53, 54, 58, 59, 60, 62, 63, 64 and 68**

- 95 Lords Amendment 39 would prohibit charges for the preparation and provision of domestic abuse legal aid letters by health professionals in general practice in the circumstances set out below.
- 96 Charging will be prohibited where a relevant health professional who has been requested to provide a letter supporting an application for legal aid in instances of domestic abuse and who wholly or mainly provides services under a General Medical Services ("GMS"), Personal Medical Services ("PMS") or Alternative Provider Medical Services ("APMS") contract from charging for such a letter.
- 97 Charging would also be prohibited where a relevant health professional who has been requested to provide a letter supporting an application for legal aid in instances of domestic abuse and who has assessed the patient in the course of providing services under a GMS, PMS or AMPS contract.
- 98 A relevant health professional would be defined in subsection (4) of the new clause and practically means a health professional who works in general practice.
- 99 The new clause would also prohibit charging for this letter through any vehicle - both by the health professional themselves and the practice as a company or partnership.
- 100 Subsection (3)(b) of the new clause would enable the Secretary of State to make regulations to extend the prohibitions to any other evidence letters or reports provided by relevant health professionals to demonstrate domestic abuse for purposes other than to obtain legal aid.
- 101 Subsection (6) of the new clause would enable the Secretary of State in relation to England and the Welsh Ministers in relation to Wales to make regulations to amend the definitions of "relevant health professional" and "qualifying medical services contract".
- 102 Lords Amendments 46, 52, 53, 54, 58, 59, 60, 62, 63 and 64 are consequential on Lords Amendment 39.
- 103 Lords Amendment 68 would provide for the new clause to be inserted by Lords Amendment 39 to come into force on 1 October 2021.

## **\*Lords Amendment to after Clause 72 "Victims of domestic abuse: data-sharing for immigration purposes"**

### **Lords Amendment 40**

- 104 Subsection (1) of this new Clause would require the Secretary of State to make arrangements to ensure that the personal data of a victim of domestic abuse that is given or used for the purpose of their seeking or receiving support and assistance is not used for immigration control purposes.
- 105 Subsection (2) of the new Clause would require the Secretary of State to make arrangements to ensure that the personal data of a witness of domestic abuse that is processed for the

purpose of that person giving information or evidence to assist the investigation or prosecution of that abuse, or to assist the victim of the abuse in any legal proceedings, is not used for immigration control purposes.

106 Subsection (3) would disapply paragraph 4 of Schedule 2 to the Data Protection Act 2018 for the purposes of subsection (1) and (2). Paragraph 4 of Schedule 2 to the Data Protection Act 2018 restricts the application of the certain General Data Protection Regulation provisions to personal data processed for the purposes of the maintenance of effective immigration control, or the investigation or detection of activities that would undermine the maintenance of effective immigration control, to the extent that the application of those provisions would be likely to prejudice those purposes.

107 Subsection (4) would require the Secretary of State to issue guidance for the purposes of the new clause to specified categories of persons.

## **\*Lords Amendment to after Clause 72 "Victims of domestic abuse: leave to remain and the destitution domestic violence concession (DDVC)"**

### **Lords Amendment 41**

108 Lords Amendment 41 would provide migrant victims of abuse with temporary leave to remain and access to public funds, for a period of no less than six months, so they can access support services while they flee abuse and apply to resolve their immigration status.

109 Subsections (1) and (2) of the new clause would require the Secretary of State to lay before Parliament, within three months of Royal Assent, new immigration rules which make provision for any person who is a victim of domestic abuse in the United Kingdom and is subject to immigration control to have a route to apply for leave to remain. Subsection (2) provides that the immigration rules would also need to set out rules for such victims to apply for indefinite leave to remain.

110 Subsection (3) would require the Secretary of State to grant limited leave to remain for at least six months to any person applying for indefinite leave to remain under the new immigration rules provided for in subsections (1) and (2). Such limited leave to remain must be free of the conditions provided in section 3(1)(c)(i), (ia), (ii) or (v) of the Immigration Act 1971 (which set out conditions restricting a person from working or studying, requiring that they and any dependents have no recourse to public funds and about residence).

111 Subsection (4) would require the Secretary of State to extend any limited leave to remain granted under subsection (3) until such time as the person's application for indefinite leave to remain had been finally decided, withdrawn or abandoned.

