

Domestic Abuse Bill

AMENDMENTS TO BE MOVED IN COMMITTEE OF THE WHOLE HOUSE

Clause 7

BARONESS GREY-THOMPSON

Page 4, line 20, at end insert—

“(e) the appropriate use of data and technology to aid in the prevention, reporting and detection of domestic abuse.”

Member’s explanatory statement

This amendment ensures that the Commissioner should encourage best practice when using data and technology in the prevention, reporting and detection of domestic abuse.

Page 4, line 35, at end insert—

“(h) making recommendations to any public authority as to the gathering of and usage of data;
(i) making recommendations to any public authority as to the usage of technology in carrying out its functions.”

Member’s explanatory statement

This amendment relates to the amendment in the name of Baroness Grey-Thompson to page 4, line 20 and sets out some of the specific actions the Commissioner can take in pursuit of encouraging best practice when using data and technology in the prevention, reporting and detection of domestic abuse.

Clause 22

BARONESS GREY-THOMPSON

Page 13, line 40, at end insert—

“(e) the previous criminal history of P.”

Member’s explanatory statement

This amendment would ensure that, when the need for handing out a DAPN is being considered, senior police officers can take into account any previous related criminality and convictions held by the alleged perpetrator.

Clause 23

LORD PONSONBY OF SHULBREDE

Page 14, line 21, at end insert –

“() Before notice is served on P, a risk assessment must be carried out, covering any additional risks to the person for whose protection the notice would be given following the giving of the notice.”

Member’s explanatory statement

This would ensure that a risk assessment was carried out, considering any increased risks to a victim likely to occur due to the perpetrator being given a notice about receiving a DAPO, before notice is given.

Clause 32

LORD PONSONBY OF SHULBREDE

Page 20, line 21, leave out “just and convenient” and insert “practical and within five working days”

Member’s explanatory statement

This would ensure there is a maximum time (within 5 working days) in which a contested DAPO which was made without notice is brought back to court.

Clause 33

LORD PONSONBY OF SHULBREDE

Page 20, line 27, after the second “abuse” insert “with the exception of restrictions listed in subsection (1A).”

Page 20, line 28, at end insert –

“(1A) Where a domestic abuse protection order is made without notice, only prohibitions may be imposed on the recipient.”

Member’s explanatory statement

This would provide that only negative or prohibitive requirements can be included in DAPOs imposed without notice.

Clause 34

LORD PONSONBY OF SHULBREDE

Page 21, line 21, at end insert “and probation or youth offending teams, as appropriate”.

Member’s explanatory statement

This would provide that evidence provided to courts includes evidence from probation or youth offending teams.

Page 21, line 23, at end insert –

“(4A) Any requirement to attend drug, alcohol or mental health programmes may only be imposed where the recipient agrees to engage with the programme.”

Member’s explanatory statement

This amendment would provide that drug, alcohol and mental health treatment should only be imposed as a requirement where the recipient has agreed to attend, which will maximise the effectiveness of any such programmes.

Clause 36

LORD PONSONBY OF SHULBREDE

Page 23, line 13, at end insert “for no more than two years”

Page 23, line 23, at end insert –

“(8) A domestic abuse protection order may be extended for a period of two years on application by those persons set out in section 26(2) of this Act.

(9) The court may order the recipient to attend one or more review hearings on a specified date or dates.”

Member’s explanatory statement

The changes proposed by Lord Ponsonby's amendments to Clause 36 would prevent an indefinite DAPO being imposed, while providing for extensions to be made on application. It would also allow courts to put in place review hearings if appropriate.

Clause 62

LORD MARKS OF HENLEY-ON-THAMES

Page 39, line 18, leave out from “person” to the end of line 19 and insert “(“P”) is, or is at risk of being, a victim of domestic abuse carried out by a person listed in subsection (1A).

(1A) A person referred to in this subsection is –

- (a) a party to the proceedings;
- (b) a relative of a party to the proceedings (other than P); or
- (c) a witness in the proceedings.”

Member’s explanatory statement

This amendment and the other amendments to Clause 62 in the name of Lord Marks of Henley-on-Thames would apply the same special measures to parties or witnesses who are victims or at risk of being victims of domestic abuse in civil proceedings as apply in family proceedings.

