# DOMESTIC ABUSE BILL

# EXPLANATORY NOTES

## What these notes do

These Explanatory Notes relate to the Domestic Abuse Bill as brought from the House of Commons on 7 July 2020 (HL Bill 124).

- 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.

# Table of Contents

# Overview of the Bill

1 In December 2019, the Government was elected with a manifesto commitment to "support all victims of domestic abuse and pass the Domestic Abuse Bill" which had previously been introduced in the 2017-19 Parliament.

2 The purpose of the Bill is to 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 and their children provided by other statutory agencies.

3 The Bill is in seven Parts.

4 Part 1 provides for a statutory definition of domestic abuse which underpins other provisions in the Bill.

5 Part 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.

6 Part 3 provides for a new civil preventative order regime - the Domestic Abuse Protection Notice ("DAPN") and Domestic Abuse Protection Order ("DAPO").

7 Part 4 places new duties on tier one local authorities in England in respect of the provision of support to domestic abuse victims and their children in refuges and other safe accommodation.

8 Part 5 confers on victims of domestic abuse automatic eligibility for special measures in the criminal, family and civil courts; and prohibits perpetrators of certain offences from cross-examining their victims in person in the family and (at the court's discretion) in civil courts in England and Wales (and vice versa) and gives family and civil courts the power, in certain circumstances, to appoint a legal representative to conduct the cross-examination on behalf of the prohibited person.

9 Part 6 makes clear that a victim cannot consent to the infliction of serious harm for the purposes of obtaining sexual gratification and extends the extraterritorial jurisdiction of the criminal courts in England and Wales, Scotland and Northern Ireland to further violent and sexual offences.

10 Part 7 makes miscellaneous and general provision. In particular, this Part 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; gives eligible victims who are homeless as a result of fleeing domestic abuse priority need for accommodation secured by the local authority; ensures that persons with secure or assured lifetime tenancies are granted a secure lifetime tenancy where the new tenancy is being granted by a local authority for reasons connected to domestic abuse; and confers a power on the Secretary of State to issue statutory guidance to practitioners in England and Wales about tackling domestic abuse.

# Policy background

11 Domestic abuse remains one of the most prevalent crimes in England and Wales. An estimated 2.4 million adults aged 16 to 74 experienced domestic abuse in the year ending

March 2019, two-thirds of whom were women.[1] The police recorded 1,316,800 domestic abuse-related incidents and crimes in the same period and, of these, 57% were recorded as domestic abuse-related crimes; domestic abuse-related crimes recorded by the police accounted for 35% of violent crime.[2]Of the 366 domestic homicides recorded by the police between April 2016 and March 2018, 270 of the victims were women.[3]

12 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 or 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."

13 From 8 March to 31 May 2018 the then Government ran a public consultation on the Government's approach to tackling domestic abuse. The aim of the proposals in the consultation was 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:

- **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;

---

[1]Domestic abuse in England and Wales overview: November 2019 – Office of National Statistics.

[2]Domestic abuse prevalence and trends, England and Wales: year ending March 2019 – Office of National Statistics.

[3]Domestic abuse prevalence and victim characteristics: Appendix tables– Office of National Statistics (table 20).

- **Improve performance** – to drive consistency and better performance in response to domestic abuse across all local areas, agencies and sectors.

14 The consultation sought views on a number of legislative and non-legislatives measures under each of these themes. The legislative measures, now incorporated in this Bill, included:

- introducing a new statutory definition of domestic abuse (Part 1);
- establishing a Domestic Abuse Commissioner in law (Part 2);
- creating a new domestic abuse protection notice and domestic abuse protection order (Part 3);
- creating a legislative assumption that domestic abuse victims are to be treated as eligible for special measures in criminal proceedings (Clause 60);
- prohibiting perpetrators of domestic abuse cross-examining their victims in family proceedings in England and Wales (Clause 63);
- extending the extraterritorial jurisdiction of the criminal courts in England and Wales to cover further violent and sexual offences (Clause 66 and Part 1 of Schedule 2);
- putting the guidance underpinning the Domestic Violence Disclosure Scheme on a statutory footing (Clause 70).

15 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.

16 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 (CP 137) was published alongside the introduction of the Bill in the House of Commons on 16 July 2019. The Bill was given an unopposed Second Reading on 2 October 2019, carried over from the 2017-19 session and re-introduced on 15 October 2019, but fell with the dissolution of Parliament ahead of the December 2019 election. The Bill as introduced in the House of Commons on 3 March 2020 was broadly the same as the Bill originally introduced in July 2019, but with the addition of the measures in Part 4 in respect of the provision of accommodation-based support by local authorities in England and the omission of the Northern Ireland domestic abuse offence (what was Part 2 of the Bill introduced in July 2019) which is now being taken forward in the Domestic Abuse and Family Proceedings Bill currently before the Northern Ireland Assembly. Alongside the re-introduction of the Bill, the Government published a further response to the Joint Committee's report (CP 214).

## Civil protection orders

17 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.

18 A DVPN is an emergency non-molestation and eviction notice which can be issued by the police, when attending to a domestic violence 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.

19 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.

20 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). Part 3 of the Bill provides for the DAPN, modelled closely on the existing DVPN, and for the DAPO which will have the following key features:

- available in a variety of courts on application by the police, the victim, persons specified in regulations or any other person with the leave of the court;
- 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;
- enables the imposition of any requirements (including prohibitions, restrictions and positive requirements) 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 a fine or both (or as a civil contempt of court, in the alternative).

## Local authority accommodation-based support

21 For the most high-risk victims of domestic abuse, refuges and other forms of safe accommodation provide vital support. In May 2019, the Ministry of Housing, Communities and Local Government ("MHCLG") published a consultation paper seeking views on the Government's proposals for a new approach to delivering support to victims of domestic abuse and their children in accommodation-based services. The consultation set out proposals to place a new duty on relevant local authorities in England to convene a local partnership board, assess need for domestic abuse accommodation support services, develop and publish strategies, decide what support services are required and commission these accordingly and report back to MHCLG. The consultation closed on 2 August 2019. MHCLG received over 400 responses which were supportive of the proposals. The Government's response to the consultation was published on 14 October 2019. Part 4 of the Bill gives effect to the proposals in the Government response to the consultation.

## Special measures in criminal proceedings

22 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".

23 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".

24 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.

25 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.

26 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. Witnesses to certain offences involving guns and knives are also assumed to automatically 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 60 puts victims of domestic abuse-related offences 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.

27 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)).

28 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 58(3) makes this special measure available in cases involving domestic abuse-related offences.

- **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[4]): 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).

## Special measures in family proceedings

29 Currently, there are no specific provisions in relation to special measures in family proceedings in primary legislation.

30 Provision for special measures is instead made in Part 3A of the Family Procedure Rules 2010, supported by Practice Direction 3AA (Vulnerable Persons: Participation in Proceedings and Giving Evidence).