112 Subsections (5) and (6) would waive restrictions which apply as a result of a person's immigration status as to the provision of services if that person is a victim of domestic abuse and is eligible to make an application for limited leave to remain under subsection (3). Subsection (7) would require the Secretary of State to issue guidance to the providers of services about the assessment of a person's eligibility to make an application for limited leave to remain under subsection (3).

## **\*Lords Amendment to after Clause 72 "Monitoring of serial and serious harm domestic abuse and stalking perpetrators under Multi-Agency Public Protection Arrangements"**

### **Lords Amendment 42**

113 Lords Amendment 42 would amend the Criminal Justice Act 2003, which provides for the establishment of Multi-Agency Public Protection Arrangements ("MAPPA"), to make arrangements for serial domestic abuse or stalking perpetrators to be registered on VISOR (the Dangerous Persons Database) and be subjected to supervision, monitoring and management through MAPPA.

114 Section 325 of the Criminal Justice Act 2003 places a duty on the "responsibility authority" (the chief officer of police, probation providers and the Prison Service) to establish and keep under review arrangements for assessing and managing the risks posed by "relevant sexual and violent offenders" or other offenders who may cause serious harm to the public. Subsection (2) of the new clause would extend the category of offenders covered by this duty to include "relevant domestic abuse or stalking perpetrators" as defined in new section 327ZA of the Criminal Justice Act 2003 which would be inserted by subsection (3) of the new clause.

115 New section 327ZA of the Criminal Justice Act 2003 would also require the Government to review the operation of the provisions in new section 327ZA and provide for a comprehensive perpetrator strategy for domestic abusers and stalkers within one year of the Act being passed (subsections (5) and (6)).

## **\*Lords Amendment to after Clause 72 "Effective protection and support for all victims of domestic abuse"**

### **Lords Amendment 43**

116 Lords Amendment 43 would require the Secretary of State to take steps to ensure that all victims of domestic abuse receive equally effective support and protection against domestic of abuse, regardless of their status, which includes a status for the purposes of Article 4(3) of the Council of Europe Convention on preventing and combating violence against women and domestic violence ("the Istanbul Convention").

## **Lords Amendments to Clause 73: Power of Secretary of State to issue guidance about domestic abuse etc.**

### **Lords Amendment 47 and 48**

117 Clause 73 confers a power on the Secretary of State (in practice, the Home Secretary) to issue guidance about certain of the provisions in the Bill that extend to England and Wales (Clause 73(1)(a)) and about other matters relating to domestic abuse (Clause 73(1)(b)).

118 Lords Amendments 47 and 48 would ensure that guidance issued by the Secretary of State under Clause 73(1)(b) about matters relating to domestic abuse in Wales does not relate to matters that are devolved in relation to Wales.

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

### **Lords Amendments 70 to 82**

119 Lords Amendments 70 to 82 would amend Schedule 2 to the Bill which extends the circumstances in which certain sexual and violent offences committed abroad may be prosecuted in England and Wales (Part of Schedule 2), Scotland (Part 2 of Schedule 2) or Northern Ireland (Part 3 of Schedule 2) where the offence is committed by a UK national or a person habitually resident in the relevant part of the UK.

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

120 Lords Amendments 53 and 54 are consequential on Lords Amendment 55.

121 Lords Amendment 55 would amend paragraph 2 of Schedule 2 to remove, for UK nationals, the condition that the act done must be criminal in the country where it is committed as well as in England and Wales. The effect of this amendment would be that, for a UK national to be guilty in England and Wales of an offence under sections 1 to 4 of the Sexual Offences Act 2003 as a result of an act done in a country outside the UK where the victim was 18 or over, it is not necessary for the act also to be an offence in that country.

### **Part 2: Scotland**

122 Lords Amendment 56 would provide, in section 11 of the Criminal Procedure (Scotland) Act 1995, for a rebuttable presumption that an act committed in a country outside the UK, which would be an assault if committed in Scotland, is an offence in that country.

123 Lords Amendment 57 is consequential on Lords Amendment 56.

124 Lords Amendment 58 would limit new section 54D(1) of the Sexual Offences (Scotland) Act 2009 (being inserted by this Bill) to UK nationals only (and not also those habitually resident in Scotland) and is linked with Lords Amendments 59 and 60.