Page 39, line 29, leave out subsection (3) and insert –

“(3) Rules made by virtue of subsection (1) must, in particular, provide for the court –

- (a) to consider whether it is necessary to make one or more special measures directions in relation to P, and

Clause 62 - continued

- (b) when considering whether it is necessary to make one or more special measures directions in relation to P, to assume that the following matters are likely to be diminished by reason of P's vulnerability –
- (i) the quality of P's evidence, and
 - (ii) where P is a party to the proceedings, P's participation in the proceedings.
- (4) Rules of court may provide for an exception to the provision made by virtue of subsection (3) where P does not wish to be deemed to be eligible for the making of a special measures direction by virtue of that subsection."

Member's explanatory statement

See explanatory statement to amendment in the name of Lord Marks of Henley-on-Thames to page 39, line 18.

Page 39, line 44, at end insert –

““relative” has the meaning given by section 63(1) of the Family Law Act 1996;”

Member's explanatory statement

See explanatory statement to amendment in the name of Lord Marks of Henley-on-Thames to page 39, line 18.

Page 40, leave out lines 3 and 4

Member's explanatory statement

See explanatory statement to amendment in the name of Lord Marks of Henley-on-Thames to page 39, line 18.

Clause 63

LORD PONSONBY OF SHULBREDE

Page 40, line 31, leave out subsection (3)

Member's explanatory statement

This is to probe that in the family court, where a perpetrator's conviction is spent, other protections will be in place to protect a victim of abuse from being cross-examined by the perpetrator.

Page 44, line 29, at end insert –

“31VA Direction to prohibit direct or indirect engagement: evidence of domestic abuse

- (1) In family proceedings, where specified evidence is adduced that a person who is a party to the proceedings has been the victim of domestic abuse carried out by another party, the court may give a direction prohibiting the latter party from directly or indirectly engaging with the victim during proceedings, if the court deems any such engagement is causing significant distress to said victim.

Clause 63 - continued

- (2) In this section—
“domestic abuse” has the meaning given by section 1 of the Domestic Abuse Act 2021;
“specified evidence” means evidence specified, or of a description specified, in regulations made by the Lord Chancellor.
- (3) Regulations under subsection (2) may provide that any evidence which satisfies the court that domestic abuse, or domestic abuse of a specified description, has occurred is specified evidence for the purposes of this section.
- (4) A direction under this section may be made by the court—
(a) on an application made by a party to the proceedings, or
(b) of its own motion.
- (5) In determining whether the significant distress condition is met in the case of a party, the court must have regard to, among other things—
(a) any views expressed by the victim;
(b) any views expressed by the other party;
(c) any behaviour by the party in relation to the victim in respect of which the court is aware that a finding of fact has been made in the proceedings or in any other proceedings;
(d) any behaviour by the party at any stage of the proceedings, both generally and in relation to the victim;
(e) any behaviour by the victim at any stage of the proceedings, both generally and in relation to the party;
(f) any relationship (of whatever nature) between the victim and the party.
- (6) If the court decides that there are no alternative measures to prevent engagement which causes distress, the court must—
(a) invite the party to the proceedings to arrange for a qualified legal representative to act for the party during the court proceedings, and
(b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether a qualified legal representative is to act for the party for that purpose.
- (7) Subsection (8) applies if, by the end of the period specified under subsection (6)(b), either—
(a) the party has notified the court that no qualified legal representative is to act for the party during the court proceedings, or
(b) no notification has been received by the court and it appears to the court that no qualified legal representative is to act for the party during the court proceedings.
- (8) The court must consider whether it is necessary in the interests of justice for the party to be represented by a qualified legal representative appointed by the court to represent the interests of the party.
- (9) If the court decides that it is, the court must appoint a qualified legal representative (chosen by the court) to represent the party.”

Member's explanatory statement

These changes would give courts the discretion to prevent a perpetrator directly or indirectly engaging with a victim during family court proceedings, where such engagement is causing distress, and to appoint a legal representative to represent the perpetrator in court, if that is necessary to prevent distress to the victim.

LORD MARKS OF HENLEY-ON-THAMES

Page 45, line 16, leave out subsection (7) and insert –

- “(7) A qualified legal representative appointed by the court under subsection (6) is responsible to the party, but must cross-examine the witness having regard to such directions as the Court may give to protect the witness from significant distress or to prevent the quality of the witness’s evidence from being diminished.”

Member's explanatory statement

This amendment is intended to maintain the responsibility of the legally qualified representative to the party in whose interests the cross-examination is conducted while ensuring it is conducted with proper regard for risk of distress to the witness and risk that the quality of the witness’s evidence might be diminished.