31 Part 3A places the court under a duty to consider whether a party's participation in family proceedings is likely to be diminished by reason of their vulnerability, and whether the quality of evidence of a party or witness in such proceedings is likely to be diminished by such vulnerability. If so, the court must consider whether it is necessary to make one or more participation directions (which might include a direction that the party or witness should have the assistance of a particular measure). There is no definition of 'vulnerability', though when considering the vulnerability of a party or witness, the court must, by virtue of Rule 3A.3(1), have particular regard to a wide range of matters listed in Rule 3A.7. This list includes any concerns arising in relation to abuse.

32 In May 2019 the Ministry of Justice established a panel of experts to review how the family courts deal with the risk of harm to children and parents in private law children cases involving domestic abuse and other serious offences. The panel held a call for evidence between July and September 2019, receiving over 1,200 submissions from those with experience of the family courts. The final report was published in June 2020.

33 The submissions to the call for evidence highlighted that there are longstanding and significant issues with how the family justice system manages risk of harm to victims of abuse and their children in private law children proceedings. Respondents detailed how the family courts in these cases can be retraumatising and a tool of abuse for perpetrators. Many respondents told the panel how the family courts can minimise allegations of domestic abuse, and that victims felt disbelieved. They felt there were inadequate protections, including access to special measures, in the family courts to protect victims from harm.

34 The final report recommended the following in relation to special measures:

> "The provisions in the Domestic Abuse Bill concerning special measures in criminal courts for victims of domestic abuse should be extended to family courts. The provisions should apply to all cases in which domestic abuse is alleged."

[4]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.

35 Due to the technicalities and nuances of each jurisdiction, and as there is an existing legislative framework contained in secondary legislation, the Government does not consider it appropriate simply to replicate the special measures provisions contained in criminal legislation (namely Chapter I of Part II of the Youth Justice and Criminal Evidence Act 1999). However, Clause 61 aligns the approach to eligibility for special measures in the family court to that taken in the criminal courts and ensures that victims of domestic abuse will be automatically eligible for access to special measures in family proceedings.

## Cross-examination in family proceedings

36 Courts hearing family proceedings do not have an express power to prevent a perpetrator or an alleged perpetrator of abuse from cross-examining their victim or alleged victim in person, nor do they have the power to order that an advocate be appointed (and funded) to carry out the cross-examination on behalf of the perpetrator or alleged perpetrator.

37 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.[5] 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".[6] Clause 63 prohibits cross-examination in person in certain circumstances in family proceedings in England and Wales and gives the courts a discretion to prohibit cross-examination in certain other circumstances. Clause 63 also makes provision for the court, in certain circumstances and 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 publish guidance on the role of such a representative, and to make regulations concerning the payment of legal representatives in these circumstances.

## Cross-examination and special measures in civil proceedings

38 In the civil courts, there are no specific provisions in the Civil Procedure Rules ("CPR") dealing with vulnerable parties or witnesses. The Court has an overriding objective to deal with cases fairly and to manage cases actively, but there is no specific rule or practice direction on the issue of vulnerability.

39 CPR 32.1 gives to the Court a broad power to control how evidence is put before it, including limiting the extent of any cross-examination.

40 Additionally, judges have an inherent power to order the provision of special measures when it is considered necessary. This includes, but is not limited to, giving evidence via video link, from behind a screen, by deposition, use of other technology, or through an intermediary or an interpreter.

41 In April 2018, the Independent Inquiry into Child Sexual Abuse published its Interim Report and recommendations. Recommendation 9 stated:

> "That the MoJ provides primary legislation and works to ensure that the Civil Procedure Rules are amended so that victims and survivors of CSA in civil court cases, where they are claiming compensation in relation the abuse they suffered, are afforded the same protections as vulnerable witnesses in criminal court cases."

---

[5] Domestic Abuse, Child Contact and the Family Courts

[6] 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

42 Following that, the Ministry of Justice commissioned the Civil Justice Council ("CJC") -which is an advisory body chaired by the Master of the Rolls and is responsible for overseeing and co-ordinating the modernisation of the civil justice system - to consider the issues raised by this recommendation and to compile a report, the scope of which was not limited to victims and survivors of child sex abuse but rather considered all vulnerable witnesses and parties within civil proceedings.

43 After a public consultation and views from experts, the CJC published their report "Vulnerable Witnesses and parties within civil proceedings – current position and recommendations for change", in February 2020. The Report conceded there was no single or coherent set of rules in the CPR dealing with vulnerability in the same way as in the Family Procedure Rules and made a number of recommendations.

44 One of those recommendations was in relation to the prohibition of cross-examination by a self-represented party. The report recommended that provision should be extended to cover civil proceedings too, thereby ensuring parity with the criminal and family jurisdictions. The CJC did, however, caution that the ban or prohibition should not be absolute. Rather, the court should retain a discretion not to apply the prohibition, given the civil and family jurisdictions are very different as regards the types of cases, with the civil jurisdiction having a much wider range of cases before it. Clause 64 gives effect to the CJC's recommendation.

45 The CJC report did not go as far as recommending that special measures should also be enshrined in primary legislation. Rather, it felt that it was best left to the flexibility of court rules, since judges in civil proceedings already have inherent powers to order the provision of special measures when it is considered necessary.

46 While the Government has accepted most of the CJC's recommendations, it has decided to legislate for a special measures provision in civil proceedings in this Bill (see Clause 62).

47 This will bring the civil courts in line (as far as appropriate) with the criminal and family courts, thereby providing protection for vulnerable witnesses and victims in each jurisdiction, and a better and supported experience of access to justice in the civil courts.

## The Istanbul Convention – extraterritorial jurisdiction

48 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 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.

49 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 "extraterritorial jurisdiction". Taking such powers requires primary legislation.

50 The courts in England and Wales already have extraterritorial 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 extraterritorial jurisdiction for other offences required by the Convention (under Articles 33 to 39), and accordingly Clause 66 and Part 1 of Schedule 2 extend extraterritorial jurisdiction to the relevant offences to satisfy the requirements of the Convention. These included certain sexual offences and offences against the person.

51 Similarly, the courts in Scotland also already have extraterritorial 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 extraterritorial 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 extraterritorial requirements of the Convention in Scotland. These include certain sexual offences and the offences of stalking and assault.

52 In Northern Ireland, the courts also have extraterritorial 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 extraterritorial jurisdiction for other offences required by the Convention (under Articles 33 to 39). Accordingly, clause 67 and Part 3 of Schedule 2 to the Bill contain provisions to give domestic effect to the extraterritorial requirements of the Convention in Northern Ireland. These include a number of sexual and violent offences.

53 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 third such report was laid before Parliament on 31 October 2019.

## Polygraph testing

54 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 69 extends these provisions of the 2007 Act to cover domestic abuse offenders.

## The Domestic Violence Disclosure Scheme

55 The Domestic Violence Disclosure Scheme, often referred to as "Clare's Law"[7], was implemented across all police forces in England and Wales in March 2014.

56 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.

57 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.

58 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.