125 Lords Amendment 59 would remove the condition in section 54D(1) of the Sexual Offences (Scotland) Act 2009 that, for a UK national to commit an offence in Scotland in relation to an act in a country outside the UK, the act must also be an offence in that country.

126 Lords Amendment 60 would provide that, for a person habitually resident in Scotland to commit an offence in Scotland in respect of an act in a country outside the UK, it remains a condition under section 54D of the Sexual Offences (Scotland) Act 2009 that the act is an offence in that country.

127 Lords Amendment 61 is consequential on Lords Amendment 60.

128 Lords Amendment 62 would provide, in section 54D of the Sexual Offences (Scotland) Act 2009, for a rebuttable presumption that an act committed in a country outside the UK, which would be an offence if committed in Scotland, is an offence in that country.

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

129 Lords Amendments 63 and 64 are consequential on Lords Amendment 65.

130 Lords Amendment 65 would amend paragraph 5 of Schedule 2 to remove, for UK nationals, the condition that the act done must be criminal in the country where it is committed as well as in Northern Ireland. The effect of this amendment would be that, for a UK national to be

guilty in Northern Ireland of an offence under Part 2 of the Sexual Offences (Northern Ireland) Order 2008 as a result of an act done in a country outside the UK where the victim was 18 or over, it is not necessary for the act also to be an offence in that country.

## Financial Effects of Lords Amendments

- 131 Lords Amendment 34, extending the offence of controlling or coercive behaviour to include ex-partners who do not live together post-separation abuse, is estimated to have an average annual cost of between £1 million and £32 million. The ranges reflect the high level of uncertainty – primarily related to (a) the prevalence of controlling or coercive caused by ex-partners; and (b) the number of such cases which may be already recorded and prosecuted under existing legislation such as stalking.
- 132 The financial impact of Lords Amendment 35, on threats to share intimate images, is likely to be limited. This is because much of the behaviour covered by this offence is also covered by existing offences such as blackmail and stalking. For this reason the increase in overall caseload is likely to be limited. There may be some movement between case types, as in some cases it may be easier to prove that this offence occurred than that other offences occurred. For example an individual who would previously have been charged with blackmail might now be charged with this new offence instead. Any charge will depend on the circumstances of the individual case so it is not possible to predict the extent to which this will happen.
- 133 In relation to Lords Amendment 36, to establish a new criminal offence of non-fatal strangulation or suffocation, establishing a baseline for the offence is difficult as data on offences committed where strangulation is a factor is not readily available. As such, it is not possible to estimate the number of cases that are likely to be prosecuted and the associated costs to the criminal justice system. It is anticipated that the number of cases will increase when the new offence comes into force due to the publicity surrounding its introduction. There will also be administrative costs associated with training, production of guidance and any other changes required to processes or systems as a result of the new offence.
- 134 It has not proved possible to fully estimate the impact of Lords Amendment 41, which would extend the duration of and eligibility criteria for Destitute Domestic Violence Concession ("DDVC") to any person subject to immigration control. Illustrative scenario analysis has been undertaken, offering a sense of scale of potential increased welfare expenditure of more limited expansion of coverage, covering specific visa routes rather than the entire group that could potentially be brought into scope by the amendment.
- 135 Scenarios looked at extending coverage from three to six months and (a) including dependents under Tier 2 and Tier 4; and (b) further extending to include main applicants in those routes. Estimates are subject to high levels of uncertainties in all areas – volumes, potential eligibility for DDVC, potential propensity to apply for DDVC/claim benefits, and benefit receipt levels for example. These scenarios estimated illustrative increased welfare expenditure of around three times in an 'average' year (an increase of approximately £50 million) in scenario (a), and around eight times (an increase of around £135 million to £145 million) in scenario (b).
- 136 It has similarly not proved possible to fully estimate the impact of Lords Amendment 43, which would amongst other things require all victims of domestic abuse, irrespective of their status, to receive equally effective support. However, the analysis above in respect of Lords Amendment 41 would apply equally to Lords Amendment 43.

## European Convention on Human Rights implications

137 The Government has published a separate supplementary ECHR memorandum in respect of relevant Lords amendments; this is available at: Domestic Abuse Bill - GOV.UK ([www.gov.uk](http://www.gov.uk)).

# DOMESTIC ABUSE BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords amendments to the Domestic Abuse Bill as brought from the House of Lords on 25 March 2021.

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