Page 45, line 40, at end insert –

- “(4) In particular the regulations may provide for the appointment of a qualified legal representative appointed under section 31W(6) to extend to stages in the proceedings other than the cross-examination for which the appointment was made.
- (5) The regulations may also provide for legal aid to be granted to any party or parties for all or any part of the proceedings in which a qualified representative has been appointed under section 31W(6), notwithstanding that the requirements of regulations made by the Lord Chancellor from time to time in exercise of the powers conferred by section 12(2), section (3)(a), (b), (e) and (g), and section 41(1) to (3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 may not have been met.”

Member's explanatory statement

This amendment would allow regulations to provide that legal assistance or legal aid is available any parties to a case in which a legally qualified representative is appointed by the court for a cross-examination and that such assistance may extend beyond the cross examination for which it was originally ordered.

Clause 64

LORD MARKS OF HENLEY-ON-THAMES

Page 46, line 39, at end insert –

“85EA Prohibition of cross-examination in person: victims of offences

- (1) In civil proceedings, no party to the proceedings who has been convicted of or given a caution for, or is charged with, a specified offence may cross-examine in person a witness who is the victim, or alleged victim, of that offence.

Clause 64 - *continued*

- (2) In civil proceedings, no party to the proceedings who is the victim, or alleged victim, of a specified offence may cross-examine in person a witness who has been convicted of or given a caution for, or is charged with, that offence.
- (3) Subsections (1) and (2) do not apply to a conviction or caution that is spent for the purposes of the Rehabilitation of Offenders Act 1974, unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3) or (4) of that Act.
- (4) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction, caution or charge when the cross-examination took place.
- (5) In this section—
- “caution” means—
- (a) in the case of England and Wales—
 - (i) a conditional caution given under section 22 of the Criminal Justice Act 2003,
 - (ii) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998, or
 - (iii) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, the person has admitted;
 - (b) in the case of Scotland, anything corresponding to a caution falling within paragraph (a) (however described) which is given to a person in respect of an offence under the law of Scotland;
 - (c) in the case of Northern Ireland—
 - (i) a conditional caution given under section 71 of the Justice Act (Northern Ireland) 2011, or
 - (ii) any other caution given to a person in Northern Ireland in respect of an offence which, at the time the caution is given, the person has admitted;
- “conviction” means—
- (a) a conviction before a court in England and Wales, Scotland or Northern Ireland;
 - (b) a conviction in service disciplinary proceedings (in England and Wales, Scotland, Northern Ireland, or elsewhere);
 - (c) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged;
- and “convicted” is to be read accordingly;
- “service disciplinary proceedings” means—
- (a) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (except proceedings before a civilian court within the meaning of that Act);

Clause 64 - *continued*

- (b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence);
 - (c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976;
- “specified offence” means an offence which is specified, or of a description specified, in regulations made by the Lord Chancellor.
- (6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this section to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally—
 - (a) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000;
 - (b) section 80 of the Sentencing Code;
 - (c) section 187 of the Armed Forces Act 2006 or any corresponding earlier enactment.
 - (7) For the purposes of this section “offence” includes an offence under a law that is no longer in force.

85EB Prohibition of cross-examination in person: persons protected by injunctions etc

- (1) In civil proceedings, no party to the proceedings against whom an on-notice protective injunction is in force may cross-examine in person a witness who is protected by the injunction.
- (2) In civil proceedings, no party to the proceedings who is protected by an on-notice protective injunction may cross-examine in person a witness against whom the injunction is in force.
- (3) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place.
- (4) In this section “protective injunction” means an order, injunction or interdict specified, or of a description specified, in regulations made by the Lord Chancellor.
- (5) For the purposes of this section, a protective injunction is an “on-notice” protective injunction if—
 - (a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked, or could have asked, for the injunction to be set aside or varied; or
 - (b) the protective injunction was made at a hearing of which the court is satisfied that both the person who applied for it and the person against whom it is in force had notice.

85EC Prohibition of cross-examination in person: evidence of domestic abuse

Clause 64 - continued

- (1) In civil proceedings, where specified evidence is adduced that a person who is a witness has been the victim of domestic abuse carried out by a party to the proceedings, that party to the proceedings may not cross-examine the witness in person.
- (2) In civil proceedings, where specified evidence is adduced that a person who is a party to the proceedings has been the victim of domestic abuse carried out by a witness, that party may not cross-examine the witness in person.
- (3) In this section—
 - “domestic abuse” has the meaning given by sections 1 and 3 of the Domestic Abuse Act 2021;
 - “specified evidence” means evidence specified, or of a description specified, in regulations made by the Lord Chancellor.
- (4) Regulations under subsection (3) may provide that any evidence which satisfies the court that domestic abuse, or domestic abuse of a specified description, has occurred is specified evidence for the purposes of this section.”