59 For the year ending March 2019 there were 7,252(based on data from 39 police forces) and 6,496(based on data from 36 police forces) applications under the right to know and right to ask respectively. For these, there were 4,008 and 2,575 disclosures respectively (Office of National Statistics).

60 Non-statutory guidance for the police on the operation of the scheme was first published by the Home Office in July 2012 and, 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.

61 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 70).

## Secure tenancies

62 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

---

[7] Named after Clare Wood who was murdered in 2009 by her former partner, George Appleton, who had a record of violence against women.

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.

63 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.

64 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".

65 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.

66 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 2017 Manifesto commitment. Clause 72 gives effect to that commitment.

# Legal background

67 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 Serious Crime Act 2015 ("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.

68 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 extraterritorial jurisdiction for certain offences committed outside Scotland;
- Part 7 of the Housing Act 1996 which makes provision for tackling homelessness in England;
- 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;
- 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 extraterritorial jurisdiction for the offences listed in Schedule 2 to 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.

# Territorial extent and application

69 Clause 78 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.

70 The provisions in the Bill for the most part extend and apply to England and Wales only. Clauses 55 to 59 (local authority support), Clause 71 (homelessness: victims of domestic abuse) and Clause 72 (secure tenancies granted to victims of domestic abuse) extend to England and Wales and apply to England only. The provisions in Part 2 of Schedule 2 extend and apply to Scotland only, while those in Clause 67 and Part 3 of Schedule 2 extend and apply to Northern Ireland only.

71 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, Senedd Cymru 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.)

72 The provisions in Part 2 of Schedule 2 extending the extraterritorial jurisdiction of the Scottish courts relate to matters within the legislative competence of the Scottish Parliament. The Scottish Parliament approved a legislative consent motion in relation to these provisions on 17 June 2020.

73 The matters to which the provisions of the Bill relate are not within the legislative competence of Senedd Cymru. Although the remit of the Domestic Abuse Commissioner (Part 2) 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.

74 The provisions in Clause 67 and Part 3 of Schedule 2 extending the extraterritorial jurisdiction of the Northern Ireland courts relate to matters within the legislative competence of the Northern Ireland Assembly. The Northern Ireland Assembly approved a legislative consent motion in relation to these provisions on 23 June 2020.

75 If, following introduction of the Bill in the House of Lords, there are amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the

Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.

76 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: Definition of "domestic abuse"

### Clause 1: Definition of "domestic abuse"

77 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).

78 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.

79 Subsection (3)(c) refers to "controlling or coercive behaviour".

80 **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.

81 **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.

82 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 also include pets or other animals (for example agricultural livestock)."Goods and services" would cover, for example, utilities such as heating, or items such as food and clothing.

83 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"

84 This clause defines the term "personally connected" for the purposes of the relationship criteria in Clause 1(2)(a).

85 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.

### Clause 3: Children as victims of domestic abuse

86 This clause recognises that domestic abuse can impact on a child who sees or hears, or experiences the effects of the abuse and it treats such children as victims of domestic abuse in their own right where they are related to either the abuser or the abused. Subsection (3) defines the term "related" for these purposes. An explanation of the definition of "relative" (as used in subsection (3)(b)) is set out above as the term is also used in the definition of "personally connected" (Clause 2).As a matter of law, the clause only treats children as victims of domestic abuse for the purposes of the free-standing provisions in the Bill. The clause does not apply in relation to amendments made by the Bill to other enactments, or to references elsewhere in legislation to victims of domestic abuse. That said, as with the definition in Clause 1, this clause is expected to be applied more generally, for example by public authorities and front-line practitioners.

## Part 2: The Domestic Abuse Commissioner

### Clauses 4 to 6: Domestic Abuse Commissioner

87 Clause 4 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 5 makes provisions for the funding of the Commissioner and of the Commissioner's office, including the payment of remuneration and allowances. Clause 6 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 practices. Individual appointments will be subject to approval by the Commissioner.

### Clause 7: General functions of Commissioner

88 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 children affected by domestic abuse.

89 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.

90 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. Nonetheless, 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 8: Reports

91 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 13). Such thematic reports are distinct from the duty to publish an annual report under Clause 14. 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)).

92 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 9: Advice and assistance

93 Subsection (1) enables the Secretary of State to request advice or assistance from the Commissioner on domestic abuse matters.

94 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.

95 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.

96 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 10: Incidental powers

97 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 7 to 9, with the exception of borrowing money.

## Clause 11: Framework document

98 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.

99 Subsection (2) provides that the framework document will deal with, amongst other things, matters relating to governance (including scrutiny by Parliament and Senedd Cymru (the renamed National Assembly for Wales effective from 6 May 2020)), 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 8(4), 9(6) and 14(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.

100 Subsections (3) provides that the Commissioner must have regard to the framework document in exercising functions under Part 2. Similarly, subsection (4) provides that the Home Secretary must have regard to the framework document when exercising any functions in relation to the Commissioner.

101 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.

102 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 Senedd Cymru (subsection (9)).

## Clause 12: Advisory Board

103 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 13).

104 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 framework document is expected to provide for the Commissioner to establish a Victims and Survivors Advisory Group, to ensure that they engage directly with victims and survivors in their work.

## Clause 13: Strategic plans

105 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 14: Annual reports

106 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 15: Duty to co-operate with Commissioner

107 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.

108 The framework document is expected to require the Commissioner 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.

109 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 16: Duty to respond to Commissioner's recommendations

110 This clause requires a public authority listed in Clause 15 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 8. 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.

111 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 17: Disclosure of information

112 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.

113 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)).

114 The operation of this information sharing gateway is without prejudice to any other power that exists to disclose information (subsection (7)).

## Clause 18: Restriction on exercise of functions in individual cases

115 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 19: Amendments relating to the Commissioner

116 This clause makes three consequential amendments to other enactments. The effect of those in subsections (1) and (2) is that the Commissioner cannot also be a Member of Parliament and that the Commissioner is subject to the Freedom of Information Act 2000 respectively. Subsection (3) amends the scrutiny powers of Senedd Cymru to cover aspects of the work of the Commissioner namely where this involves consulting or co-operating with devolved public authorities, voluntary organisations and other persons in Wales, or disclosing information to a devolved Welsh authority. By virtue of the amendment made to section 37 of the Government of Wales Act 2006, the Senedd is able to require the Commissioner to attend Senedd proceedings (or those of one of its committees) to give evidence or to produce documents which are in the Commissioner's possession or control.

# Part 3: Powers for dealing with domestic abuse

## Clause 20: Power to give a domestic abuse protection notice

117 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.

118 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".

119 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 25 to 47 deal with DAPOs.

120 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.

121 Subsection (2) sets out that a notice will be used to protect the victim from domestic abuse committed against them by the perpetrator.

122 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.

123 Subsection (6) sets out that the notice may not be given to a person who is under the age of 18.

124 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 e-mail while they were in Scotland. Such breach would constitute an offence in England and Wales.

## Clause 21: Provision that may be made by notices

125 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 22: Matters to be considered before giving a notice

126 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.