Member’s explanatory statement

This amendment and the other amendments to Clause 64 in the name of Lord Marks of Henley-on-Thames would allow for the same prohibition of direct cross-examination in civil proceedings as that which is available in family proceedings.

Page 47, line 32, leave out paragraph (e)

Member’s explanatory statement

This amendment and the other amendments to Clause 64 in the name of Lord Marks of Henley-on-Thames would allow for the same prohibition of direct cross-examination in civil proceedings as that which is available in family proceedings.

Page 48, line 28, leave out “a direction under section 85F” and insert “any of sections 85F to 85I”

Member’s explanatory statement

This amendment and the other amendments to Clause 64 in the name of Lord Marks of Henley-on-Thames would allow for the same prohibition of direct cross-examination in civil proceedings as that which is available in family proceedings.

Page 49, line 11, leave out subsection (7) and insert—

- “(7) A qualified legal representative appointed by the court under subsection (6) is responsible to the party but must cross-examine the witness having regard to such directions as the Court may give to protect the witness from significant distress or to prevent the quality of the witness’s evidence from being diminished.”

Member's explanatory statement

This amendment is intended to maintain the responsibility of the legally qualified representative to the party in whose interests the cross-examination is conducted while ensuring it is conducted with proper regard for risk of distress to the witness and risk that the quality of the witness's evidence might be diminished.

Page 49, line 35, at end insert –

- “(3A) In particular the regulations may provide for the appointment of a qualified legal representative appointed under section 85H(6) to extend to stages in the proceedings other than the cross-examination for which the appointment was made.
- (3B) The regulations may also provide for legal aid to be granted to any party or parties for all or any part of the proceedings in which a qualified representative has been appointed under section 85H(6), notwithstanding that the requirements of regulations made by the Lord Chancellor from time to time in exercise of the powers conferred by sections 12(2), (3)(a), (b), (e) and (g) and 41(1) to (3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 may not have been met.”

Member's explanatory statement

This amendment would allow regulations to provide that legal assistance / legal aid is available any parties to a case in which a legally qualified representative is appointed by the court for a cross-examination and that such assistance may extend beyond the cross examination for which it was originally ordered.

Page 50, line 5, at end insert –

“85K Regulations under Part 7A

- (1) Any power of the Lord Chancellor to make regulations under this Part –
- (a) is exercisable by statutory instrument,
 - (b) includes power to make different provision for different purposes, and
 - (c) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.
- (2) A statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.”

After Clause 64

LORD PONSONBY OF SHULBREDE

Insert the following new Clause –

“Confidentiality of refuge addresses

- (1) In family proceedings, where a person (“P”) is –
- (a) witness or party to the proceedings; and
 - (b) has been subject to domestic abuse as defined under section 1 of this Act; and
 - (c) is residing at a refuge

After Clause 64 - continued

the provisions in this section apply.

- (2) The court must not share the residential address of the refuge with any individual or third party.
- (3) A court order must not be served on at the residential address of the refuge.
- (4) A court order may be served on P at the refuge's office address or by an alternative method or at an alternative place, in accordance with part 6 of the Family Procedure Rules 2010.
- (5) The residential address of the refuge must be redacted from any court documentation."

Member's explanatory statement

This would prevent the residential address of a refuge being shared as part of court proceedings.

Insert the following new Clause –

“Duty on courts to share information

- (1) Where a person (“P”) is
 - (a) a party or witness in court proceedings; and
 - (b) a victim, or at risk of being a victim, of domestic abuse carried out by a person under subsection (2);
 there is a duty on any court hearing those proceedings to share information regarding P.
- (2) The persons referred to in subsection (2) are –
 - (a) a party to the proceedings;
 - (b) a relative of a party to the proceedings (other than P); or
 - (c) a witness in the proceedings.
- (3) In family proceedings, where information shared under this section identifies that court proceedings may be being used by a person under subsection (2) to continue abusive behaviour towards P, the court must consider making an order under section 91(14) of the Children Act 1989 (effect and duration of orders etc.).”