127 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 23: Further requirements in relation to notices

128 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.

129 A DAPN must be in writing and served on a perpetrator personally by a constable (subsections (1) and (3)).

130 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.

131 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 24: Breach of notice

132 Should the subject of a DAPN breach the conditions of the notice, then a constable may arrest the person without warrant.

133 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)). 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)).

134 If the court adjourns the DAPO hearing, by virtue of Clause 27(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)).

135 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.

136 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 25: Meaning of "domestic abuse protection order"

137 This clause describes a DAPO for the purposes of Part 3, 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 16 or over and personally connected to the perpetrator (see Clause 2 of the Bill)).

## Clause 26: Domestic abuse protection orders on application

138 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 27). Third, a DAPO may be made by a family court, criminal court or (in prescribed circumstances) county court during any ongoing proceedings (Clause 29).

139 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).

140 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 29), 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.

141 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 27: Applications where domestic abuse protection notice has been given

142 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 26(3) for a chief officer of police to apply to a magistrates' court for DAPO once a DAPN has been issued.

143 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.

144 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.

145 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 28 apply.

## Clause 28: Remand under section 27(8) of person arrested for breach of notice

146 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.

147 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.

148 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.

149 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 29: Domestic abuse protection orders otherwise than on application

150 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.

151 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). The Government's intention is to specify only those types of proceedings where domestic abuse is most likely to be alleged or revealed in evidence.

## Clause 30: Conditions for making an order

152 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 been abusive towards 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)).

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

## Clause 31: Matters to be considered before making an order

154 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).

155 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 32: Making of orders without notice

156 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 apply in the case where a perpetrator has been given a DAPN as Clause 27(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.

157 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 33: Provision that may be made by orders

158 This clause sets out the types of conditions that may be imposed by a DAPO.

159 Subsections (1) and (2) provide 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.

160 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. 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.

161 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.

162 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 or rents the premises.

163 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 34: Further provision about requirements that may be imposed by orders

164 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.

165 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 37 below). The perpetrator is under a duty to keep in touch with the person responsible for supervising compliance with the requirement (subsection (7)).

## Clause 35: Further provision about electronic monitoring requirements

166 This clause sets out the conditions that must be satisfied to enable an electronic monitoring requirement to be attached to a DAPO.

167 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.

168 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 with 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)).

169 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.

170 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.

171 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").

172 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).

173 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 37).

## Clause 36: Duration and geographical application of orders

174 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.

175 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 may apply for a more limited period than the order itself (subsection (4)) and, in the case of an electronic monitoring requirement, may not apply for more than 12 months (subsection (5)). Where a DAPO or a requirement of a DAPO is time limited, the duration of the order or requirement (including an electronic monitoring requirement), as the case may be, may be extended on the variation of the DAPO under Clause 42.

176 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 e-mail while they were in Scotland. Such breach would constitute an offence in England and Wales.

## Clause 37: Breach of order

177 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)).

178 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)).

179 Subsection (6) provides that a conditional discharge is not an option open to the court in respect of the offence. Subsection (7) makes similar provision where a service court convicts someone of the Clause 37 offence. A conditional discharge means that if the offender commits another offence within a specified period, they can be sentenced for the first offence at the same time as the new offence.

180 As an alternative to prosecution for the offence under subsection (1), breach of a DAPO may be dealt with as a civil contempt of court (the maximum penalty for which is two years' imprisonment or a fine or both except in a magistrates' court where the maximum penalty is two months' imprisonment or a fine). 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 38: Arrest for breach of order

181 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)).

182 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 38

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

184 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.

185 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.

186 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 39: Notification requirements

187 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.

188 The perpetrator's "home address" for these purposes is defined in Clause 54(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 53(1) (for example, if they leave the UK to live abroad). Clause 54(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).

189 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.

190 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 40: Further provision about notification under section 39

191 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.

192 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.

193 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.

194 Subsection (4) provides that a notification must be acknowledged in writing and in such form as the Secretary of State may direct.

195 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 41: Offences relating to notification

196 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.

197 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 42: Variation and discharge of orders

198 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.

199 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)).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.

200 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 43: Variation and discharge: supplementary

201 This clause sets out 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.

202 Subsection (9) 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 44: Appeals

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

204 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 26 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 29; 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 42 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.

205 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 45: Further provision about appeals

206 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).

207 Subsections (3) and (4) set out the powers of the Crown Court or Court of Appeal (Criminal Division) when hearing an appeal under Clause 44. 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.

208 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 46: Nature of certain proceedings under this Part

209 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.

210 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.

211 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.

212 Subsection (4) provides that where a perpetrator has been convicted of an offence but is conditionally or absolutely 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 offence within a specified period, they can be sentenced for the first offence at the same time as the new offence. Where an absolute discharge is given, this means that the court does not impose any punishment for the offence (for example, a fine, community sentence or imprisonment) but the offender receives a criminal record.

## Clause 47: Special measures for witnesses

213 This clause applies, with appropriate modifications, the special measures provisions in Chapter 1 of Part 2 of the YJCEA 1999 to proceedings under Part 3 of the Bill. This means that victims of domestic abuse would be eligible for special measures (see paragraph 28 above) when giving evidence in relation to proceedings in respect of a DAPO.

## Clause 48: Guidance

214 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 26(2)(c) (subsections (1) and (2)). Such persons are under a duty to have regard to the guidance when exercising functions under this Part (subsection (3)).

215 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 49: Data from electronic monitoring: code of practice

216 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.

217 The processing of such data will be subject to the requirements of 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 50: Powers to make other orders in proceedings under this Part

218 Subsection (1) inserts a reference to Part 3 of the Bill into section 8(4) of the Children Act 1989. By doing so, the Bill amends the Children Act 1989 to provide that proceedings under Part 3 of the Domestic Abuse Act 2020 are "family proceedings" for the purposes of the Children Act 1989. The effect of this amendment is to 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.

219 Subsection (2) inserts a reference to Part 3 of the Bill into section 63(2) of the Family Law Act 1996. By doing so, the Bill amends the definition of "family proceedings" for the purposes of Part 4 of the Family Law Act 1996 to include within the definition proceedings under Part 3 of the Domestic Abuse Act 2020. The effect of this amendment is to 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 51: Proceedings not to be subject to conditional fee agreements

220 This clause amends section 58A of the Courts and Legal Services Act 1990 so as to add proceedings under Part 3 of the Bill 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 52: Consequential amendments of the Sentencing Code

221 The Sentencing Bill, which was introduced in the House of Lords on 5 March 2020, provides for the new Sentencing Code. The new code is a consolidation of the law governing sentencing procedure in England and Wales. It brings together the procedural provisions which sentencing courts need to rely upon during the sentencing process, and in doing so aims to ensure that the law relating to sentencing procedure is readily comprehensible and operates within a clear framework as efficiently as possible. This clause makes two consequential amendments to the Sentencing Code as a result of Part 3 of the Bill. The first adds a reference to Clause 37(6) to the list of cases where an order for conditional discharge is not available. The second inserts a signpost to Part 3 of the Bill into Part 11 of the Sentencing Code, which deals with behaviour orders (such as a DAPO).

### Clause 53: Repeal of provisions about domestic violence protection notices and orders

222 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 54: Interpretation of Part 3

223 This clause defines terms used in Part 3.

## Part 4: Local authority support

### Clause 55: Support provided by local authorities to victims of domestic abuse

224 Subsection (1) 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 – see Clause 59) to assess the need for "domestic abuse support" for victims and their children within its area (subsection (1)(a)), to prepare and publish a strategy for the delivery of the support within its area (subsection (1)(b)), and to monitor and evaluate the effectiveness of this strategy (subsection (1)(c)).

225 Subsection (2) defines "domestic abuse support" as meaning support, in relation to domestic abuse, for victims and their children who live in "relevant accommodation". Such support may include:

- Overall management of services within safe accommodation – including, the management of staff, payroll, financial management of services and maintaining relationships with the local authority (such functions will often be undertaken by a service manager);
- Support with the day-to-day running of the service, for example scheduling times for counselling sessions, group activities etc.;
- Advocacy support – development of personal safety plans, liaison with other services (for example, GPs and social workers, welfare benefit providers);
- Domestic abuse-prevention advice – support to assist victims to recognise the signs of abusive relationships, to help them remain safe (including online) and to prevent re-victimisation;
- Specialist support for victims with protected characteristics and / or complex needs, for example, translators and interpreters, faith services, mental health advice and support, drug and alcohol advice and support, and immigration advice;
- Children's support – including play therapy and child advocacy;
- Housing-related support – providing housing-related advice and support, for example, securing a permanent home and advice on how to live safely and independently; and
- Counselling and therapy for both adults and children.

226 What constitutes "relevant accommodation" for the purposes of the definition of domestic abuse support will be specified in regulations made by the Secretary of State (in practice the Secretary of State for Housing, Communities and Local Government). The Government intends that the description of such accommodation to be broad based encompassing dedicated specialist services which provide a safe place to stay for victims and their children fleeing domestic abuse, namely:

- refuge accommodation;
- specialist safe accommodation;
- dispersed accommodation;
- sanctuary schemes;
- and move-on or second stage accommodation.

227 Subsection (3) provides that a relevant local authority must, in carrying out its functions, give effect to the strategy. Relevant local authorities must also keep the strategy under review (the frequency of such review may be determined in regulations made by the Secretary of State), may make any changes to or replace the strategy, and must publish any revised or replacement strategy (subsection (5)).

228 Subsection (4) requires that prior to publication of a strategy the relevant local authority must consult the domestic abuse local partnership board established under Clause 56, local authorities within the relevant local authority's area (that is tier two local authorities, namely

non-unitary district councils or London Boroughs) and any other persons considered appropriate (for example, local providers of domestic abuse services).

229 Subsections (8) to (10) enable the Secretary of State, by regulations, to make provision about the preparation and publication of domestic abuse support strategies. Such regulations are intended to provide for a consistent approach to these strategies across England. Regulations may specify, amongst other things, the date by which the first strategy must be produced, the frequency of periodic reviews and the procedure to be followed in preparing strategies.

230 Subsections (6) and (7) require tier two local authorities to co-operate with the relevant (tier one) local authority for the purpose of discharging its functions under this clause, so far as is reasonably practicable, for example, through the provision of information.

## Clause 56: Domestic abuse local partnership boards

231 This clause 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 (subsection (1)).

232 It 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), the board membership must include at least one person representing the interests of: tier two local authorities in the relevant local authority's area; victims of domestic abuse; children of domestic abuse victims; charities and other voluntary organisations that work with victims of domestic abuse; persons who provide or have functions relating to health care services; and policing and criminal justice agencies. Subject to these minimum requirements, the composition of the board is a matter for the relevant local authority.

## Clause 57: Annual reports

233 This clause places a duty on relevant local authorities to submit an annual report, as soon as reasonably practicable after the end of each financial year, to the Secretary of State on the exercise of the functions under this Part. This annual reporting requirement will help the Government and others to monitor how the new duties on local authorities are working, understand where there may be challenges and how the funding is being used, and help identify and disseminate good practice.

234 The Secretary of State may, by regulations, make provision about both the form and content of the annual report (subsection (2)). A standardised annual reporting framework will assist local authorities in reporting back to the Government on the delivery and outcomes of the new duties, as well as better enabling comparisons to be made across local authority areas.

## Clause 58: Guidance

235 This clause places a duty on the Secretary of State to issue guidance to local authorities in England relating to the exercise of their functions under Part 4 (subsection (1)) and enables the Secretary of State to revise the guidance from time to time (subsection (3)). Local authorities are under a duty to have regard to the guidance when exercising functions under this Part (subsection (2)).The purpose of this guidance is to assist local authorities in the delivery of support to victims of domestic abuse and their children in safe accommodation. Any guidance issued under this clause and any revisions to the guidance must be published (subsection (6)).

236 This clause also places a duty on the Secretary of State to consult with the Domestic Abuse Commissioner, local authorities and other such persons the Secretary of State considers appropriate before issuing or revising such guidance (subsection (4)), except where the proposed revisions to the guidance are insubstantial (subsection (5)).

### Clause 59: Interpretation of Part 4

237 This clause defines terms used in Part 4.

# Part 5: Protection for victims and witnesses in court

### Clause 60: Special measures in criminal proceedings for offences involving domestic abuse

238 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.

239 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[8].

240 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).

241 Clause 60 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-related offences. 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 61: Special measures in family proceedings: victims of domestic abuse

242 The provision of special measures in family proceedings is governed by Part 3A of the Family Procedure Rules 2010 ("FPR"), supported by Practice Direction 3AA. Rule 3A.4 places the court under a duty to consider whether a party's participation in the proceedings (other than by way of giving evidence) is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make one or more participation directions ("special measures") to assist the party. Rule 3A.5 confers a similar duty in respect of the quality of evidence given by a party or witness. The measures available include giving evidence behind a screen or via live link.

243 The purpose this clause is to ensure that victims of domestic abuse will be automatically eligible for access to special measures in family proceedings without the need for any determination of their vulnerability. The clause sets out in primary legislation what rules of court must contain in relation to special measures.

---

[8]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.

244 Subsections (2) and (3) state that rules of court must provide that, where a party or witness is a victim of domestic abuse carried out by a party, a relative of a party (other than P) or a witness, then the court is to assume that the quality of the victim's evidence and (where the victim is also a party) their ability to participate in the proceedings will be diminished by reason of vulnerability.

245 Subsection (4) provides that rules of court may provide for an exception to this general rule, to allow victims to notify the court if they do not wish to be deemed eligible for special measures.

246 As eligibility for victims of domestic abuse will be assumed, the court will instead proceed straight to the second part of the test in Rules 3A.4 and/or 3A.5 – that is, determining whether it is necessary to make one or more participation directions. As with the practical effect of Clause 60, this clause amends the law concerning eligibility for special measures but does not provide automatic access or guarantee the provision of special measures in any given case.