Member's explanatory statement

This would provide for a duty on courts to share information on cases involving the same victim of domestic abuse. Where it appears that court cases are being brought by a perpetrator of abuse as a means to carry on abusive behaviour, the court must consider making a “barring” order to prevent further cases.

Insert the following new Clause –

“Training for Judiciary and professionals in family court

- (1) Any person who is working in a professional capacity in family proceedings must undergo mandatory training on domestic abuse, as defined under section 1 of this Act.
- (2) A person to whom subsection 1 applies includes, but is not limited to –

After Clause 64 - continued

- (a) a member of the Judiciary,
 - (b) an employee of the Children and Family Court Advisory and Support Service,
 - (c) a social worker,
 - (d) an appointed expert advising the family court.
- (3) Training under this section must include—
- (a) the definition of domestic abuse, as provided under section 1 of this Act,
 - (b) the impact of domestic abuse on both adults and children affected by it,
 - (c) how to identify and respond to a vulnerable victim of domestic abuse,
 - (d) the need for the court to assess any risks for a victim and children throughout court proceedings,
 - (e) the impact of trauma from domestic abuse.
- (4) Training under this section must be established in consultation with the Domestic Abuse Commissioner.”

Member’s explanatory statement

This would require judges and professionals in the family court to undergo mandatory training on understanding and identifying domestic abuse.

Insert the following new Clause—

“The impact of trauma on the quality of evidence in family law proceedings

- (1) In family proceedings, where a witness or party to the proceedings is a victim of domestic abuse, the court shall consider—
- (a) the vulnerability of the witness or party as a result of such abuse,
 - (b) the impact of trauma, as a result of such abuse, on the quality of evidence provided by the witness or party,
- when assessing the evidence provided to the court.
- (2) In this section “domestic abuse” has the same meaning as in section 1 of this Act.”

Member’s explanatory statement

This would require the court to consider the impact of trauma, from domestic abuse, on the quality of evidence that a victim may provide to the court.

Insert the following new Clause—

“Transparency of court arrangements: appeals process

- (1) The Secretary of State must by regulations amend the Family Procedure Rules 2010 to provide for the duty under subsection (2).
- (2) In family proceedings, where a party to the proceedings is, or is at risk of being, a victim of domestic abuse carried out by a person listed in subsection (4), the judge must include information on the appeals process as part of their ruling.

After Clause 64 - continued

- (3) Information on the appeals process included under subsection (2) must include—
 - (a) permissible grounds for appeal,
 - (b) the timeframe and relevant deadlines, and
 - (c) details of support services that may provide legal support for appeals.
- (4) The persons referred to in subsection (2) are—
 - (a) a party to the proceedings; or
 - (b) a witness in the proceedings.”

Member’s explanatory statement

This would require a judge in the family court to clearly lay out details of how the appeals process works when giving a ruling in a case involving a domestic abuse victim.

Clause 69

LORD MARKS OF HENLEY-ON-THAMES
BARONESS HAMWEE

The above named Lords give notice of their intention to oppose the Question that Clause 69 stand part of the Bill.

After Clause 72

BARONESS GREENGROSS

Insert the following new Clause—

“Duty to report suspected abuse

A local authority must ensure that, where any of its employees suspects in the course of carrying out a financial assessment for adult social care that a person is the victim of domestic abuse, the employee reports the suspected abuse to a relevant social worker or the police.”

Insert the following new Clause—

“Social workers: powers of entry

- (1) A magistrate’s court may make an order permitting a registered social worker to enter premises specified in the order by force for the purposes of identifying and supporting victims of domestic abuse on an application made to it in accordance with this section.
- (2) A registered social worker may make an application if the social worker—
 - (a) has reason to believe that any of the occupants of the premises are at risk of being victims of domestic abuse, and
 - (b) has been refused entry by any of the occupants of the premises.”

After Clause 72 - continued

BARONESS BERTIN
LORD ROSSER
BARONESS BURT OF SOLIHULL

Insert the following new Clause—

“Strategic plan for perpetrators of domestic abuse

Within one year of the passing of this Act, the Secretary of State must lay before Parliament a comprehensive prevention and perpetrator strategy for domestic abuse for the purposes of—

- (a) improving the identification and assessment of perpetrators,
- (b) increasing the number of rehabilitation programmes, and
- (c) increasing specialist work to tackle abusive attitudes and behaviour.”

Member’s explanatory statement

This amendment would require the Government to provide a comprehensive perpetrator strategy for domestic abuse, within one year of the Act being passed.

Domestic Abuse Bill

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18 January 2021