## Clause 62: Special measures in civil proceedings: victims of specified offences

247 This clause provides that Court Rules must make provision to enable the court to make a special measures direction in relation to victims or 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.

248 Subsection (3) provides that a person is the victim of a specified offence if another person has been convicted of, or given a caution for, the offence; or a person is the alleged victim of a specified offence if another person has been charged with the offence.

## Clause 63: Prohibition of cross-examination in person in family proceedings

249 This clause inserts new Part 4B (comprising new sections 31Q to 31Z) into the Matrimonial and Family Proceedings Act 1984 ("MFPA 1984") to automatically prohibit perpetrators or alleged perpetrators of abuse from cross-examining their victims in person in the family courts in certain circumstances in England and Wales, 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 publicly-funded qualified legal representative to conduct cross-examination in the interests of the party prohibited or prevented from cross-examining in person.

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

250 Section 31Q defines terms used in new Part 4B.

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

251 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 victim or alleged victim cannot, in person, cross examine the perpetrator or 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.

252 Section 31R(6) makes clear that the prohibition applies even where an order has been made for discharge, whether absolute or conditional.

253 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 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.

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

254 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 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.

255 Subsection (5) sets out what is meant by "on notice" for the purposes of this section.

256 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 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.

257 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.

258 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 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. It is intended to include, for example, non-molestation orders made under the Family Law Act 1996 and DAPOs made under Part 3 of the Bill.

259 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 –Prohibition of cross-examination in person: evidence of domestic abuse**

260 Section 31T makes 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 has the meaning given in Clause 1 of the Bill.

261 Section 31T(3) provides that "specified evidence" is 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.

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

262 Section 31U provides that, in addition to the automatic bar on cross-examination in person provided for in sections 31R to 31T, 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 a direction or if the court itself 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. This discretionary power is intended to ensure that the court can prohibit cross-examination in person wherever it is needed, including in domestic abuse-related cases where the automatic prohibition does not apply, or where a party may experience significant distress or have the quality of their evidence compromised for reasons other than domestic abuse.

263 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.

264 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 conducting the cross-examination and the distress caused is likely to be greater than if the witness were cross-examined other than by the party in person. Circumstances in which this condition might be met could include, for example, instances where domestic abuse is alleged but the automatic prohibition doesn't apply or where the direct cross-examination by a party of an expert witness would be likely to cause the party significant distress.

265 Section 31U(5) sets out factors that the court must consider when deciding whether the "quality condition" or "significant distress condition" is met. This includes views expressed by the witness or the party, the likely content of the questions to be asked, 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 in the proceedings 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.

266 Section 31U(6) and (7) explain what is meant by the "quality" of evidence given by the witness.

**New section 31V – Directions under section 31U: supplementary**

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

268 The court must provide its reasons for giving, refusing or revoking directions under section 31U (section 31V(4)).

269 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 31W – Alternatives to cross-examination in person**

270 Section 31W 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 to 31U.

271 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 judge putting questions to the witness, where appropriate.

272 If the court concludes that there are no satisfactory alternative means available, the court will ask the party who has been prohibited from direct cross-examination to arrange, within a specified time, a qualified legal representative (as defined in section 31W(8)(b)) to cross-examine the witness on their behalf, and to notify the court of the arrangements.

273 If, after the specified time, the party has either notified the court that there is no qualified legal representative to act for them for the purposes of cross-examining the witness, 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 to cross-examine the witness in the interests of the party. This legal representative, appointed by the court, is not responsible to the party.

**New section 31X – Costs of legal representatives appointed under section 31W(6)**

274 Section 31X confers a power for the Lord Chancellor to make regulations about the payment out of central funds of fees and costs of a qualified legal representative appointed under section 31W(6) and to cover related costs connected to their appointment.

**New section 31Y – Guidance for legal representatives appointed under section 31W(6)**

275 Section 31Y confers on the Lord Chancellor the power to issue guidance about the scope and nature of the role of a court-appointed qualified legal representative. The intention is that the guidance will set out further practical detail about the scope of this new statutory role. A qualified legal representative is required to have regard to the guidance.

**New section 31Z – Regulations under Part 4B**

276 Section 31Z 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.

## Clause 64: Prohibition of cross-examination in person in civil proceedings

277 This clause inserts new Part 7A (comprising new 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.

**New section 85E– Prohibition of cross-examination in person: introductory**

278 Section 85E defines terms used in new Part 7A.

**New section 85F –Direction for prohibition of cross-examination in person**

279 Section 85F provides a power for the court to give a direction prohibiting cross-examination in person where the conditions in section 85F(1)(a) and (b) of the Courts Act 2003 are met. In effect, the court may give a direction in one of two circumstances, namely where cross-examination in person by a party (that is, the perpetrator) is likely to diminish the quality of the witness's (that, is the victim's) evidence, or would cause significant distress to the witness, and it would not be contrary to the interests of justice to give the direction. This section will apply reciprocally so as to prevent a victim of abuse from having to cross-exam their perpetrator.

280 Section 85F(2) and (3) sets out what constitutes the "quality condition" and "significant distress condition".

281 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 a direction was given.

282 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 conducting the cross-examination and the distress caused is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.

283 Section 85F(4) sets out that the court also has the discretion to make a direction of its own motion prohibiting the cross-examination in person where it considers it appropriate to do so.

284 In considering whether the quality condition or the significant distress condition is met, section 85F(5)(a)-(j) sets out the what the court will consider, amongst other things, the behaviour of the witness and party, the relationship between them or whether one party has been convicted or cautioned with an offence against the other. The court may give a direction prohibiting cross-examination in person on application by a party, but it also has the discretion to give a direction of its own motion where it considers to be in the interests of justice to do so (section 85F(4)).

**New section 85G –Directions under section 85F: supplementary**

285 Section 85G provides more detail in relation to directions given by the court under section 85F. This covers how long a direction made under section 85F may last and the circumstances where a court may revoke a direction it has given under section 85F. The court must provide its reasons for giving, refusing or revoking directions under section 85F (section 85G(4)).

**New sections 85H–85I –Alternatives to cross-examination in person; Costs of legal representatives appointed under section 85H(6); and Guidance for legal representatives appointed under section 85H(6)**

286 Where a person is prohibited from cross-examining another in person, section 85H makes provision for the court to consider whether there are satisfactory alternatives to cross-examination in person. If the court considers there are none, then it must invite the person affected to arrange for a qualified legal representative to act for him or her for the purpose of cross-examining the witness and require them to notify the court by the end of a specified period whether a qualified legal representative is to act for them for that purpose. If the person does not do so, then the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a qualified legal representative, and, if so, the court must appoint a qualified legal representative for that purpose. The Lord Chancellor will issue guidance about the role the court-appointed representative is to play in in civil proceedings (section 85J). The costs of such a representative will be met from central funds. This will be provided for in regulations made under section 85I.

# Part 6: Offences involving violent or abusive behaviour

## Clause 65: Consent to serious harm for sexual gratification not a defence

287 This clause restates in statute law the general proposition (established in the case of *R. v. Brown* [1993] 2 W.L.R.556) that a person may not consent to the infliction of serious harm and, by extension, is unable to consent to their own death. It also reflects the exception in relation to consent in cases involving the transmission of sexually transmitted infections, in so far as the law has been established by the cases of *R v Dica* [2004] 3 All ER 539 and *R v Konzani* [2005] EWCA Crim 706.

288 Subsection (1) sets out that the clause applies for the purposes of determining whether a person ('D'), who inflicts "*serious harm*" on another person ('V') is guilty of a "*relevant offence*", as defined within subsection (3).

289 Subsection (2) provides that, unless subsection (4) applies, it is not a defence that another person consented to the infliction of the serious harm for the purposes of obtaining sexual gratification.

290 Subsection (3) defines what is meant by "*relevant harm" and "serious harm"* by reference to sections 18 (causing grievous bodily harm with intent), 20 (inflicting grievous bodily harm) and 47 (actual bodily harm) of the Offences Against the Person Act 1861 ("the 1861 Act").

291 Subsection (4) provides for an exception to subsection (2) where the serious harm under section 20 or 47 of the 1861 Act consists of, or is a result of, the infection of V with a sexual transmitted infection in the course of sexual activity, and V consented to the sexual activity in the knowledge or belief that D had the sexually transmitted infection. This subsection preserves the position (as set out paragraph 58 of the judgment in *R v Dica)* that where D intends for V to be infected then consent would provide no defence to a charge under section 18 of the 1861 Act.

292 Subsection (5) provides that it does not matter whether the harm was inflicted for the purposes of obtaining sexual gratification for D, V or some other person.

293 Subsection (6) provides that nothing in this clause affects any enactment or rule of law relating to other circumstances in which a person's consent to the infliction of serious harm may, or may not, be a defence to a relevant offence.

## Clause 66: Offences against the person committed outside the UK: England and Wales

294 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.

295 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.

296 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.

297 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.

298 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 67: Offences against the person committed outside the UK: Northern Ireland

299 This clause makes provision for Northern Ireland analogous to that in Clause 66 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 68: Amendments relating to offences committed outside the UK

300 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

301 Paragraph 1 inserts a new section 4B in the Protection from Harassment Act 1997 ("the 1997 Act").

302 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.

303 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.

304 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.

305 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.

306 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.

307 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

308 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.

309 Paragraph 4(3) inserts a new section 11(2A) which extends extraterritorial 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.

310 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.

311 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 in new section 11(2B).

312 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 extraterritorial jurisdiction over equivalent offences against a child under the age of 18.)

313 The jurisdiction of sheriff courts is territorial and a sheriff court has no jurisdiction to try offences committed 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, tried and punished 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.

314 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.

315 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, wholly or partly 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.

316 The jurisdiction of sheriff courts is territorial and a sheriff court has no jurisdiction to try offences committed outside the sheriffdom in the absence of a statutory provision conferring that jurisdiction. New section 39A(2) provides that if a person's course of conduct consists entirely of conduct in a country outside the UK, the person may be prosecuted, tried and punished 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. Existing jurisdictional rules will apply when the course of conduct consists of both conduct in Scotland and conduct in a country outside the UK.

**Part 3: Northern Ireland**

317 Paragraph 7 inserts a new Article 6A in the Protection from Harassment Order (Northern Ireland) 1997 ("the 1997 Order").

318 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.

319 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.

320 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 7: Miscellaneous and general

## Clause 69: Polygraph conditions for offenders released on licence

321 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.

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

323 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 (Sentences) 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."

324 Subsections (2) and (4) amend subsection (2) and insert new subsections (3A) to (3C) 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(3B) – 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 (section 28(2)(b)).

325 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 70: Guidance about the disclosure of information by police forces

326 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 60 above).

327 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.

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

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

330 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 71: Homelessness: victims of domestic abuse

331 This clause gives those who are eligible and are homeless as a result of fleeing domestic abuse "priority need" status for accommodation secured by the local authority.

332 Local authorities have a number of statutory duties to support those who are homeless or at risk of homelessness. The Homelessness Reduction Act 2017 places duties on local housing authorities to take reasonable steps to try to prevent and relieve a person's homelessness.

333 For those who are homeless and are identified as having a "priority need" the local authority has a duty under Part 7 of the Housing Act 1996 to secure that accommodation is available for the applicant's occupation. Those who are identified as having a priority need are outlined in section 189 of the Housing Act 1996 and the Homelessness (Priority Need for Accommodation) (England) Order 2002 (SI 2002/2051).

334 The existing categories of priority need include a "person who is vulnerable as a result of ceasing to occupy accommodation by reason of violence from another person or threats of violence from another person which are likely to be carried out". Prior to this clause coming into effect, victims of domestic abuse may be considered to be in this category and therefore have priority need for accommodation, if they can show they are vulnerable as a result of ceasing to occupy accommodation as a result of domestic abuse. This clause amends section 189 of the Housing Act 1996 to create a distinct new priority need category, namely "a person who is homeless as a result of that person being a victim of domestic abuse". This will mean that victims of domestic abuse that are homeless and eligible for homelessness assistance, will no longer need to fulfil the vulnerability test to be considered in priority need for accommodation.

To further clarify this new position, this clause also amends Article 6 of the Homelessness (Priority Need for Accommodation) (England) Order 2002 to clarify that for those who are in priority need due to being vulnerable as a result of ceasing to occupy accommodation by reason of violence from another person or threats of violence, 'violence' does not include violence which is domestic abuse.

335 The clause also amends the language in the Housing Act 1996 to reflect contemporary understanding of the nature of domestic abuse, by replacing references to domestic violence with domestic abuse as defined in clause 1 of the Bill.

### Clause 72: Grant of secure tenancies in cases of domestic abuse

336 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 new section 81ZA(4) of the 1985 Act) carried out by another person, and the new tenancy is being granted for reasons connected with that abuse.

337 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 62 to 66 above).

### Clause 73: Power of Secretary of State to issue guidance about domestic abuse, etc

338 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.

339 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 (subsection (4)).

## Commencement

340 Clause 79(1) provides for Clause 64 (consent to serious harm for sexual gratification not a defence) and the general provisions in Clauses 74 to 80 (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.

341 Clauses 66 and 68(1) and Part 1 of Schedule 2 (offences committed outside the UK: England and Wales) come into force two months after Royal Assent (Clause 79(2)).

342 Clause 68(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 79(3)).

343 Clauses 67 and 68(3) and Part 3 of Schedule 2 (offences committed outside the UK: Northern Ireland) will be brought into force by means of a commencement order made by the Department of Justice in Northern Ireland (Clause 79(4)).

344 The remaining provisions will be brought into force by means of commencement regulations made by the Secretary of State (Clause 79(5)). Clause79(7) and (8) enable the provisions in Part 3 (DAPNs and DAPOs) and 69 (polygraph testing) to be piloted.

# Financial implications of the Bill

345 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 £1million per annum. The estimated average annual cost of the measures in the Bill in respect of England and Wales once fully implemented is £137million to £155million. The provisions in respect of Scotland are currently estimated to cost £0.7millionper annum. These figures are estimated based on a number of assumptions about implementation which are subject to change.

346 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

347 The House of Commons approved a Money resolution in respect of the Bill on 28 April 2020. 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 5,new section 31X of the MFPA 1984 inserted by Clause 63 and new section 85I of the Courts Act 2003 inserted by Clause 64. In addition, a number of provisions such as those in Clauses 55, 69 and 70 will result in an increase in expenditure for bodies such as local authorities, probation services and the police. The House of Commons has agreed that such expenditure is to be paid out of money provided by Parliament.

# Compatibility with the European Convention on Human Rights

348 The Home Office Minister of State, Baroness Williams of Trafford, 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".

349 The Government has published separate ECHR memorandums with its assessment of the compatibility of the Bill's provisions with the Convention rights: these memorandums are available on the Government website.

# Related documents

350 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.
- The Government further response to the report from the Joint Committee on the Draft Domestic Abuse Bill (CP 214), 3 March 2020.
- Migrant victims of domestic abuse review findings, Home Office, June 2020.
- Domestic Abuse Services: Future Delivery of Support to Victims and their Children in Accommodation-Based Domestic Abuse Services, MHCLG, May 2019.
- Domestic Abuse Services: Future Delivery of Support to Victims and their Children in Accommodation-Based Domestic Abuse Services – Response to consultation, MHCLG, October 2019.
- Domestic abuse in England and Wales overview: November 2019, Office of National Statistics.
- The Economic and Social Costs of Domestic Abuse, Home Office, January 2019.
- Violence against Women and Girls Report 2018-19, Crown Prosecution Service, September 2019.
- 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) –2019 Progress Report, Home Office, October 2019.
- The police response to domestic abuse: an update report, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, February 2019.
- Vulnerable witnesses and parties within civil proceedings: current position and recommendations for change, Civil Justice Council, February 2020.
- Assessing risk of harm to children and parents in private family law children cases: Final report and implementation plan, Ministry of Justice, June 2020.
- Draft statutory guidance, Home Office, July 2020.
- Impact assessment.

- Policy equality statement.
- ECHR memorandums.
- Delegated powers memorandum.

# 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. |
| CJC | Civil Justice Council |
| CPR | Civil Procedure Rules |
| 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 |
| Istanbul Convention | Council of Europe Convention on preventing and combating violence against women and domestic violence |
| MFPA 1984 | Matrimonial and Family Proceedings Act 1984 |
| MHCLG | Ministry of Housing, Communities and Local Government |
| 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 |
| YJCEA 1999 | Youth Justice and Criminal Evidence Act 1999 |

# Annex B – Territorial extent and application in the United Kingdom

351 The provisions of Clauses 1 to 36, 38 to 54, 60 to 66, 68(1), 69, 70 and 73 of, and Schedule 1 and Part 1 of Schedule 2 to, the Bill extend and apply to England and Wales only (disregarding minor effects as detailed below). Those in Clauses 55 to 59 (local authority support), 71 (Homelessness: victims of domestic abuse) and 72 (secure tenancies granted to victims of domestic abuse) extend to England and Wales but apply to England only.

352 The provisions in Clause 68(2) and Part 2 of Schedule 2 (extraterritorial offences) extend and apply to Scotland only.

353 The provisions in Clauses 67 and 68(3) and Part 3 of Schedule 2 (extraterritorial offences) extend and apply to Northern Ireland only.

354 In the view of the Government of the UK, the provisions of the Bill that apply to England only or England and Wales only are within the legislative competence of the Scottish Parliament or Northern Ireland Assembly.[9]

| 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 Senedd Cymru? | 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 sought? |
|---|---|---|---|---|---|---|---|---|
| Clause 1to 3 | Yes | Yes | No | No | No | Yes | Yes | No |
| Clauses 4 to 19 | Yes | Yes | No | No | No | Yes | Yes | No |
| Clauses20 to 36 | Yes | Yes | No | No | No | Yes | Yes | No |
| Clause 37 | Yes | Yes | In part | In part | N/A | N/A | N/A | No |
| Clauses 38 to 54 | Yes | Yes | No | No | No | Yes | Yes | No |
| Clauses 55 to 59 | Yes | No | No | No | Yes | Yes | Yes | No |
| Clauses60–65 | Yes | Yes | No | No | No | Yes | Yes | No |
| Clause 66 | Yes | Yes | No | No | No | Yes | Yes | No |
| Clause 67 | No | No | No | Yes | N/A | N/A | N/A | Yes (NI) |
| Clause 68 | In part | In part | In part | In part | N/A | N/A | N/A | Yes (S and NI) |

[9] References in this Annex to a provision being within the legislative competence of the Scottish Parliament, Senedd Cymru 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 Senedd Cymru? | 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 sought? |
|---|---|---|---|---|---|---|---|---|
| Clauses 69 and 70 | Yes | Yes | No | No | No | Yes | Yes | No |
| Clauses 71 and 72 | Yes | No | No | No | Yes | Yes | Yes | No |
| Clause 73 | Yes | Yes | No | No | No | Yes | Yes | No |
| Clauses 74 to 78 | Yes | Yes | Yes | Yes | N/A | N/A | N/A | No |
| Clause 79 | Yes | Yes | Yes | Yes | N/A | N/A | N/A | Yes (S and NI) |
| Clause 80 | 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 and NI) |

## Minor and consequential effects

355 Clause 19 makes amendments to the House of Commons Disqualification Act 1975, Schedule 1 to the Freedom of Information Act 2000 and the Government of Wales Act 2006 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.

356 Part 3 makes provision for DAPNs and DAPOs. These provisions (with the exception of Clause 37(7)) extend to England and Wales only. Clauses 20(7) and 36(7) provide that DAPNs and DAPOs have effect throughout the UK. This means that an act in Scotland or Northern Ireland in breach of a DAPO will constitute an offence in England and Wales. However, the provisions in Part 3 only apply to England and Wales so that only a court in that jurisdiction may make a DAPO. Breach of an order is therefore only an offence in England and Wales. As such, these provisions only have minor effect in Scotland and Northern Ireland.

## Subject matter and legislative competence of devolved legislatures

357 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 extraterritorial jurisdiction) and section 97 of and Schedule 7 to the Justice Act (Northern Ireland) 2015 (which makes provision for domestic violence protection notices and orders).

358 The Bill generally deals with reserved matters in Wales, which include 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 Senedd cannot make modifications of "sentences and other orders and disposals in respect of defendants in criminal proceedings". 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 brought from the House of Commons on 7 July 2020 (HL Bill 124).

---

Ordered by the House of Lords to be printed, 7 July 2020

---



PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS