



HM Government

# **Transforming the Response to Domestic Abuse Consultation Response and Draft Bill**

**January 2019**





# Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill

Presented to Parliament  
by the Secretary of State for the Home Department  
by Command of Her Majesty

January 2019



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Any enquiries regarding this publication should be sent to us at:

Home Office  
Inter-Personal Violence Team  
5<sup>th</sup> Floor, Fry Building  
2 Marsham Street  
London  
SW1P 4DF

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## Foreword by Home Secretary and Justice Secretary

### The importance of tackling domestic abuse

Domestic abuse destroys lives. It is a cruel and complex crime that can affect anyone, leaving physical and emotional scars that can last a lifetime.

No one should have to suffer the pain of this abhorrent crime, particularly at the hands of those closest to them. Children should not have to witness violence and abuse in their own homes. We have a duty to support victims and prevent people from being hurt.

That is why the government has committed to introduce a Domestic Abuse Bill, which will provide a once-in-a-generation opportunity to transform the response to this terrible crime. In March 2018, we set out our legislative proposals for this landmark bill, alongside a package of practical action. We consulted on these, seeking views from victims and survivors, support organisations and frontline professionals, to harness their knowledge and expertise.

We asked questions on how we could achieve four main objectives, each with prevention and protection at their heart. The responses explore how we can:

- **promote awareness** – to put domestic abuse at the top of everyone’s agenda, and raise public and professional awareness
- **protect and support** – to enhance the safety of victims and the support that they receive
- **transform the justice process** – to prioritise victim safety in the criminal and family courts, and review the perpetrator journey from identification to rehabilitation
- **improve performance** – to drive consistency and better performance in the response to domestic abuse across all local areas, agencies and sectors

Having considered these responses, we are committed to delivering on the measures set out in the Queen’s Speech. We are taking forward domestic abuse legislation to fundamentally change the way we, as a country, think about this insidious crime.

We are also dedicated to ending all forms of violence against women, and our Violence Against Women and Girls Strategy 2016–2020 sets out our ambition to protect women and girls from violence, support victims and provide leadership at a national and international level on ending these forms of abuse. But much has changed since we published the strategy in 2016, and we have gone much further and faster than ever before. Therefore, we will shortly be publishing a refreshed Violence Against Women and Girls Strategy, which sets out achievements made to date as well as setting out new action to tackle these crimes, in line with our 2016 vision.

We have also committed to improve support for all victims through our Victims Strategy, which was published in September 2018 and sets out our commitment to improve support for all victims of crime by giving victims the certainty that they will be understood, protected and supported throughout their journey. In addition, we know that nearly 60% of female offenders have experience of domestic abuse, so through our Female Offender Strategy we have also committed to investing £5 million in community provision for female offenders and women at risk of offending, which includes £2 million of funding for women who have experienced domestic abuse.

Our aim is to support victims, communities and professionals to confront and challenge all types of abuse, wherever they find it.

Ending domestic abuse remains an absolute priority for this government and we will continue to show strong leadership and take decisive action to ensure that we are doing all we can to transform our response and end the suffering and harm that abuse causes.



A handwritten signature in black ink, appearing to read 'S. Javid'.

**The Rt Hon Sajid Javid MP**  
**Home Secretary**



A handwritten signature in black ink, appearing to read 'David Gauke'.

**The Rt Hon David Gauke MP**  
**Lord Chancellor and Secretary**  
**of State for Justice**

## Executive summary

**In February 2017, the Prime Minister announced plans for work to transform the way we think about and tackle domestic abuse, leading to the introduction of a new Domestic Abuse Bill.** The commitment to introduce this bill was re-affirmed in the Queen's Speech at the opening of Parliament in June 2017.

**On International Women's Day 8 March 2018 the government launched a nationwide consultation to seek views on how this transformation can be achieved.** The consultation – *Transforming the Response to Domestic Abuse* – ran for 12 weeks and closed on 31 May. The aim of the consultation was to harness the knowledge and expertise of victims and survivors, as well as charities, specialist organisations, and experts across policing, criminal justice, health, welfare, education, social services, employment and local authorities who deal with the effects of domestic abuse every day. The consultation was launched in two versions, one with 65 questions, and a shorter version with 12 questions that were focused on the experience of victims.

**The consultation received over 3,200 responses from across the UK.**

During the consultation period, a large number of events were held across England and Wales, engaging over 1,000 people including victims, charities, local authorities and professionals from other organisations. We want to extend our thanks to all those who shared their personal experiences through the consultation process and to all the organisations who hosted events and made sure as many victims voices were heard and amplified as possible. We have put these victim testimonies and experiences at the centre of our response.

**The majority of those who responded to the consultation agreed with the proposals within it.** The response also provided important insight into the lived experience of domestic abuse as well as useful examples of what can be effective in tackling it.

**The response to the consultation identifies nine measures that require primary legislation to implement.** These will now be taken forward in a draft Domestic Abuse Bill, which is annexed to this document (Annex D), together with the explanatory notes for the draft Bill (Annex E). These nine measures are:

- provide for a statutory definition of domestic abuse
- establish the office of Domestic Abuse Commissioner and set out the Commissioner's functions and powers
- provide for a new Domestic Abuse Protection Notice and DAPO
- prohibit perpetrators of domestic and other forms of abuse from cross-examining their victims in person in the family courts (and prevent victims from having to cross-examine their abusers) and give the court discretion to prevent cross-examination in person where it would diminish the quality of the witness's evidence or cause the witness significant distress

- create a statutory presumption that complainants of an offence involving behaviour that amounts to domestic abuse are eligible for special measures in the criminal courts
- enable domestic abuse offenders to be subject to polygraph testing as a condition of their licence following their release from custody
- place the guidance supporting the Domestic Violence Disclosure Scheme on a statutory footing
- ensure that, where a local authority, for reasons connected with domestic abuse, grants a new secure tenancy to a social tenant who had or has a secure lifetime or assured tenancy (other than an assured shorthold tenancy), this must be a secure lifetime tenancy
- extend the extra-territorial jurisdiction of the criminal courts in England and Wales to further violent and sexual offences

**The draft Bill will now be subject to pre-legislative scrutiny by a joint committee of both Houses of Parliament.**

**We recognise that this issue cannot be addressed through legislation alone and therefore we have also proposed a package of measures to sit alongside the legislation. This programme of work includes a wide range of cross-government commitments which will be taken forward over the coming year.**

**Through the measures set out in both the draft Domestic Abuse Bill and the practical package of action outlined in this document, we seek to transform the government's response to domestic abuse.**

## Section 1: Promoting awareness

### 1.1 Introducing a new statutory definition of domestic abuse

We want to ensure that all domestic abuse is properly understood, considered unacceptable and actively challenged across statutory agencies and in public attitudes.

**Domestic abuse is complex.** It can go unidentified by agencies, families and friends, and even victims<sup>1</sup> themselves. In order to transform the response to domestic abuse, it is important that it is first properly recognised and understood.

**Domestic abuse does not only occur between couples.** It can also involve wider family members, including parental abuse by an adolescent or grown child. It can exist between older siblings, or the wider extended family in elder or honour-based abuse.

**Domestic abuse involves many different acts and behaviours.** These include physical violence, manipulation, isolation, control, and use of threats and humiliation which harm, frighten or punish a victim. We recognise that a simplistic description may fail to completely encompass the dynamics of power and control, and the risk that control represents to the victim.

We consulted on the following definition:

***Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexual orientation. The abuse can encompass, but is not limited to: psychological, physical, sexual, economic and emotional forms of abuse.***

***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 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 a person.***

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<sup>1</sup> We recognise that there are differing views on the use of the words victim and/or survivor. Throughout this document we will be using the word victim, in recognition of the fact that a victim of domestic abuse is a victim of a crime. However, we understand that many victims prefer the term survivor, to place focus on their strength and resilience rather than the crime committed against them. We have not used the term victim/survivor for readability but encourage you to read this term as appropriate, according to your preference.

## You said:

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*“Too often people ignore what is abuse, merely saying it can only be abuse if violence is involved.”*

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Over 85% of you strongly agreed or agreed with the proposed definition of domestic abuse. You agreed that recognising that abuse includes not only physical acts, but emotional and other types of abuse too was important. This was supported by the Home Affairs Select Committee Inquiry into domestic abuse, which welcomed the government’s recognition that domestic abuse can take different forms and that it can be displayed not only through a single act of serious abuse, but also through a series of incidents.

The Home Affairs Select Committee Inquiry into domestic abuse also echoed the Equality and Human Rights Commission recommendation that the new statutory definition of domestic abuse applies to both sexes.

The inclusion of the term economic abuse was particularly welcomed as it encompasses a wider range of behaviours than financial abuse. Also welcomed was recognition that domestic abuse could involve different types of relationships and former partners.

Most agencies and charities said that the statutory definition would not necessarily change the way in which their organisation works (56% said it wouldn’t change, 44% said it would). The most commonly cited reason was that organisations were already using the existing cross-government definition. However, there was an acknowledgment that the definition would still be important to reinforce current messages and allow organisations to update their training packages, guidance and resources.

To ensure the definition is embedded in frontline practice, 44% of you said that it was important that training was given to the police, voluntary sector and the criminal justice system.

You said that the impact of reducing the lower age limit to 16 in 2012 was positive, as it increased awareness of domestic abuse among young people. In all, 59% of you strongly agreed or agreed that the current lower age limit of 16 years should be maintained in the statutory definition. One of the central arguments against lowering the lower age limit further was the risk of blurring the lines between child abuse and domestic abuse between adults; abuse perpetrated by an adult towards someone under 16 is classified as child abuse and the distinction needs to be maintained. However, there was an acknowledgement that the impact of domestic abuse on under-16s needed to be recognised. This included ensuring that sufficient services were in place both for children in households affected by domestic abuse and also for young people experiencing abuse in their own intimate relationships. You also said that we should avoid prosecuting young people who perpetrate abuse so as not to unnecessarily criminalise the under-16s.

## We will:

**We will include a definition of domestic abuse based on the one proposed in the consultation document**, in the draft Domestic Abuse Bill.

**We will specify economic abuse as a distinct type of abuse**, as it encompasses a wider range of behaviours than financial abuse.

**We will ensure that different types of relationships are covered**, including family members, ex-partners and those who are not cohabiting.

**In the statutory guidance that will accompany the definition, we will expand further on the different types of abuse and the forms they can take.** This will include types of abuse which are experienced by specific communities or groups, such as migrant women or ethnic minorities and also teenage relationship abuse. This will also recognise that victims of domestic abuse are predominantly female.

**We will recognise the devastating impact that domestic abuse can have on children who are exposed to it within the statutory guidance.** The guidance will be directed at all statutory and non-statutory service providers.

**We will include 16 and 17 year olds in the statutory definition, as this change to the definition has been viewed as having a positive impact by most of you.** However, it is clear that the impact of domestic abuse on young people needs to be properly recognised and we need to ensure that agencies are aware of it and how to appropriately identify and respond. This includes: children living in abusive households; teenage relationship abuse; and abuse directed towards siblings and parents. Courts and responding agencies must take into account youth justice guidelines when responding to cases and must avoid unnecessarily criminalising young people.

## 1.2 Educating young people on relationships

**As outlined in our Violence against Women and Girls Strategy,<sup>2</sup>** prevention and early intervention remain the foundation of our approach, and the same principle will apply to domestic abuse more generally.

**We recognise that if we want to change attitudes we need to engage with children at the earliest possible opportunity.** We know that exposure to domestic abuse can have a serious, lasting impact on children, with negative effects on their future behaviour and relationships. All children should be supported to understand that abuse is never acceptable.

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<sup>2</sup> HM Government (2016) Ending Violence Against Women and Girls Strategy 2016–2020. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/522166/VAWG\\_Strategy\\_FINAL\\_PUBLICATION\\_MASTER\\_vRB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522166/VAWG_Strategy_FINAL_PUBLICATION_MASTER_vRB.PDF).

**We want to help schools deliver high-quality relationships education that covers domestic abuse.** This includes the provision of Relationships Education, Relationships and Sex Education, and Health Education. This will help equip children with the information they need to have healthy and respectful relationships, and leave school prepared for adult life.

**The commitment to provide Relationships and Sex Education in schools is already enshrined in the Children and Social Work Act 2017.<sup>3</sup>** We are making Relationships Education compulsory in all primary schools in England, and Relationships and Sex Education compulsory in all secondary schools from September 2020, as well as making Health Education compulsory in all state-funded schools.

#### You said:

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*“Education is needed. I had no idea I was in an abusive relationship until it was far too late. Start in schools to help awareness for both potential victims and potential abusers, but it’s also vital to do the same through media.”*

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You asked the government to ensure that children and young people learn about healthy relationships and domestic abuse so they can form positive relationships into adulthood and know how to find help if they ever feel unsafe. Of those of you who considered the best way to reach children and young people, almost 40% suggested media campaigns.

Almost half of you (46%) made suggestions about what children should learn in school, asking for children and young people to:

- receive quality teaching about healthy relationships
- learn about unhealthy relationships and the signs of domestic abuse at an age that is appropriate for their development

Many of you commented on ways to support schools to deliver quality Relationships Education and Relationships and Sex Education, and 58% of those responses suggested that schools should have access to training, useful resources or advice from specialist organisations.

With regards to Relationships Education, the Home Affairs Select Committee Inquiry into domestic abuse recommended that the government should allocate resources and determine priorities for evaluating the efficiency of initiatives.

#### We will:

**We will introduce regulations and statutory guidance for schools on Relationships Education, Relationships and Sex Education, and Health Education.** In primary schools, we want to equip children with the foundations for healthy, respectful relationships. In secondary schools, we propose teaching

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<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2017/16/contents/enacted>

young people about healthy intimate relationships, and the concepts and laws relating to consent, sexual exploitation, grooming, harassment and domestic abuse. Through this teaching, we can help children to understand domestic abuse, including coercive control, so they can recognise the signs of abuse and stay safe.

While many schools will be able to begin teaching quickly and are supported and encouraged to start from September 2019, it is essential that we ensure that all schools have enough time to plan and prepare their staff. **We will begin working with schools, unions, other education providers and expert organisations such as subject associations to determine what support schools will need to deliver the subjects well, including consideration of training and quality materials.**

**We will also work with schools to provide advice, sources of expert information and recommendations of useful teaching resources such as lesson plans based on the government's Disrespect NoBody campaign.<sup>4</sup>**

**In November 2018, we published Respectful School Communities, a self-review and signposting tool to support schools to develop a whole-school approach to promote respect, healthy relationships and discipline.** This tool can help schools build on their existing duties to take a wider preventative approach to combat bullying, harassment and abuse of any kind, and create inclusive and tolerant school communities.

### 1.3 Reporting domestic abuse to statutory agencies

**We know how important it is that statutory agencies and professionals properly understand domestic abuse.** Wide-ranging action is being taken to improve understanding of domestic abuse including statutory guidance, targeted resources and training.

**We want all agencies to be able to confidently and appropriately identify, assess and support victims of domestic abuse by signposting them to the right support.** Government departments are working to improve the training provided to professionals to ensure that this happens and that all victims receive the help they need.

**There is, however, more that can be done to improve the response from the police and across other statutory agencies,** including health, education, social care, Jobcentres and the courts.

**We also recognise and value the contribution that the voluntary sector can make in educating statutory agencies about domestic abuse.** There are already many examples of good practice. For example, many Jobcentre Plus offices routinely work with local charities on domestic abuse initiatives that aim to equip staff to respond effectively and signpost users to appropriate

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<sup>4</sup> <https://www.disrespectnobody.co.uk/>

support. Every Jobcentre has a District Provision Tool, which lists expert organisations both locally and nationally, and which Work Coaches and Case Managers can use to direct claimants to further support.

We recognise the importance of improving awareness of domestic abuse amongst health staff. In March 2017, the Department of Health and Social Care (DHSC) published an online domestic abuse resource for health professionals to improve awareness. It advises health staff on how they can support adults and young people over 16 who are experiencing domestic abuse, and dependent children in their households, by showing how they can respond effectively to disclosures of abuse.

Routine enquiry on domestic abuse already takes place in place in maternity and mental health services, to improve earlier disclosure and support people to get the care that they need. Domestic abuse training materials for staff were updated from the results of research commissioned by DHSC. The National Institute for Health and Care Excellence also published its Quality Standard for Domestic Abuse<sup>5</sup> in March 2016.

DHSC have also funded the ‘Identification and Referral to Improve Safety’ (IRIS) project. This is a staff training and support programme that bridges between the voluntary sector and primary care, to harness the strengths of each, and provide an improved domestic violence service. DHSC has invested £2 million to fund the expansion of the Standing Together Against Domestic Violence pathfinder programme. This programme will create a model health response for victims of domestic abuse across community, mental health and A&E settings. The additional funding will increase the number of clinical commissioning groups who will become pathfinder sites to eight providing health services to approximately 18,000 survivors. **The programme will run until March 2020 but emerging learning from the programme will be shared as soon as possible.**

#### You said:

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*“Everyone should be aware of domestic abuse. Once people start to talk about it you realise how prevalent it is in the world today. We should not be brushing this under the carpet.”*

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The top three agencies you identified as needing to do more to recognise the signs of domestic abuse were: education professionals, police, and health professionals (full results can be seen in Figure 1). Many of the consultation responses were clear that it is the responsibility of *all* agencies to do more.

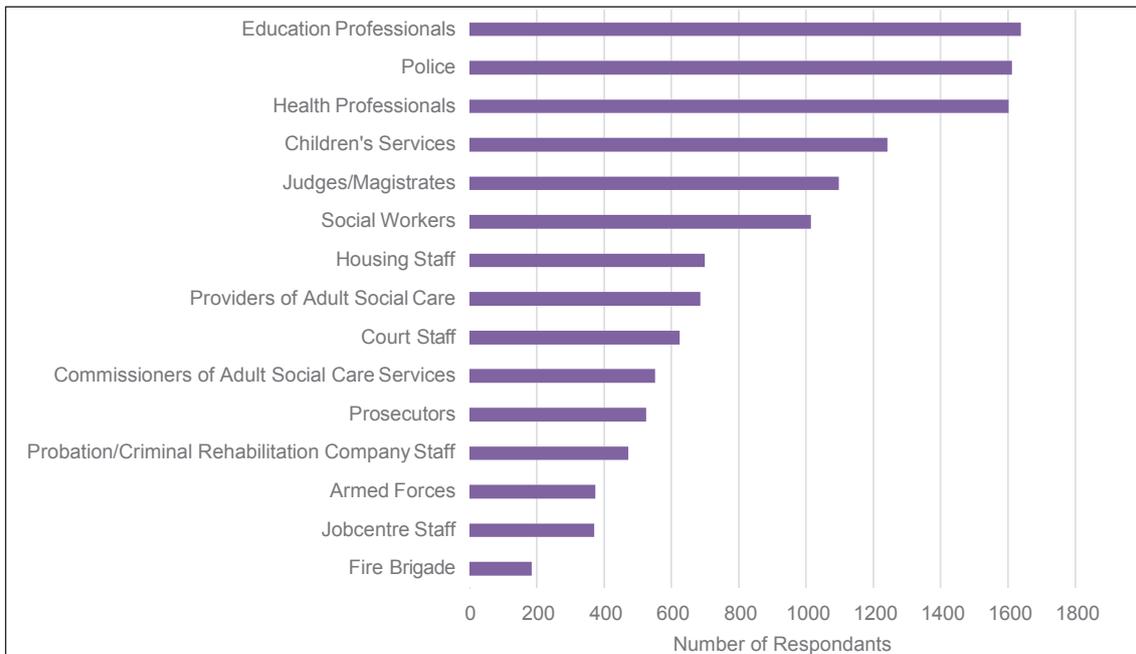
You said that training should incorporate an understanding of how domestic abuse affects groups of people differently – including lesbian, gay, bisexual and trans plus (LGBT+), male, black and minority ethnic (BAME) and older victims. You also said you wanted the effectiveness of training to be monitored or assessed.

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<sup>5</sup> <https://www.nice.org.uk/guidance/qs116>

This was echoed in the report published by the Home Affairs Select Committee Inquiry on domestic abuse. It recommended that more training and guidance was needed for public sector staff dealing with domestic abuse, so that they can respond appropriately to public needs and refer individuals on to specialist services.

**Figure 1:** Responses to Question 7 of the consultation: “Which of the following organisations do you think should do more to recognise the signs of domestic abuse? (Please select the top three you think the government should focus on)”



**We will:**

Given that the responses from the consultation highlighted the importance of training, we will invest in police training on coercive control to extend the rollout of the Domestic Abuse Matters police change programme, developed by the charity SafeLives and the College of Policing. We recognise that there is further work to do in transforming the police response to domestic abuse, and have laid out plans for work in this area in Section 3.

**We will provide £220,000 to develop and pilot a training programme for social workers on coercive control** to make sure they can effectively identify and respond to all types of domestic abuse.

**We will fund the development of domestic abuse training materials, both online and face-to-face, for frontline professionals working in probation services and community rehabilitation companies.**

**The Department for Work and Pensions (DWP) is in the process of developing future learning and development products, for all Universal Credit work coaches, which will focus on how to support victims of domestic abuse.**

As recommended by the Work and Pensions Select Committee, **DWP will introduce domestic abuse specialists in each Jobcentre, who will receive further training on how to support claimants who are victims of domestic abuse.** These specialists will also have the opportunity to upskill their colleagues and promote awareness of domestic abuse in their Jobcentres. This will be delivered in Summer 2019.

The Department for Education (DfE) recently updated 'Keeping Children Safe in Education' – the statutory safeguarding guidance for schools and colleges. It includes information on domestic abuse and the long-lasting emotional and psychological impact it can have on children. The guidance is clear that schools should ensure that all staff receive regularly updated safeguarding training, so that they can take appropriate steps to identify, protect and support children. **We will continue to raise awareness of this update. DfE keeps the effectiveness of the guidance under review and will consider strengthening it further as required.**

**DfE will also drive forward wide-ranging reforms to children's social care.** It is essential that social workers provide effective support to children and families affected by domestic abuse. Our children's social care reform programme is working to improve social work practice across the country through initial education, continued professional development and tougher professional regulation. The Knowledge and Skills Statements underpin reforms, and state that all social workers must be able to identify the impact of domestic abuse and act to protect vulnerable adults and children.

We also recognise the importance of strong leadership in driving local changes in delivery, which is why the **National Oversight Group on Domestic Abuse, chaired by the Home Secretary, will continue to oversee the police response to domestic abuse and the implementation of Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services' inspection recommendations.**

DHSC and NHS England are improving the awareness of abuse amongst health staff, with an online domestic abuse resource for health professionals and have also developed a number of e-learning and training modules with the Institute of Health Professionals and the Royal Colleges of Nursing and General Practice. **NHS England is refreshing the training to reflect emerging practice and a whole-family approach to safeguarding.**

DHSC will continue to work with NHS England to raise the awareness and understanding of healthcare providers so they know what action to take and when. **This will include a comprehensive four-year plan to both raise awareness amongst NHS staff and address the issue of NHS staff who are themselves victims. It will also ensure support is available for prevention purposes for any staff who are, or are known to have been, perpetrators.** NHS England will also use expert partners in domestic abuse to inform and shape the plan.

The Ministry for Housing, Communities and Local Government (MHCLG) are funding a ‘whole housing’ pilot project in London and Cambridgeshire that will develop the practice and knowledge of housing professionals in the private rented, privately owned and social rent sectors. Much of the focus of existing training and awareness raising in the housing sector is focused on social housing but a key element of the ‘whole housing’ project is to enable better engagement with the landlord professional bodies and provide training on domestic abuse to their members.

The Ministry of Defence (MOD) published its No Defence for Abuse Strategy in July 2018<sup>6</sup>. This five-year strategy highlights that although there is no evidence that domestic abuse is more prevalent in the defence community, the MOD takes the issue of domestic abuse extremely seriously and recognises that there are aspects of service life that may impact on family life. The Strategy sets out plans to create a culture of safety and support for those who experience domestic abuse and their children, taking steps to remove barriers that can deter victims from asking for help. The Strategy is focused on three key areas: prevention – raising awareness, encouraging openness and identifying those most at risk; intervention – enabling safe disclosure, appropriate responses and consistent support; and partnering – working across boundaries in defence to improve information sharing, working with specialist organisations and expert bodies to encourage provision of services tailored to the armed forces and learning from best practice.

#### 1.4 Raising public awareness of domestic abuse

**We know that victims of domestic abuse are far more likely to confide in family and friends than in the police or agencies.** Women’s Aid created the ‘Ask Me’ programme, which is supported by government, because victims said that they needed more help from their local communities.

**We know that there are other groups who could play an important role in tackling domestic abuse.** The Employers’ Initiative on Domestic Abuse is a group of over 200 companies and public sector organisations who have come together to help staff affected by domestic abuse. Other groups such as Business in the Community and the Domestic Abuse Housing Alliance are pioneering work to tackle domestic abuse within their sectors.

**We are funding several projects to improve community awareness of domestic abuse.** We have provided £1.5 million for the Women’s Aid ‘Ask Me’ programme to raise awareness and support among young people, and £1 million for the Hestia Housing and Support ‘Tools for the Job’ project, which aims to improve employers’ responses to domestic abuse.

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<sup>6</sup> Ministry of Defence (2018) No Defence for Abuse. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/725400/Domestic\\_Abuse\\_MOD\\_booklet\\_Digital.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725400/Domestic_Abuse_MOD_booklet_Digital.pdf)

**We recognise that there is a need to provide more information to the public.** This should outline clearly what domestic abuse is, and what options they have if they are a victim or are concerned about someone else who is a victim. The guidance should also give advice on what to do for those who identify as perpetrators or think someone they know may be a perpetrator.

**We want to challenge the social attitudes that allow domestic abuse to occur.** By making domestic abuse socially unacceptable in any form, we can start to prevent abuse before it happens rather than repairing the damage once it has occurred.

**You said:**

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*“A lot of what happens is behind closed doors, I know in my circumstances he looked amazing to everyone looking in.”*

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You asked for more to be done to raise awareness of domestic abuse for all, including:

- who could be affected
- what the warning signs are
- where victims could go to seek support
- where concerned family members or friends can go for advice

It was clear that there needs to be a better understanding of the fact that anyone can be a victim, regardless of age, gender, sexual orientation, ethnicity or background. You also said that you wanted employers to do more to support victims and to see increased support for victims in the community. The most common suggestion was for a national public awareness campaign.

**We will:**

**We will continue to provide annual funding of £1.1 million up to 2020/21 for helplines, subject to the outcome of the Spending Review:** supporting victims of domestic abuse, stalking, so-called honour-based violence and revenge porn, as well as perpetrators of domestic abuse. We are currently re-tendering these helplines to improve the service offer.

**We will continue to show leadership in supporting the Employers’ Initiative events and raising awareness of the Business in the Community domestic abuse toolkit.<sup>7</sup>** This provides support and information for employers, so they can better understand the scope of the problem and improve the support available to employees, both victims and perpetrators, who are affected by domestic abuse.

**We will work with partners to review, evaluate and understand current communication activities, which will help inform future communication**

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<sup>7</sup> Business in the Community (2018) Domestic abuse: a toolkit for employers. Available at: [https://wellbeing.bitc.org.uk/sites/default/files/kcfinder/files/bitc\\_phe\\_domestic\\_abuse\\_toolkit.pdf](https://wellbeing.bitc.org.uk/sites/default/files/kcfinder/files/bitc_phe_domestic_abuse_toolkit.pdf).

**activity.** This will include identifying where there are potential gaps and opportunities for the government to enhance our communications approach.

**We will work to tackle harmful gender norms, in recognition that all forms of violence against women and girls are both a cause and a consequence of wider gender inequality.** Through the refreshed Violence Against Women and Girls Strategy, we are embarking on an ambitious programme to tackle restrictive and harmful gender norms, with a focus on working with the advertising industry, on body image, and through working with men and boys to challenge harmful attitudes.

DWP will look to update existing Universal Credit communication products and materials (for example, the myth-busting leaflets and the Understanding Universal Credit website) to include additional content on and better signposting to DWP's existing package of support available to domestic abuse victims. This support includes a range of measures, including conditionality easements, advance payments, referrals to expert organisations, special provisions in Housing Benefit and Universal Credit housing support, and exemptions from Child Maintenance Service application fees.

The option to request split payments is also available to claimants as part of this package of support. When an individual suffering from domestic abuse requests a split payment, DWP will support them in putting this arrangement in place. Split payments will always be given when they are requested, and where they are the best option for the claimant. Split payments can be used to support claimants in a number of different scenarios where there is financial mismanagement, for example when one member of the couple has an addiction, or is a victim of domestic abuse. Not all victims of domestic abuse will want a split payment, and so we work with claimants on an individual case basis.

DWP is also proactively exploring additional measures based on an official-level meeting with Home Office colleagues, and steers from the Secretary of State and the Minister for Family Support, Housing and Child Maintenance.

In order to raise public awareness of this support, DWP will also look to create a tailored factsheet and a series of digital assets, for example explainer videos and infographics that could be used and shared online across corporate and stakeholder channels. We will seek to encourage stakeholders to share this information both internally with their staff and to promote it externally to the audiences they reach. This content could also be tailored for use by our operational colleagues in Jobcentres and in their discussions with potential claimants who are victims of abuse. Any product would be 'informative messaging' in style and would include the relevant call to action/link to GOV.UK and further support.

Home Office and DWP communications teams are also working together to ensure an integrated approach to domestic abuse communications.

## Section 2: Protect and support victims

### 2.1 Support for children

**No child should ever experience the trauma caused by domestic abuse.** Research suggests that between a quarter and a third of children in the UK have been exposed to domestic abuse. Children can witness or overhear abuse, observe their parent's ongoing distress and be harmed trying to intervene. Many teenagers also experience domestic abuse in their own relationships.

**We know domestic abuse can have a devastating, long-term impact on children.** Growing up in a household of fear and intimidation can profoundly impact children's wellbeing and development, with lasting effects into adulthood. Children exposed to domestic abuse are more likely to suffer from mental health difficulties, do worse at school and experience domestic abuse in later life.

**Children exposed to domestic abuse are victims of child abuse.** The Serious Crime Act 2015 made it explicit that cruelty to children which causes psychological suffering can be a crime. This includes when children are emotionally harmed by exposure to domestic abuse, holding perpetrators to account for the impact of their abuse on children. Under existing law, the definition of 'harm' to children recognises the impact of seeing or hearing the abuse of someone else, so local authorities may take action to protect children who witness domestic abuse.

**Domestic abuse is the most prevalent risk affecting children in need, who receive statutory help and protection from children's social care.** These children have complex needs, and in school they do far worse than their peers. The Children in Need Review recently published interim findings on what works to support these children and improve their educational outcomes.

**We have undertaken a literature review on the impact of domestic abuse on children,** which has been published alongside this consultation response as an annex to the *Economic and Social Cost of Domestic Abuse* paper. We hope this will contribute to the wider understanding of how children are affected by domestic abuse.

**We have provided funding to enable the rollout of Operation Encompass across England and Wales. Operation Encompass is a scheme that facilitates multi-agency working to support children who witness domestic abuse.** The scheme supports police and schools to work together to provide emotional and practical help to pupils affected. Whereas children's social care only intervene in the most serious cases, Operation Encompass enables every child to receive support, regardless of whether the incident has been recorded as a crime.

The Home Affairs Select Committee Inquiry into domestic abuse recommended that children in refuge should be given priority access to new school places, to

prevent delay if they have been forced to flee their home and require an in-year school move.

We have already invested over £1 billion to develop capacity and capability across the system to support the transformation in children and young people's mental health. This will ensure that an extra 70,000 children a year receive the support they need by 2020/21.

**You said:**

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*“My teenage son now tells me he used to believe that I would be killed and grew up tormented by the fear which made him reluctant to attend school because he was afraid to leave me.”*

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In response to the consultation, NSPCC ran a workshop with 10 young people aged 11 to 19 with experience of domestic abuse. They described feeling sad, scared, anxious and depressed as a result of witnessing abuse. The young people were worried about how living with domestic abuse might affect their behaviour and their future. They expressed concerns about turning to drugs and alcohol, involvement with bullies or gangs, and having nowhere to go to escape, so running away and becoming homeless.

Respondents to the consultation said that children affected by domestic abuse need support to recover. Suggestions included helping children to feel safe and supported in schools, a more effective response from children and family social workers, and therapeutic interventions.

The Home Affairs Select Committee Inquiry into domestic abuse recommended that the draft Domestic Abuse Bill should explicitly safeguard children who have suffered domestic abuse and that the government should develop a clear strategy to ensure that children are protected and receive support underpinned by adequate funding for specialist services.

**We will:**

**We will allocate funding to support children affected by domestic abuse.**

In July 2018, the government launched a fund to give charities, local authorities and other organisations the chance to run programmes that intervene early and help children affected by domestic abuse. This could be children exposed to domestic abuse in the family home, experiencing domestic abuse in their own relationships or demonstrating harmful behaviours to those closest to them. Details of the successful bids can be found in Annex A.

Everyone needs to recognise that children exposed to domestic abuse are victims of a crime. They do not need to be directly physically harmed, but suffer when they are exposed to domestic abuse and live in an environment of fear and intimidation. **We will undertake research to understand why more perpetrators of domestic abuse are not convicted of causing emotional harm to children, and whether action should be taken to improve the response to this crime.**

**Through the Children in Need review we will identify what needs to be done in policy and in practice to address the injustice of poorer educational outcomes for children in need.** This will be based on evidence of what works, and we will continue to build the evidence through ongoing partnership with three What Works Centres, including new analysis by the Education Endowment Foundation.

We have provided £163,000 to fund the national rollout and evaluation of Operation Encompass across all police forces. **We will monitor the implementation of the rollout and share findings from the evaluation in order to increase its effectiveness and develop the scheme further.**

The School Admissions Code places a requirement on local authorities to have a Fair Access Protocol to ensure that children without a school place, especially the most vulnerable, are offered a place at a suitable school without unnecessary delay. However, we recognise that there can be challenges. Therefore, as part of the Children in Need Review, **we will improve the process for in-year school admissions by considering changes to the Schools Admissions Code to help vulnerable children, including those in refuge, access a new school place as quickly as possible.**

We published Transforming Children and Young People's Mental Health Provision: a Green Paper<sup>8</sup> in December 2017. This set out ambitious proposals to fill the gap in support for children and young people's mental health. We are incentivising and supporting all schools and colleges to identify and train a Designated Senior Lead for Mental Health and funding new training to help leads put in place whole school approaches to mental health. We are also introducing new Mental Health Support Teams working in or near schools and colleges to provide earlier access to a wider range of support and treatments.

## 2.2 Resources

### 2.2.1 Funding

**We understand that having the right tools and services to protect and support victims of domestic abuse will make individuals and families safe, sooner.** Different types of support may be needed at different times in a victim's journey, and it is important that the funding of domestic abuse services reflects that.

**We have supported a variety of volunteer-led services over the last 10 years.** However, we understand that more still needs to be done to ensure that these services and others like them have the support that they need to continue delivering a high quality service.

**The funding landscape for domestic abuse services is diverse.** Funding is needed to support: safe accommodation, including refuges and social housing; support workers, including Independent Domestic Violence Advisors (IDVAs); and first-touch services, such as helplines. We also need to ensure that these

<sup>8</sup> <https://www.gov.uk/government/consultations/transforming-children-and-young-peoples-mental-health-provision-a-green-paper>

services work for communities on a local level, and that service provision is intelligence-led through effective multi-agency working.

In the Victims Strategy,<sup>9</sup> we addressed funding for domestic abuse victims in three critical areas. Many victims of domestic abuse also experience sexual violence and seek assistance from sexual violence services. **We are responding to increasing demand for sexual violence services.** We increased funding for rape and sexual abuse support services across England and Wales – offering £24 million over three years to provide advice, support and counselling for women affected by rape and sexual abuse. This funding will increase the resilience of the wider sector supporting victims of sexual violence, including those who experience domestic abuse, to provide timely, wrap-around support.

In the Victims Strategy, we also announced that we would increase funding by £200,000 over two years to provide further advocacy support to families bereaved by domestic homicide. We want to ensure that all bereaved families, who consent, are provided with specialist advocacy support.

We recognise the devastating impact of domestic abuse on children, and launched an £8 million fund in 2018 for children affected by domestic abuse details of successful bidders can be found in Annex A.

In addition, NHS England with partners across government have published the Strategic Direction for Sexual Assault Services.<sup>10</sup> The measures set out in the Strategic Direction aim to improve health outcomes for victims of sexual assault and abuse. They intend to radically improve access to services for victims of sexual assault and abuse and support them to recover, heal and rebuild their lives.

#### You said:

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*“Funding should be delivered in a co-ordinated way by all government departments responsible for responding to domestic abuse, as all will benefit from resulting cost savings from preventing and reducing this form of harm.”*

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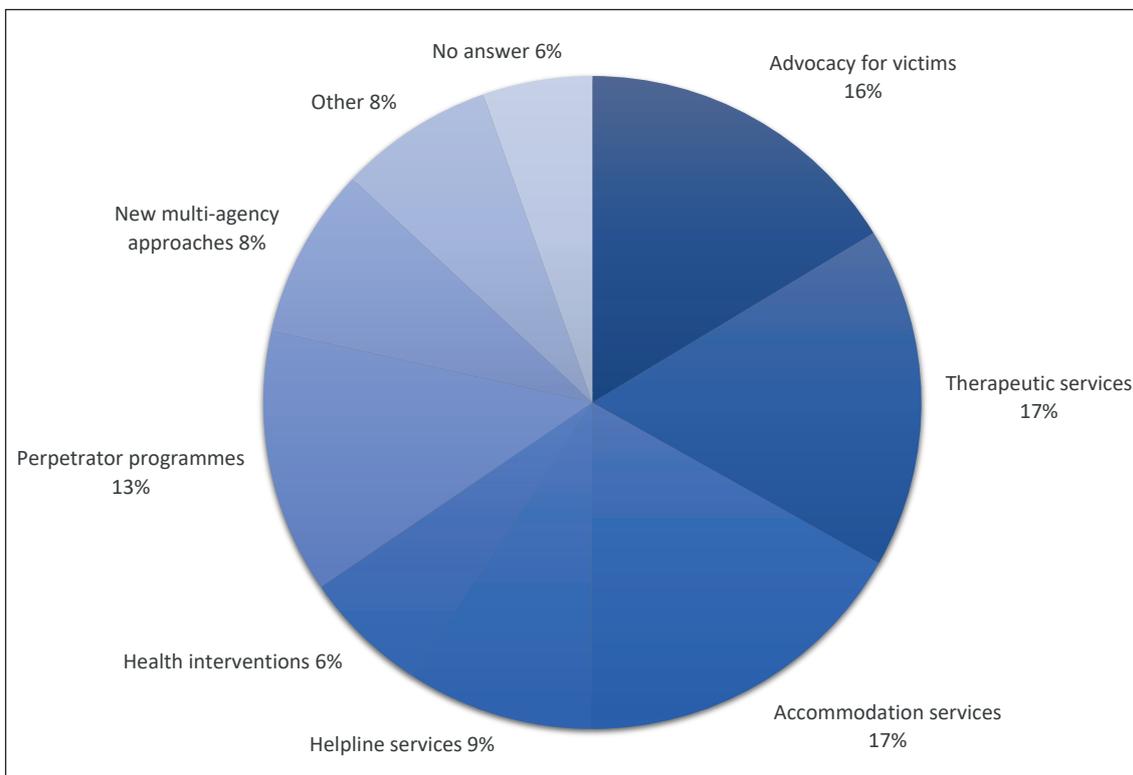
From the consultation, you were asked to select up to three areas that you felt the UK government should prioritise for central government funding.

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<sup>9</sup> HM Government (2018) Victims Strategy. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/746930/vic\\_tim-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746930/vic_tim-strategy.pdf).

<sup>10</sup> <https://www.england.nhs.uk/wp-content/uploads/2018/04/strategic-direction-sexual-assault-and-abuse-services.pdf>

**Figure 2:** Responses to Question 10 of the consultation: “We are in the process of identifying priority areas for central government funding on domestic abuse. Which of the following areas do you think the UK government should prioritise?”



**We will:**

As announced in the Victims Strategy, **we will develop a new victims services delivery model to increase the availability of services through more joined-up and sustainable funding.** This will explore the potential to align government funding for victim support services.

The government has already pledged over £100 million of funding to tackle violence against women and girls from 2016 to 2020. Over £80 million of this total has been allocated for the provision of victims’ services, including over £40 million for safe accommodation-based services and around £5 million for national helplines.

At the launch of the consultation, we announced that £12 million of the remaining £20 million would support children affected by domestic abuse, female offenders who have experienced domestic abuse and a health pathfinder project designed to identify best practice in healthcare settings. **With the remaining £8 million we will support a wide range of individuals who are affected by domestic abuse including:**

- the LGBT+ community
- elderly victims
- male victims
- disabled victims

- those affected by adolescent to parent abuse
- victims of economic abuse

**We will also fund initiatives that will strengthen the frontline response, raise awareness and knowledge of domestic abuse and deliver projects to support victims in the justice system – details of which can be found in Sections 1 and 3 of this consultation response, respectively.**

**From April 2019, we will explore the benefits of full local commissioning of rape and sexual violence support services by Police and Crime Commissioners (PCCs).** We believe that this will lead to better service integration and local join-up to offer more seamless support pathways for victims with specific or complex needs. PCCs are well placed to understand the needs of victims in their area, and to subsequently commission services to meet these needs. They are familiar with the local provider landscape, including smaller providers who often find it difficult to successfully bid for larger pots of government funding but still provide a specialist service.

### **2.2.2 Accommodation-based services including refuges**

**We know how important it is that victims of domestic abuse have access to safe accommodation.** We believe that the best way to assess need and provide safe accommodation is through local authorities working in partnership with other agencies.

**MHCLG is carrying out a review of how domestic abuse services are locally commissioned and funded across England.** This work combines the manifesto and Violence Against Women and Girls Strategy commitments to review funding for safe accommodation, including refuges, and the locally led approach to commissioning and delivering these services. The review has been informed by an independent audit of provision of domestic abuse services across England, to measure the amount and nature of domestic abuse service provision and how it is delivered by local authorities in the context of MHCLG's Priorities for Domestic Abuse Services. In September and October 2018, MHCLG held a series of Domestic Abuse Service events across the country with local authorities, the Local Government Association and London Councils and key domestic abuse sector partners. MHCLG also sought views from PCCs, other organisations which support victims and groups which support victim with protected characteristics. This was an opportunity to listen and draw on experience and expertise and gather intelligence on what works well and where challenges and barriers prevent victims and their children to accessing the right support at the time of need.

**MHCLG continue to work closely with sector partners, drawing on their data, expertise and knowledge, as it undertakes this critical work** to develop future, sustainable delivery options for support elements of accommodation-based services for domestic abuse across England.

**These options may include a statutory duty or guidance on local authorities that could be included in the Domestic Abuse Bill** (this provision will not be in the draft Bill).

**The outcomes of the review have not yet been finalised but MHCLG is aiming to launch a public consultation shortly.**

**MHCLG will continue to invest in the Women’s Aid ‘Routes to Support’ project,<sup>11</sup> subject to the outcome of the Spending Review. The funding contributes to a database and staff to support victims who need to access refuges** and enables detailed monitoring and analysis of the availability of bed spaces and other violence against women and girls services. The funding also supports the ‘No Woman Turned Away’ project,<sup>12</sup> which offers caseworker support to victims who may have faced difficulties accessing refuge. Since 2016, 668 victims have been supported.

#### *Supported housing*

We announced in August that housing benefit will be maintained for all supported housing. This will apply to all support housing including refuges. This reflects the particular needs of the vulnerable groups of people who access supported housing, and the government’s commitment to get the best possible outcome for them. We are working on oversight arrangement to ensure that both quality and value for money are delivered in this sector.

#### *Secure tenancies*

The government took through the Secure Tenancies (Victims of Domestic Abuse) Act 2018<sup>13</sup> (the 2018 Act) to deliver on a manifesto commitment to ensure that where local authorities grant a new tenancy to lifetime tenants who are victims of domestic abuse, it must be a further lifetime tenancy.

The 2018 Act amended provisions in the Housing and Planning Act 2016 that make fixed-term tenancies generally mandatory for local authorities. However, the social housing green paper<sup>14</sup> has since announced a decision not to implement the fixed-term tenancy provisions in the Housing and Planning Act 2016 at this time.

This means that we also cannot implement the 2018 Act at this time. The green paper therefore includes a commitment to bring forward new legislation to put in place similar protections for victims of domestic abuse where local authorities offer fixed-term tenancies at their discretion. The draft Domestic Abuse Bill includes provisions to deliver on this commitment.

#### *Access to social housing for victims of domestic abuse*

Following consultation, the government issued new statutory guidance<sup>15</sup> for local authorities on 10 November 2018, designed to help victims of domestic abuse who are currently living in a refuge or other forms of safe temporary

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<sup>11</sup> <https://www.womensaid.org.uk/routes-to-support/>

<sup>12</sup> <https://www.womensaid.org.uk/research-and-publications/nowomanturnedaway/>

<sup>13</sup> <http://www.legislation.gov.uk/ukpga/2018/11/contents/enacted>

<sup>14</sup> MHCLG (2018) *A new deal for social housing*. Green paper. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/733605/A\\_new\\_deal\\_for\\_social\\_housing\\_web\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733605/A_new_deal_for_social_housing_web_accessible.pdf).

<sup>15</sup> MHCLG (2018) *Improving Access to Social Housing for Victims of Domestic Abuse in Refuges or Other Types of Temporary Accommodation: Statutory guidance on social housing allocations for local authorities in England*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/753667/Improving\\_access\\_to\\_social\\_housing\\_for\\_victims\\_of\\_domestic\\_abuse.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753667/Improving_access_to_social_housing_for_victims_of_domestic_abuse.pdf).

accommodation to move on into social housing. The new guidance builds on existing statutory social housing allocations guidance to improve access to social housing for victims of domestic abuse by:

- making it clear that local authorities are expected to disapply any residency tests for those victims who have fled to a refuge or other form of temporary accommodation in another local authority district;
- setting out how local authorities can ensure that victims who are in a refuge or other form of temporary accommodation are given appropriate priority.

The guidance also advises local authorities on how they can use their existing powers to support tenants who are victims of domestic abuse to remain safely in their homes if they choose to do so; for example, by putting in place appropriate security measures and/or evicting the perpetrator and granting a sole tenancy to the victim.

### 2.2.3 Whole Housing Partnership Project

As mentioned in Section 1. MHCLG are funding, as part of their recent £22 million fund, a pilot of a 'whole housing' partnership project in London and Cambridgeshire to provide individual housing support to a diverse range of victims of domestic abuse and their children. It includes all type of housing from private housing through to social housing and refuges and will ensure that the full range of housing-related professionals will be able to recognise domestic abuse and intervene appropriately at an earlier stage. It will enable better engagement with landlord professional bodies and training for their members. In addition, good practice will be available for landlords in order to avoid eviction and to provide early support to domestic abuse victims.

### 2.2.4 Support for those with no recourse to public funds

**We recognise that not everyone living in the UK has automatic access to public funds.** The destitute domestic violence concession is available to support such individuals so they can escape the abusive situation.

**The destitute domestic violence concession provides eligible individuals with a period of three months' leave outside the immigration rules, allowing them to apply for access to public funds,** which may help fund alternative accommodation away from their abuser. This period of leave enables individuals to reflect and make arrangements to regularise their status by applying for indefinite leave to remain if they wish. The destitute domestic violence concession is open to partners of British citizens and settled persons where those partners are on a spouse, civil partner, unmarried partner or same-sex partner visa.

**Though not eligible for the destitute domestic violence concession, we provide analogous support to asylum seekers if they are destitute.** There are systems that enable accommodation providers to quickly move asylum-seeking victims of domestic abuse to safety.

We are looking at how to improve the way that the immigration system accommodates victims of domestic abuse.

In terms of the police response to this issue, there is a clear policy that when a person has reported to the police that they are a victim of crime, particularly ones of significant vulnerability, they will be treated as victims first and foremost, regardless of their immigration status.

**You said:**

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*“There is still a lack of understanding across frontline professionals around what support is available for women with no recourse to public funds. Many women are so fearful of deportation that they do not report crimes of sexual and domestic violence to the police, or seek support to escape the abuse, despite being entitled to protection.”*

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The consultation asked what other actions the government could take, in addition to reviewing who may be eligible for the destitute domestic violence concession, in respect of protecting domestic abuse victims with no recourse to public funds.

You highlighted the lack of awareness that victims, the public and expert organisations have about the immigration rights of migrant domestic abuse victims.

You recommended expanding the eligible cohort for the destitute domestic violence concession to include those not on partner visas. There were also recommendations for extending the time period for which the destitute domestic violence concession is available, from three to six months.

The Home Affairs Select Committee Inquiry into domestic abuse stated that immigration status itself is used by perpetrators of domestic abuse as a means to coerce and control and it is vital that insecure immigration status must not bar victims of abuse from protection and access to justice.

**We will:**

**We will help build long-term capacity and expertise about immigration rights for those working to combat domestic abuse.** We will build on current protections under the destitute domestic violence concession to improve our understanding of the number of migrant victims who need crisis support, providing funding for such projects through a £500,000 grant.

**We will consider how best to raise awareness of the destitute domestic violence concession** and the support that is available to migrant victims.

**We will consider the argument for widening the cohort of individuals eligible under the destitute domestic violence concession.** It will take time to build an evidence base on which to base any decisions. In some cases, the

victim of domestic abuse may be best served by returning to their country of origin and, where it is available, to the support of their family and friends.

**We have considered the policy rationale for extending the destitute domestic violence concession from three to six months and have concluded that it would make little difference** in supporting victims while they make arrangements regarding their future immigration status. This is because the vast majority of applications for indefinite leave to remain made on the basis of suffering domestic abuse are resolved quickly and well within three months.

**The National Police Chiefs' Council (NPCC) leads for domestic abuse and vulnerability will work with forces to raise awareness of guidance on supporting victims with insecure immigration status to help overcome barriers to reporting and accessing protection and support.** Immigration Enforcement is also working with the NPCC lead on domestic abuse to ensure that police and immigration officers work collaboratively to quickly recognise victims and to ensure that immigration status is not used by perpetrators to coerce and control vulnerable migrants.

## 2.3 Working together: a proactive and reactive multi-agency response

### 2.3.1 Domestic Abuse Protection Order

Protection orders are an important tool for keeping victims safe and preventing the continuation and/or escalation of abuse. They provide victims with space to consider the options open to them and give the police time to gather evidence to build a case.

There are a range of orders, including the Domestic Violence Protection Order (DVPO), which are currently used to protect victims of domestic abuse, but this can lead to confusion and issues with enforcement.

Some have said that the lack of a criminal sanction in the case of a breach limits the effectiveness of the DVPO.

We want to introduce a new Domestic Abuse Protection Notice (DAPN) and Domestic Abuse Protection Order (DAPO). These will combine the strongest elements of the various existing orders and provide a flexible pathway for victims and practitioners.

#### You said:

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*“Streamlining protective orders and also giving teeth to the DAPO is a positive step.”*

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Responses from the consultation showed that the majority of you agreed with the proposals for the new DAPN and DAPO but wanted us to make sure that the new orders would be easy to access, properly enforced and backed up by

support and guidance for victims and for the agencies responsible for making sure they work effectively.

In all, 56% of you also agreed that the DAPN should operate in the same way as the existing Domestic Violence Protection Notice but wanted to make sure that police were supported and trained to use the new notices.

### **We will:**

**We will legislate to provide for the new DAPN and DAPO.** We recognise that the new order introduces some untested ideas, for example in relation to the effectiveness of electronic monitoring in this context, and we want to continue to work with expert professionals from the police, courts and specialist domestic abuse sector to ensure that these new orders work on the ground. To this end, we will pilot the DAPN and DAPO in a number of police force areas.

To support the introduction of the orders **we will issue statutory guidance which will be accompanied by a programme of training and practical toolkits for professionals.**

*Who can apply?*

**Applications for previous orders have been open to different groups.** We asked you who you felt should be able to apply for a DAPO and why.

### **You said:**

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*“I think it’s really important that it’s quite simple for a victim to gain this protection. It’s such a huge step to ask someone for help so it’s frightening to think you have to recount it all again to another person. I never informed police of the violence that occurred as I was too scared.”*

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You said that a wide range of people should be able to apply for a DAPO, with 60% of you choosing the victim, 62% choosing the police, 54% choosing relevant third parties and 44% choosing certain other persons with permission of the victim and/or court.

However, you raised concerns about allowing persons associated with the victim, such as family members or friends, to apply because this route may be open to abuse by those who wish to interfere in relationships of which they do not approve.

### **We will:**

**We will enable victims, the police and relevant third parties to apply for a DAPO** but, taking on board concerns outlined above, the draft bill **does not allow family members and friends to apply directly without the court’s permission.**

Family and friends will be able to approach police or specialist services to seek help for someone close to them, and these will, in turn, be able to work with a victim to establish the best course of protective action for the individual. **We will ensure statutory guidance optimises the use of multi-agency processes to ensure police and partners work together to identify, assess and agree the best way to mitigate risk to a victim.**

#### *Routes for application*

**Previous orders have had different routes for application.** We asked you which routes you felt would be suitable for a DAPO.

#### **You said:**

Of those who responded to the consultation, 75% of you agreed that applications should be able to be made via multiple routes. You thought this approach would make the process of getting an order easier, quicker and more flexible. There was particular support for enabling DAPOs to be applied for in the family court. However, you were concerned about the cost of applications and the importance of making sure applications were properly supported by evidence.

In total, 72% of you also agreed that family, civil and criminal courts should be able to make DAPOs of their own volition. You thought that this would improve protection for victims, particularly given that abuse can come to light during the court process. However, you wanted to make sure that a range of agencies, including domestic abuse specialists, would be involved in the process and that the wishes of victims would be properly considered.

#### **We will:**

**The draft Bill will enable police to apply to a magistrates' court for a DAPO, and any other eligible applicant to apply to the family court.**

**We will also enable DAPOs to be applied for by a party in any ongoing family or criminal proceedings or specified ongoing proceedings in the civil courts.** To address concerns raised in the consultation, **we will ensure that the statutory guidance provides clear information about how the various pathways for applications work and provide practical toolkits for professionals to use when making applications. We will work with domestic abuse specialists and relevant agencies to ensure that the process for obtaining an order through the family court is as straightforward as possible and that victims and third parties are supported through the process.**

Although we do not intend to require victims to consent to orders in order to protect them from coercion and pressure to withdraw their support, **we will include a requirement in legislation for courts to take into account the wishes of victims before making an order.** We will also look at how we can improve sharing of information, especially between civil and criminal courts.

### *Positive requirements*

**Current orders can only impose prohibitive conditions on a perpetrator.**

For example, preventing an abuser from molesting their victim or entering premises shared with the victim.

**We want courts to be able to impose positive requirements on perpetrators.** These requirements could include participation in an intervention or parenting programme, or drug and alcohol treatment.

### **You said:**

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*“It highlights the fact that the perpetrator has to take responsibility for his actions and they have to change their way of thinking/doing.”*

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Of those who responded to the consultation, 83% agreed that courts should be able to propose positive requirements.

You said that courts should be able to impose positive requirements, as well as prohibitive conditions, which are necessary to reduce the risk of further abuse and encourage attitudinal and behavioural change in perpetrators. You did, however, tell us that you were concerned about programmes being seen as ‘magic bullets’ and thought that it was important that programmes were used as part of a wider risk management plan. Some of you also foresaw challenges with the commissioning of sufficient numbers of good quality intervention programmes.

### **We will:**

**We will draft legislation to allow courts to place positive requirements on perpetrators through orders.** To address concerns about how these interventions can be best used, **we will issue supporting commissioning guidance to help local agencies support positive requirements effectively.** **We will test this approach through a pilot.**

### *Notification requirements*

**We think that the DAPO should include notification requirements.** This means that, if it would assist in preventing further abuse, those who are subject to a DAPO would have to register certain personal details with the police.

These details might include their address, who they live with, and details of intimate relationships and their access to any associated children. These details would allow the police to make an accurate risk assessment of the danger that person poses.

### **You said:**

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*“So many victims of domestic abuse, and their children, are in a long line of victims. Notifying personal details could prevent abusers preying upon unsuspecting new victims.”*

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Of those who answered, 76% of you agreed that courts should be able to require individuals subject to a DAPO to notify the police of their personal details. Many respondents thought that this would help the police to protect victims but there were also concerns about proportionality and the resources that would be needed to support this proposal.

You were keenest on individuals providing their name and home address but also supported the idea of providing details about new relationships, their household and child arrangement orders. Some of you provided other interesting suggestions including workplace details, firearms licence details and details of new applications for dependent or spousal visas.

### **We will:**

**We will introduce a standard requirement on individuals subject to a DAPO to notify the police of their name (including any aliases) and address and to keep such details up to date.**

**We will also enable the court to impose additional notification requirements on a case-by-case basis;** these could include details of new relationships, visa applications and firearms licences held as suggested in the consultation response. **We will work with police and courts to make sure additional notifications are effective, testing this new approach through a pilot.**

### *Breach*

**Currently DVPOs do not have a criminal sanction if they are breached.**

By making the breach of a DAPO a criminal offence, we think that it would be sending a strong message that non-compliance is taken seriously.

**However, we understand that domestic abuse is complex and that victims may have concerns about this approach.** We do not want the possibility of criminal action to deter victims from applying for a DAPO or from reporting breaches. We therefore asked if you thought that there should be an alternative option to a criminal sanction. This would mean that a breach could instead be treated as a contempt of court, as it can be with a non-molestation order. This would not lead to a criminal record.

### **You said:**

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*“This approach seems to balance the need to pursue breaches and the needs of victims who might feel less comfortable reporting such breaches. This approach would have to be fully explained to victims at the point of imposition.”*

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In total, 83% of respondents agreed that a breach of a DAPO should be a criminal offence.

The majority told us that by making a breach a criminal offence this would act as a stronger deterrent to perpetrators and reduce breach rates. A smaller number of you, however, were concerned that criminalising breaches may discourage victims from reporting to the police.

Your views were more evenly split on whether it should be possible, as an alternative, for a breach of a DAPO to be punished as a contempt of court (48% thought there should be a contempt of court option, 34% disagreed and 18% didn't know).

### **We will:**

**The draft Bill will provide that the breach of an order will be a criminal offence, subject to a maximum penalty of five years' imprisonment, an unlimited fine, or both. It will also be open to a court to punish a breach as a contempt of court, as an alternative to criminal proceedings.** This will allow for a flexible approach in cases where a criminal sanction for the perpetrator would not be in the best interests of a victim. **We will ensure that guidance is clear on the contempt of court option and the importance of discussing its availability with victims when a DAPO is made.**

#### *Electronic monitoring*

**We think that electronic monitoring could be used as part of a DAPO to prevent further abuse** and ensure that perpetrators are complying with the conditions of their order.

**Electronic monitoring is not just restricted to GPS tracking.** The type of electronic monitoring used would depend on the conditions of the order and may include location monitoring to ensure compliance with an exclusion zone, radio frequency monitoring to ensure compliance with a curfew, or alcohol monitoring to comply with a positive requirement to attend an alcohol course.

**We understand that, without legal powers, the courts are limited in how they can apply electronic monitoring.** We think that the courts should have an express power to impose electronic monitoring, and we would also include a set of statutory safeguards to ensure that electronic monitoring is only used when necessary and proportionate.

### **You said:**

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*“The nature of power and control is that offenders may be tempted to continue to intimidate the victim. It will take a long time for the message to sink in to offenders of this type of crime. Perhaps this will help them to realise how seriously it is now being taken.”*

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Of those who responded to the consultation, 69% of you agreed that courts should be given an express power to impose electronic monitoring as a condition of a DAPO. You felt that it would be useful for safeguarding and evidential purposes for cases involving stalking and harassment.

Of those of you who were unsure, many said you did not know enough about electronic monitoring and felt that it should be piloted. There were also concerns that electronic monitoring should only be imposed if used proportionately and fairly. You also had some concerns around how its use affected a defendant's human rights. Some of you also suggested that alcohol monitoring, where alcohol may be a contributing factor, could also be used.

The most popular choice for which type of electronic monitoring should be used was location monitoring. Other suggestions were phone and social media monitoring and drug monitoring.

You agreed that there should be statutory safeguards relating to the use of electronic monitoring and DAPOs with certain offences, such as for repeat offenders, for child protection, in stalking cases, for high risk offenders and for vulnerable offenders.

#### **We will:**

Because there was clear support for the introduction of electronic monitoring, **the draft Bill will enable a court to attach an electronic monitoring requirement to a DAPO as a means of monitoring compliance with other provisions of the order (for example, a prohibition on the subject of an order entering a specified area).**

**We will also trial the use of electronic monitoring as part of the broader DAPO pilot.**

We acknowledge that many respondents thought that there should be statutory safeguards relating to the use of electronic monitoring. As with other requirements in an order, **a court will only be able to impose an electronic monitoring requirement where necessary and proportionate to protect a victim of domestic abuse.**

#### **2.3.2 Multi-agency working**

We know that effective multi-agency working is vital to ensure that the risk that victims of domestic abuse and their children face is properly identified and assessed. A multi-agency approach also provides more effective wrap-around support and recovery.

**The government recognises the most effective initiatives to tackling domestic abuse are those that adopt a collaborative multi-agency approach, with services commissioned locally and driven by local needs.** The government's commitment to prevent, protect and drive service innovation is reflected in the projects, programmes and services currently being supported through the £100 million Violence Against Women and Girls funding and beyond.

**An example of an effective multi-agency approach is the Troubled Families programme, which is aimed at creating safe and nurturing environments for children.** Just under a quarter of troubled families on the programme had a family member affected by an incident of domestic abuse or

violence in the year before the intervention. That is why violence against women and girls is one of the six headline criteria under which families are eligible for support in the programme.

**The programme advocates a whole-family, integrated approach across multiple services, reflecting the Violence Against Women and Girls Strategy’s wider ambition to embed early intervention and prevention in local areas.** Ensuring that family key workers are not just concentrating on the children or the mother but considering the family dynamic as a whole and the overlapping nature of the problems they face, enables them to offer a co-ordinated package of support. This can include working with perpetrators if appropriate. Those going through the programme report greater coping skills and resilience, improved confidence in dealing with problems, and more awareness of how to seek outside help. This can mitigate the risk and impact of family breakdown due to extraordinary reasons such as domestic violence.

Another example of a local initiative that the government is funding through the MHCLG accommodation fund is Norfolk’s Anchor Project, which is a transformative and innovative multi-faceted initiative delivering a victim-centred integrated model, supported by local leaders. The initiative ensures services across Norfolk are effectively and efficiently joined up to support domestic abuse victims with additional needs, including those with poor mental health and substance misuse.

**In July 2018, after full consultation, the government updated *Working Together to Safeguard Children*, the statutory guidance on multi-agency working to safeguard and promote the welfare of children<sup>16</sup>.** It states that practitioners should be aware of the impact of domestic abuse on children and alert to the potential need for early help, and signposts to further guidance and information.

#### You said:

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*“As someone who has to engage in this all the time it’s quite clear that there is no multi-agency working since agencies all have different cultures and agendas.”*

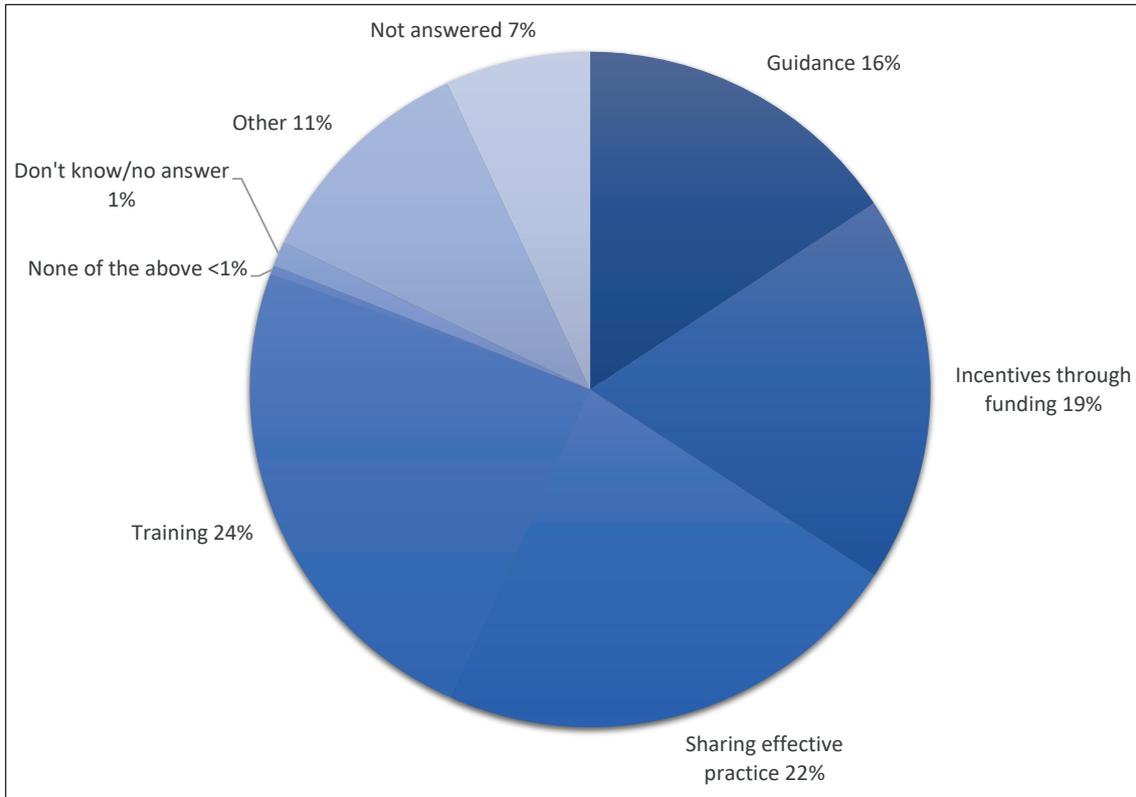
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We asked what more the government could do to encourage and support effective multi-agency working. The most popular responses were training, sharing effective practice, and incentives through funding.

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<sup>16</sup> HM Government (2018) Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/729914/Working\\_Together\\_to\\_Safeguard\\_Children-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729914/Working_Together_to_Safeguard_Children-2018.pdf).

**Figure 3:** Responses to Question 11 of the consultation: “What more can the government do to encourage and support effective multi-agency working, in order to provide victims with full support and protection?”



**We will:**

Working with voluntary sector partners, **we will help local areas to develop a more integrated approach to multi-agency working that looks at victims, their families and perpetrators in the round.** Initiatives like the SafeLives One Front Door model can help to make the links between the risks faced by victims, child safeguarding needs and the risks posed by the perpetrators of abuse. Bringing together the expertise from the Multi-Agency Risk Assessment Conferences (MARACs) and Multi-Agency Safeguarding Hubs (MASHs) can help to ensure that no risks or potential solutions are missed.

**Working Together to Safeguard Children<sup>17</sup> sets out the plan for the replacement of Local Safeguarding Children Boards with a new system of multi-agency arrangements and local and national child safeguarding practice reviews.** The new arrangements, to be implemented by September 2019, should provide better protection from abuse for children in all areas. Some areas are establishing multi-agency arrangements ahead of the final implementation date. Through the ‘Safeguarding Early Adopters’ programme, we are supporting these developments, which include innovative approaches to safeguarding children from domestic abuse. **We will monitor the**

<sup>17</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/729914/Working\\_Together\\_to\\_Safeguard\\_Children-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729914/Working_Together_to_Safeguard_Children-2018.pdf)

**implementation of these multi-agency approaches to domestic abuse and disseminate the learning to safeguarding partners.**

On accommodation-based services, MHCLG is working closely with sector partners to develop future sustainable delivery options for domestic abuse services and is clear on the importance of multi-agency working in any future model. However, they are not yet in a position to say exactly what this looks like as the outcomes of the review of the funding and commissioning of these services have not been finalised.

The Female Offender Strategy, published in June 2018, set out the government's aims to improve outcomes for female offenders<sup>18</sup>. More detail is provided in Section 2.4.2. It is important for local agencies to take a joined-up approach to addressing the complex needs of this cohort of women and **we are investing £1 million (as part of a bigger £5 million fund) to develop whole-system approach models to female offenders in local areas**. Women's centres are often at the heart of these models, helping to provide the holistic, wrap-around and trauma-informed response that these women need to improve their lives and reduce reoffending.

Every GP practice and NHS Trust has access to expert advice on safeguarding from a named or designated healthcare professional. The DHSC and NHS England have held a number of events to raise awareness of the new safeguarding reports and the new role of health as an equal statutory partner. This includes addressing domestic abuse between adults, and the impact on children as witnesses, taking a whole family approach. This will build on the approach of multi-agency working to assess risk of domestic abuse, where health is now expected to be a full member of these arrangements.

NHS England are also exploring what contractual incentives are available to incentivise best practice in responding to violence and abuse.

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<sup>18</sup> Ministry of Justice (2018) Female Offender Strategy. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/719819/female-offender-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719819/female-offender-strategy.pdf).

## 2.4 Supporting victims with specific or complex needs

### 2.4.1 Specialist needs

**Domestic abuse affects a wide and disparate group and a ‘one size fits all’ approach is not appropriate to support all victims**, especially those with specific needs and vulnerabilities.

**Throughout the consultation a wide variety of focus groups were held to explore in detail the issues affecting victims with specialist needs. These included LGBT+, disabled and elderly groups** and brought to light examples of the specific needs some people in these groups have and the distinctive support they require.

#### You said:

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*“There needs to be a variety of tools in the toolbox and there needs to be a lot of choice for the victim.”*

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You told us that there is a need for funding for specialist services, improved training and information for statutory agencies working with those with specialist needs and raised public awareness.

As a part of the consultation, focus groups were held with victims with specific or complex needs, including deaf people, people with disabilities and the elderly, and with the professionals that work with those victims. These highlighted the specific challenges facing these groups, which included the lack of translators for deaf victims, the sense of shame that some older victims face in disclosing long-term abuse, and the consequences to care and living arrangements that disclosing abuse as a vulnerable adult may entail. The focus groups also raised the lack of representation in the media of victims with specific needs and there was a call to further highlight its prevalence.

The Home Affairs Select Committee Inquiry into domestic abuse was concerned about the reported decrease in specialist services for BAME victims of abuse. Some BAME women are more vulnerable to culturally specific types of abuse and can find it particularly difficult to seek help because of close-knit family and communities, and because of language difficulties. They argued that specialist ‘by and for’ BAME domestic abuse services are necessary to win the confidence of BAME victims of abuse, to understand the issues they face, and to have the skills and experience to provide the necessary support.

#### We will:

We recognise that specialist organisations often struggle to win funding from local commissioning channels and in competition with mainstream organisations. We will target funding to increase the reach of a range of specialist services, as set out below.

There are very few organisations that specifically support LGBT+ victims of domestic abuse and they are significantly under-resourced to support LGBT+ victims and to facilitate a co-ordinated national approach. **We will support LGBT+ victims by providing up to £500,000 to build capacity in the charitable sector, raise awareness and improve monitoring and recording practice.**

**We will improve capacity within the women's sector by providing £250,000 to improve the response to disabled victims.**

**We will provide £250,000 to fund kits for refuges and other domestic abuse services to make them accessible to deaf victims, as well as investing in greater advocacy support for deaf victims and increasing the accessibility of information, advice and support for deaf users.**

**We will provide £100,000 to upskill domestic abuse organisations to respond to elder abuse** and develop a number of primary support services to extend their reach and capability.

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services and Her Majesty's Crown Prosecution Services Inspectorate are undertaking an inspection into crimes against older people, which will publish its findings in July 2019. **We will consider the results of the report and explore what more can be done to prevent elder abuse and improve safeguarding and support for victims.**

**MHCLG is investing nearly £300,000 to help reduce the impact of violence on the lives of BAME victims through building the capacity of and strengthening specialist BAME organisations.**

MHCLG's updated *Priorities for Domestic Abuse Services*<sup>19</sup>, developed with partners from the domestic abuse sector and local government, set out what local areas need to do to ensure that their response to domestic abuse is as effective as it can be<sup>20</sup>. They are clear that local areas should respond to the needs of all domestic abuse victims including those from isolated and/or marginalised communities, BAME, LGBT+, older people and victims with complex needs.

#### 2.4.2 Female offenders

**The majority of female offenders have experienced domestic abuse and it is often linked to their offending**, with 6 in 10 female offenders indicating that they currently are or have been victims<sup>21</sup>.

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<sup>19</sup> <https://www.gov.uk/government/publications/domestic-abuse-fund-2018-to-2020-prospectus>

<sup>20</sup> See Annex C in: MHCLG (2018) *2018/20 Fund for Domestic Abuse Services, including refuge and other safe accommodation, to help local areas meet the Priorities for Domestic Abuse Services*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721495/Fund\\_for\\_domestic\\_abuse\\_services\\_2018-20\\_prospectus.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721495/Fund_for_domestic_abuse_services_2018-20_prospectus.pdf).

<sup>21</sup> Ministry of Justice (2018) 'Women in the Criminal Justice System (CJS)'. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/719768/infographic-for-the-female-offender-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719768/infographic-for-the-female-offender-strategy.pdf).

We know that where local partners work together to take a whole-system approach, this can enable local areas to address the complex needs of female offenders through holistic, wrap-around support.

**We know that there may be a link between controlling relationships and crime.** In a 2005/06 prisoner survey, almost half (48%) of female prisoners said that they had committed their offence to support the drug use of someone else<sup>22</sup>.

**Female offenders often face significant stigma when accessing domestic abuse services. We want to help female offenders and women at risk of offending to identify their abuse earlier and receive the support that they need to reduce their chances of reoffending.** We need to ensure that female offenders are included in guidance about supporting victims of domestic abuse and that they are able to access the same support services as non-offenders.

#### You said:

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*“All too often a female offender is seen as an offender before they are ever seen as a victim. We have worked with many female offenders in our prison programmes who have never been asked about the abuse that they have experienced. The majority of those women have been at risk of serious harm or murder when we have done risk assessments with them.”*

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Respondents highlighted the need for early intervention in work with female offenders.

Of the options provided, 80% of you felt that making sure that a history of abuse is captured at every stage of the criminal justice system as a way we can work better with female offenders and vulnerable women at risk of offending to identify domestic abuse earlier. You also said that diversion from the criminal justice system altogether was key for offenders with experience of domestic abuse. Some of you felt that there was a need to ensure availability of community and custodial support for these women. In total, 70% of you specifically highlighted the need for health, finance and accommodation interventions and advice for women in the community.

#### We will:

In summer 2018 we launched the government’s Female Offender Strategy, which recognises that female offenders can often have multiple and complex needs<sup>23</sup>. The Strategy outlines a programme of work driven by our vision to see:

- fewer women coming into the criminal justice system;

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<sup>22</sup> Ibid.

<sup>23</sup> Ministry of Justice (2018) *Female Offender Strategy*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/719819/female-offender-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719819/female-offender-strategy.pdf).

- fewer women in custody, especially on short-term sentences, and a greater proportion of women managed in the community successfully;
- better conditions for those in custody.

The Strategy moves the focus from custodial to community provision for women and, as part of this, **we will invest £2 million into community provision for women with experience of domestic abuse**. This is part of a £5 million fund that will enhance and expand community provision and the development of whole-system approaches to female offenders. **We will give grants to local communities to focus on issues such as health, finance and accommodation**.

**We will develop a National Concordat on Female Offenders to improve outcomes for female offenders**. The Concordat will also work at a local level to support joined-up working from statutory agencies and third sector organisations.

Alongside our strategy, **we are working with the NPCC to publish guidance on working with vulnerable women**, supporting the identification of abuse at every stage of a woman's journey through the criminal justice system.

**We are also supporting the rollout of trauma-informed training for probation and prison staff**, so that they can appropriately support female offenders with an experience of domestic abuse.

#### 2.4.3 Substance misuse

**Domestic abuse is prevalent among those with substance misuse issues and the stigma that is often felt by those who have experienced domestic abuse is compounded where substance misuse is present**. In 29% of incidents of domestic violence, the victim perceived the offender to be under the influence of alcohol<sup>24</sup>, although other studies indicate that this figure could be higher.

**The interplay between domestic abuse and substance misuse is complex**. Victims may misuse substances as a coping mechanism and perpetrators may use them as a form of coercion and control. Domestic abuse perpetration can arise from withdrawal from substances and disputes about buying substances. When they were children, perpetrators of domestic abuse commonly experienced familial substance misuse, physical abuse or sexual abuse, or witnessed domestic abuse.

#### You said:

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*“Each time I ask for help from my doctor, from drug or alcohol services, from child services, I have to explain my trauma again. I relive it each day. One service that encompasses all of the many complex needs we as victims may face could be helpful.”*

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<sup>24</sup> Office for National Statistics (2017) 'Nature of crime tables (violence) – year ending March 2017'. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/natureofcrimetablesviolence>.

**You made it clear that women with experience of extensive physical and sexual violence are more likely to be substance-dependent and experience disadvantage in other areas of their lives.** Women experiencing abuse are therefore likely to require multi-agency support. You told us that successfully addressing complex needs requires sustained funding and can have significant social and financial benefits in the long term. Many of you commented that staff in substance misuse services and domestic abuse services should be better trained in how to use referral pathways to each other's services effectively.

**We will:**

**We will consider the impact of alcohol on domestic abuse and develop a response as part of the department's alcohol policy work.**

**We will hold workshops to improve our understanding of the links between alcohol and domestic abuse.** These workshops will identify good practice and challenges at a local and national level.

**We will identify gaps in the evidence base on the relationship between substance misuse and domestic abuse** by continuing to work with academia and improving the data available.

**We will learn from a recent roundtable on women's substance misuse about the importance of multi-agency women-only provision that is commissioned collaboratively, and the need to address women's specific needs in drug and alcohol policies.**

**We will allocate funding for training to promote greater joining-up between substance misuse and domestic abuse services.**

## 2.5 Types of abuse

### 2.5.1 Economic abuse

**Domestic abuse is not just physical or psychological; we recognise that domestic abuse can also be economic.** Economic abuse goes beyond financial abuse and can involve behaviours that control a person's ability to acquire, use and maintain economic resources. This may include money, food, transport and housing – for example, restricting the use of a car or ruining credit ratings.

**The government has already funded some key initiatives via the Tampon Tax Fund**, with £100,000 to set up the charity 'Surviving Economic Abuse' and £164,000 for the 'Domestic and Economic Abuse Project' led by Surviving Economic Abuse and Money Advice Plus to develop partnership working between banks, money advice services and domestic abuse services.

**We want to not only increase awareness and understanding of economic abuse but also ensure victims can be identified and supported and perpetrators held to account.**

**You said:**

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*“My ex-partner took full control over the finances, I was not even allowed to use my own bank card ... I was not allowed to buy essentials and had to ask for permission to buy things for my children, whilst he spent money daily on alcohol. He would hide bank statements, and even remove my card from my purse whilst I wasn't aware.”*

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You told us about the severity and lifelong impact of economic abuse and that it can often happen after the relationship has ended. You also made clear the immense barriers that victims and survivors face in escaping this abuse and rebuilding their lives: from the inability to end joint bank accounts and mortgages without both parties agreeing, to difficulties accessing appropriate housing and refuge, to something as simple as getting a mobile phone.

Other barriers that you identified included struggling to clear debt taken out by perpetrators in victims' names, and the resulting impact on credit ratings. Many of you highlighted that abuse can also be perpetrated through the courts system. Examples provided included perpetrators taking victims to court knowing the victim does not have the funds needed for lawyers, and child maintenance not being paid.

Difficulties with the benefits system, and specifically Universal Credit, were also identified in responses as well as the need to improve awareness among financial institutions and statutory agencies of economic abuse and its complexity.

You said that payment of Universal Credit for couples into a single nominated bank account risks increasing a perpetrator's economic control over their victim. Other difficulties with the benefits system were raised, such as delays in new claims being processed and difficulties accessing benefits where victims have had to flee without essential documents and identification.

The Home Affairs Select Committee Inquiry into domestic abuse also raised the issue of Universal Credit and recommended that split payments should be the standard approach in England and Wales.

**We will:**

**We will include economic abuse in the new statutory government definition of domestic abuse** and accompanying statutory guidance to ensure that economic abuse and its impact is legally recognised, to improve knowledge and awareness of the issue and provide better support to victims.

**We will update the statutory guidance** for the offence of controlling or coercive behaviour to include references to economic abuse and include it in the statutory guidance for future Stalking Protection Orders and DAPOs.

**We will update relevant legal guidance for prosecutors** to ensure cases of economic abuse can be successfully prosecuted where appropriate.

**We will continue to work with UK Finance to encourage banks and financial authorities to do more to support victims of domestic abuse** and help them move forward to escape debt, joint accounts and mortgages. UK Finance has recently launched its Code of Practice, designed to encourage banks to do more to support victims of domestic abuse. They have also created a consumer information pack, to help victims know what support they can expect.

**We will provide £47,000 of funding to update proven police training so that it covers economic abuse.**

**We will provide £200,000 of funding to the National Skills Academy for Financial Services to develop and deliver financial capability training** for frontline workers to support individuals who are experiencing economic and finance-related domestic abuse.

**We will provide approximately £250,000** to create a national advice service for banks and building societies, increase the capacity of existing telephone casework services for victims of domestic abuse and develop resources to help people identify if they are experiencing economic abuse.

The Department for Work and Pensions delivered updated training on domestic abuse, including financial abuse, to all Child Maintenance caseworkers in the second half of 2018. **DWP will continue to exempt victims of domestic abuse from the application fee for the statutory child maintenance scheme, and continue to pursue parents who fail to meet their financial obligations.**

We recognise that there are many barriers to victims in rebuilding their lives. In order to support people to return to work when they are ready to do so, **the government has committed to £500,000 of funding, which will be focused on those with additional barriers to participating in the labour market –** with a specific focus on those who have been victims of domestic abuse.

#### *Universal Credit*

DWP published data in July 2018 that shows that a majority of new Universal Credit claimants are being paid in full and on time. If someone cannot wait for a first payments because they are in financial need, they can claim up to a 100% advance payment of the indicative award in just a few days – even on the same day in some circumstances, for example for victims of domestic abuse. The government made improvements in the Budget 2018 to support the important aspect of Universal Credit by reducing the maximum debt recovery rate from 40% to 30% and by extending the maximum period for the repayment of advances to 16 months.

The option to request split payments is also available to claimant as part of this package of support. When an individual suffering from domestic abuse requests a split payment, DWP will support them to putting the arrangement in place. Split payments will also be given when they are requested, and where they are the best option for the claimant. Split payments can be used to support claimants in a number of different scenarios where there is financial mismanagement, for example when one member of the couple has an addiction or is a victim of domestic abuse. Not all victims of domestic abuse will want a split payment and we will work with claimants on an individual case basis.

In order to raise public awareness of this support, we will create a tailored factsheet and series of digital assets, for example explainer videos and infographics that could be used and shared online across corporate and stakeholder channels. We could seek to encourage stakeholders to share this information both internally and with their staff and promote it externally to the audiences they reach. This content could also be tailored for use by our operational colleagues in job centres and in their discussions with potential claimants who are victims of abuse. Any product would be 'informative messaging' in style and would include the relevant call to action/link to GOV.UK and further support.

**DWP delivered updated training on domestic abuse, including financial abuse, to all Child Maintenance caseworkers in the second half of 2018.**

We are working closely with Refuge, Women's Aid, and Mankind to improve the training provided to our staff, which means that Departmental training and awareness is now better than it ever has been, allowing Jobcentre staff to proactively identify, support and signpost victims of abuse.

**We will work closely with the Scottish Government to establish the practicalities of delivering split payments in Universal Credit in Scotland**

and will observe their implementation to further understand their impact, potential advantages and challenges of such a policy.

**DWP is committed to ensuring that household payments go directly to the main carer.** This is usually, but not always, the woman. For those couples currently claiming Universal Credit, around 60% of payments already go to the woman's bank account. However, we are looking at what more we could do to enable the main carer to receive the Universal Credit payment, and we will begin to make those changes later this year.

Childcare is essential to enable parents to work. Although Universal Credit's provision of funding up to 85% of a claimant's childcare costs is higher than under legacy benefits, this is paid in arrears once actual costs are known. In recognition that this may cause financial difficulty as some claimants struggle to pay upfront or report their costs on time, when the initial month of childcare prevents a claimant from starting work, the Flexible Support Fund can be used to help. It is also important to be flexible when parents are unable to report their childcare costs immediately, and so these costs will still be reimbursed.

## 2.5.2 Online abuse

**While technological advances have improved the lives of many, we recognise that the increasing importance of technology in our everyday lives presents new opportunities for perpetrators of domestic abuse.** This can involve using social media to perpetrate abuse online, as well as controlling a victim's access to technology. We also know that perpetrators sometimes install tracking software, turning a victim's device against them.

**Victims can feel like there is no escape.** Online abuse and abuse via technology is not restricted to location and is used to isolate, punish and humiliate. We have seen a rise in this type of offending in prosecutions and know that many of the prosecutions for coercive or controlling behaviour have contained elements of online abuse.

**We know that we must do more to tackle technology-related abuse.** We also know that we need to do more to empower both potential victims and survivors to feel safer online.

**While technology is used to perpetrate abuse, there are opportunities to use technology solutions to tackle domestic abuse** and to provide further support for victims.

### You said:

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*“Teaching teenagers about online abuse as part of tackling bullying and domestic violence. I think this should be brought in from the age of 11/12 (i.e. Year 7) and it should be tackled as ‘abuse’ e.g. where a boyfriend is insisting his girlfriend gives him her Facebook password.”*

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You said it was important to recognise the role technology now plays in everyday life, and the ways in which technologies can be misused. You asked the government to look at legal processes, ensure social media companies play their part, raise awareness and address spyware. You wanted:

- the government to look at how evidence collection and use could be improved, particularly within criminal investigation and prosecution processes (24%);
- social media companies to provide appropriate reporting categories and signposting to support services (20%), as well as providing clear guidance on privacy settings (18%);
- the government to raise awareness of online and technology risks in relation to domestic abuse (18%); and
- retailers and the technology industry (17%) and government (14%) to raise awareness about spyware and the misuse of technologies.

**We will:**

**We will continue working on the online harms white paper**, to be published later this parliamentary session, that will set out our proposals to address both harmful and illegal conduct and content, including the broad range of online harms associated with domestic abuse.

**2.5.3 Adolescent to parent violence**

Adolescent to parent violence is a relatively hidden but increasingly recognised form of domestic abuse. Victims of this type of abuse may feel unsure of how to access support and may not feel they will be believed if they do come forward.

It is important to recognise that services need to take an approach that provides wrap-around support to the entire family, and that responding agencies need training to be able to do so effectively, both to reduce harm and to prevent children ending up in the criminal justice system.

**You said:**

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*“It is important that adolescent to parent violence is recognised as distinct from intimate partner violence if patterns of violent and abusive behaviour by all children are to be taken seriously.”*

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You said that young people who perpetrate domestic abuse is still a relatively hidden area of abuse and that there is a lack of focus on it in current government activity. It is clear that this is a complex and hidden type of abuse, which requires a specialist response.

Some of you who have experienced abuse from your children cited feelings of alienation by social services and other agencies, and felt that there was a lack of services available.

You emphasised that services need to interact to support the entire family, and that agencies need training for dealing with this kind of abuse. By concentrating efforts on services available to children and parents, it potentially reduces the harm caused, as well as keeping children outside of the criminal justice system.

**We will:**

**We will draw together best practice and develop training and resources to improve the response to victims of adolescent to parent violence.**

**We will also promote and embed existing Home Office guidance** and general principles in addition to working with experts to develop service-specific guidance.

## 2.6 Victims' rights

### 2.6.1 Anonymous voter registration

**When individuals register to vote, their name and address appear on a public register or roll.** Anonymous registration was established for those whose safety would be at risk if their details were listed publicly.

**When an individual wants to register anonymously they are asked for evidence that their safety (or that of others at their address) would be at risk.** We understand that this process has not always been easy for victims of domestic abuse. In March 2018, the government made changes that allow a broader range of people to certify that the applicant's safety is at risk and expanded the types of evidence admissible when applying. We recognise the importance of these measures and will continue to assess their impact and engage on how the scheme could be improved.

#### You said:

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*"I think that it's quite clear. If perpetrators know where victims (and their children) live then they are put at significant risk. Risk to mental health, physical health and risk to their housing."*

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You were positive about the changes already introduced and 57% said it would make it easier for survivors of domestic abuse to register to vote anonymously. Only 2% of you thought that the changes would not make it easier.

While respondents did consider that there could be further ways to keep victims' addresses safe (75%), the majority of respondents who answered this question did not specify what this change should be.

#### We will:

To date, we have worked closely with domestic abuse charities, refuge managers and electoral administrators to understand the difficulties survivors of domestic abuse face in accessing the electoral register. **We will continue to work closely with them in order to promote further uptake of the scheme.**

We remain committed to ensuring that nobody is denied their democratic right to vote. **We will raise awareness of the anonymous registration scheme through engagement and communications** to ensure that more applicants are able to register with confidence using an accessible and secure system.

### 2.6.2 The Domestic Violence Disclosure Scheme

We introduced the Domestic Violence Disclosure Scheme (DVDS), also known as Clare's Law, in 2014. **It enables the police to disclose information to a victim, or potential victim, of domestic abuse about their partner's (or ex-partner's) previous abusive or violent offending.**

**The purpose of the scheme is to increase public safety.** We want to raise awareness of the scheme, increase the number of disclosures made and make sure that it is used and applied consistently across all police forces.

**You said:**

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*“I did not know my ex-partner had a history of domestic violence. I found out about Clare’s Law after I was assaulted by him. If I had known about Clare’s Law and his history of domestic violence I would never have been in that situation.”*

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In total, 32% of you had not heard of the DVDS before reading the consultation; of this, 61% were victims. This clearly shows that there is more work to be done to raise awareness of the scheme among the public.

The majority of you – 57% – agreed or strongly agreed that the guidance underpinning the scheme should be put into law.

With regard to promoting awareness, 32% of you felt that social media was the best way and 22% felt that television and magazines were the best.

**We will:**

**We will put the guidance on which the DVDS is based into statute.** This will place a duty on the police to have regard to the guidance and strengthen the visibility and use of the scheme. We think that this will result in more people being warned of the dangers posed by their partners (or ex-partners) and help keep victims safer.

**We will work with the police to enable online applications to the DVDS to make it easier to use and more accessible.**

## 2.7 Male victims

**The government has always recognised domestic abuse as a gendered crime and included it within its Violence Against Women and Girls work.** Evidence supports this stance. For instance, according to the 2016/17 Crime Survey for England and Wales, an estimated 1.2 million women experienced domestic abuse in the year ending March 2017, compared with an estimated 713,000 men.<sup>25</sup>

**However, as is evident from these figures, men and boys are also victims of domestic abuse and responses show that some people both find it hard to identify themselves as a victim and find that they face barriers to reporting these crimes and accessing appropriate support services.** At a consultation

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<sup>25</sup> Office for National Statistics (2017). *Domestic abuse in England and Wales: year ending March 2017*. Statistical bulletin. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2017>.

event focusing on this issue, you highlighted homelessness, unemployment and suicide as consequences of domestic abuse; the complexities of having children with the perpetrator; and the need for services that understand the particular experiences of male victims and can respond to their needs effectively. Since 2005, we have funded the Men's Advice Line, a confidential helpline for men experiencing domestic abuse. We also fund the National LGBT+ Domestic Violence Helpline, which provides information, advice and support to gay, bisexual and trans men (as well as lesbian, bisexual and trans women) who are affected by domestic abuse.

We want to bolster support to male victims nationwide, ensuring all victims are sufficiently captured and no victim is inadvertently excluded from protection or access to services, and to provide a more comprehensive package of supportive measures.

**You said:**

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*“About 40% of male victims don't report it. This needs addressing. Men don't even talk to anyone so when they talk to the police or anyone they need to be believed immediately and given help.”*

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You said that you would like more funding and resource allocated specifically for male victims. You also told us that there should be training for agencies and practitioners, specifically the police, social workers and healthcare professionals, to better recognise and understand male victims. In addition, you want to ensure that relationship education is fully inclusive, recognising that both women/girls and men/boys can be both perpetrators and victims and taking into account the needs of male and LGBT+ victims.

**We will:**

**We will publish a Male Victims' Position Statement to recognise the needs of male victims of domestic abuse, sexual violence and forced marriage, and to clarify the government's position.**

**We will provide £500,000 of funding to improve support to male victims of domestic abuse.**

**We will work with the Crown Prosecution Service (CPS) to improve the gender breakdown of CPS and police data to better understand the numbers of male victims of domestic abuse who engage with the criminal justice system.**

**We will conduct a review of the National Statement of Expectations<sup>26</sup> and, as part of this, consider its impact on the commissioning of male support services. This will work to ensure that commissioners are educated on the complexities of commissioning services that are victim focused, gender aware and provide an appropriate response according to the victim's needs, including for LGBT+ victims.**

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<sup>26</sup> <https://www.gov.uk/government/publications/violence-against-women-and-girls-national-statement-of-expectations>

## Section 3: Transforming the justice process and the perpetrator response

### 3.1 Transforming the police response

**A 2014 report by Her Majesty's Inspectorate of Constabulary that reviewed the police response to domestic abuse victims highlighted a number of failings.**<sup>27</sup> The report, which looked at all 43 police forces in England and Wales, raised issues about culture, attitude and core skills. In response, the then Home Secretary established a National Oversight Group. Over the past four years, the inspectorate has tracked police progress on domestic abuse on an annual basis, and has found that the police response is improving, with domestic abuse now seen as a consistent priority across all police forces.

**The National Oversight Group has overseen a range of new initiatives.** These include the publication of a domestic abuse improvement plan by every police force; new guidance published by the College of Policing; new training and a national standard for the collection of data for crimes recorded as domestic abuse; the introduction of victim improvement surveys; and the publication by the Office for National Statistics of annual data bulletins on domestic abuse.

In response to findings that the Domestic Abuse, Stalking and Harassment and Honour Based Violence (DASH) risk assessment model was being applied inconsistently across all police forces, **the College of Policing has piloted a revised risk assessment tool in three police forces.** Early evaluation has found that the new tool encourages victims to disclose more coercive and controlling behaviour and also increases the accuracy of risk assessments.

**We have seen innovation in a number of police forces.** The Home Office provided £6.7 million through their Police Transformation Fund to the Northumbria Police and Crime Commissioner, to develop a whole-system approach to domestic abuse. This includes measures to improve effective working within the criminal justice system; partnership work with civil and family courts; multi-agency victim support and offender management; and trials of body-worn cameras to strengthen cases for the prosecution. Early outcomes have been positive, with the multi-agency tasking and co-ordination pilot achieving a 65% reduction in reoffending in relation to domestic abuse-related offences.

**Prosecutions and convictions for domestic abuse have risen since 2010** – by 20% and 28% respectively. However, we have seen a slight fall in the number of prosecutions and convictions in 2018 and a decrease in the number of cases referred by the police to the CPS, which we are working to address.

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<sup>27</sup> Her Majesty's Inspectorate of Constabulary (2014) *Everyone's Business: improving the police response to domestic abuse*. Available at: [www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf](http://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf).

We also recognise that there are still challenges involved in investigating domestic abuse-related offences, with recent data from the Office for National Statistics showing that 49% of domestic abuse-related violence offences had evidential difficulties where the victim did not support action and 22% had evidential difficulties where the victim did support action.

**You said:**

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*“Some victims don’t trust the police or law enforcement, they don’t think that anything can be done because generally they have tried to report before and nothing has changed.”*

*“There [are] still cultural issues within the police ... We can be robotic in our approach, forcing arrest and insisting victims give statements. We can alienate victims and increase the risk to them.”*

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On the subject of improving the police response and outcomes for victims, your overwhelming view was that more training should be given to police officers. This included training to raise awareness of the dynamics of domestic abuse, training on how to recognise potential warning signs when taking the initial call and responding to a call-out, and training on sensitivity towards potential victims. You also mentioned more focused training on controlling and coercive behaviour, which you said was still not widely understood among all police officers. The importance of the police adopting a multi-agency approach, including signposting victims to third sector services, was also highlighted.

You said that you would like to see specialist domestic abuse police officers or standalone domestic abuse units within police forces. You highlighted that a key area to focus on for these new officers or units would be the initial response. You also highlighted the need for police to more effectively use their existing tools and powers, including the effective use of bail provisions, using body-worn cameras correctly, using better enforcement of protection orders, and using a more consistent application of Domestic Violence Disclosure Scheme. You also said that the police should maintain regular contact with victims and keep them better informed about the progress of the investigation. On the wider criminal justice response, you said that more evidence-led prosecutions should be brought forward, to reduce the burden on the victim.

**We will:**

**We recognise that there are further areas in which the police response to domestic abuse could be improved.** You have identified that a key issue concerns training, so we will consider how best to ensure that all police forces receive adequate training on domestic abuse. A number of forces have completed the Domestic Abuse Matters training and we are working with the College of Policing and the National Police Lead to ensure that this training or an equivalent is rolled out across all forces. **We will provide additional funding to support the further rollout of Domestic Abuse Matters training.**

**In order to raise the status and standard of police support for vulnerable victims, the College of Policing is designing a ‘licence to practice’ model for high risk and high harm areas of policing.** It is working with policing practitioners to develop a learning programme for strategic police leaders who have responsibility for public protection and safeguarding, including around domestic abuse.

Guidance already exists regarding tools and powers, including bail, body-worn cameras, protection orders and Domestic Violence Disclosure Scheme. However, we are considering how this guidance can be improved. **In order to effectively disseminate this guidance to all police forces, we are considering introducing a national effective practice toolkit.**

**We will continue to drive forward progress on the police response to domestic abuse** through the National Oversight Group, and will work closely with the College of Policing, the National Policing Lead and Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services. **We will continue to assess the police response to domestic abuse as part of the PEEL 2018/19 assessment which is the annual process of bringing together all the evidence from police force evaluations across the country**

**The College of Policing will undertake further testing of the new risk assessment process to establish whether it supports identification of coercive control and therefore offers better protection for domestic abuse victims.** It will also consult on the advice given to police on stalking and harassment so that the difference between the two offences is better understood, and the risks associated with stalking are identified and dealt with more effectively.

**We will continue to work closely with the police and the CPS to ensure perpetrators are brought to justice, as well as to further protect victims of abuse.** The CPS will continue to work closely with the police locally and nationally to ensure that appropriate referrals are made by the police and to address any fall in referrals where needed. Specific guidance will be updated to help prosecutors address complex issues involving witness attrition, to outline the appropriateness of charging or diversion from the criminal justice system for female offenders who have been previous victims of crime – especially for victims of domestic abuse or sexual exploitation – and to help challenge myths and stereotypes about the experience of male victims.

**We will seek to increase the effectiveness and number of evidence-led prosecutions where the victim does not support action.** Her Majesty’s CPS Inspectorate and Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services will conduct a joint inspection of the effectiveness of cases which are prosecuted on evidence other than that provided directly by the victim.

**We will continue to roll out body-worn cameras, which have been shown to have a positive impact on the number of charges made and can strengthen the case for prosecution.** Since 2013, we have provided £5 million funding to forces to trial body-worn cameras. At the end of 2017, more

than 65,000 devices were in use throughout all 43 forces. By 2019, current deployment and procurement plans will take that figure to nearly 81,000' devices.

## 3.2 Criminal justice system

### 3.2.1 Controlling or coercive behaviour offence

**In December 2015, we introduced a new offence of controlling or coercive behaviour in an intimate family relationship.** This offence is specific to domestic abuse and allows for justice to be sought against perpetrators whose behaviour includes a course of conduct of psychological and emotional abuse.

**In the year ending March 2018, a total of 9,053 offences of coercive control were recorded by the police and prosecutions for 960 offences were commenced at magistrates' courts.** This is encouraging, and suggests that there is a growing awareness of the offence among the police, the CPS, the wider criminal justice system and members of the public. However, we recognise that there is further work to do to raise awareness, improve understanding of the offence and increase the number of prosecutions.

**We also recognise that there are key similarities between controlling or coercive behaviour occurring within an intimate relationship and stalking behaviours, particularly those related to control, surveillance, intimidation and manipulation of the victim.** We also recognise that this can take place when an abusive intimate relationship has ended or the perpetrator and the victim are no longer living together. Where domestic abuse continues post-separation, particularly where this involves economic abuse, we want to ensure that guidance makes it clear when the behaviour should be addressed under the coercive control offence or the stalking and harassment offence.

**We are supporting Dr Sarah Wollaston's Stalking Protection Bill which will introduce new civil Stalking Protection Orders.** Subject to the passage of the bill, Stalking Protection Orders will be available to protect both victims of so-called 'stranger stalking' and victims of stalking in a domestic abuse context where appropriate.

#### You said:

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*"Controlling and coercive behaviour is difficult to quantify and explain. It is devastating. Greater understanding that abuse is never a 'loss of control', it is always 'total control', would go a long way to helping victims come forward."*

*"We need to start joining up the dots between different crimes to close the net on coercive and controlling domestic abuse perpetrators."*

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A total of 73% of you said that there was further action the government could take to strengthen the effectiveness of the offence of controlling or coercive behaviour.

Most responses called for improved understanding and awareness of the offence among statutory officials, including both the police and people working within the criminal justice system, so that victims are better protected and supported. Many responses also highlighted the need for improved understanding and awareness among the wider public. Both of these measures could translate into increased reporting, more cases going to court, and more successful convictions and prosecutions.

Responses also suggested amending the current law to include abuse perpetrated by ex-partners or partners who were no longer living with the victim. Respondents wanted the offence to recognise that abuse can happen even after the relationship has ended or partners have separated.

Responses called for economic abuse to be recognised as part of controlling or coercive behaviour, as well as abuse perpetrated through the courts system and through child contact arrangements, all of which can occur post-separation. This would also help to highlight and recognise the impact of controlling or coercive behaviour on children.

#### **We will:**

**We will improve understanding of the offence throughout the justice system**, and work to dispel stereotypes by promoting the updated statutory guidance for the offence through the courts and justice system. This will help to increase the number of cases that are brought, charged and successfully prosecuted under this offence.

We have also looked at the feasibility of extending the offence so that it covers abuse perpetrated by an ex-partner who no longer lives with the victim. We have concluded that this behaviour is already captured under existing stalking and harassment legislation.<sup>28</sup> However, from what you and our key sector stakeholders have said, it is clear that the relationship between these offences is not well understood, and this is sometimes a barrier to the effectiveness of the controlling or coercive behaviour legislation. **We want to make sure that victims are protected after a relationship has ended, so we will issue statutory guidance to the police on future Stalking Protection Orders to ensure it is clear that the order can be used in domestic abuse contexts as appropriate.**

We will also update the statutory guidance and CPS legal guidance for the controlling or coercive behaviour offence. The updated guidance will include:

- economic abuse, and how this form of abuse can manifest itself as part of coercive control

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<sup>28</sup> See Crown Prosecution Service (2017) *Controlling or Coercive Behaviour in an Intimate or Family Relationship*. Available at: [www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship](http://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship).

- a guide to how abuse can be perpetrated through both the criminal and family court systems, including through child contact arrangements
- further details on how witnessing domestic abuse or living in a household where domestic abuse is perpetrated can impact upon children

We feel that real change can be made by raising awareness and improving understanding of the offence in statutory agencies, and we are therefore not currently proposing to amend the legislation. **However, we will commit to reviewing its effectiveness to ensure it is fit for purpose, and that it adequately protects victims from abuse.**

### 3.2.2 Special measures

**Special measures are provisions put in place in the criminal courts for vulnerable and intimidated victims when the court is satisfied that the measures will improve the quality of the evidence given.** There are a range of special measures available, and eligibility depends on the particular needs and views of the victim. The most common special measure is a screen that allows the victim to give evidence without being seen by the defendant or the public gallery.

**Currently, parties can apply for special measures on behalf of victims, or the court may direct the use of special measures on its own.** For victims of offences involving domestic abuse, this is done on the basis that they are eligible under section 17 of the Youth Justice and Criminal Evidence Act 1999. The decision on whether to grant special measures in the courtroom is up to the presiding judge, depending on whether the measures would improve the quality of evidence given, and whether they would inhibit a party effectively testing that evidence.

**We sought views on whether creating a legislative assumption that victims of offences involving domestic abuse would be eligible for special measures on the grounds of fear and distress would support more victims in giving evidence.** This would mean that it would not be necessary to establish that the witness is in fear or distress, but only that they were a victim of an offence involving domestic abuse and that the provision of such measures would improve the quality of their evidence. It would still be the decision of the presiding judge whether to grant the use of special measures in relation to a particular witness.

#### You said:

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*“Unless you have experienced how difficult it is to tell just one person of what has happened, you will have no concept of how much harder it is to tell an entire room of strangers ... Anything that helps victims have voice and the courage to speak up is vital.”*

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Of those who answered the question, 83% said that access to special measures for victims of domestic abuse should be automatic, and that if the government

provided this you would have more confidence in the criminal justice system. You also said that the use and availability of special measures should be increased, that court staff need to have a better understanding of a victim's needs, and that there should be specialist advocacy for the victim. You raised the issue of trial length and said that you wanted us to speed up the trial process, and increase the provision of specialist domestic violence courts. You suggested that evidence captured by police body-worn cameras should be used more in court.

**We will:**

**We have listened to your responses about the provision of special measures.** The draft Domestic Abuse Bill will put forward proposals for legislative changes to provide for automatic eligibility for special measures in domestic abuse cases, removing the burden on the victim to prove they are in fear or distress. The judge will still make the final decision on which special measures will be appropriate in each case.

**We also recognise the issue of trial length and have already made significant steps towards speeding up this process.** The Single Justice Procedure was introduced in 2015 to deal with less serious offences where there is no named victim involved, such as travelling on a train without a ticket, failing to register a change in car ownership or failing to pay for a TV licence. Cases are dealt with quickly and efficiently and decided on the papers by a single magistrate without the defendant or prosecution having to attend court. This enables the courts to focus on more serious and complex cases.

**We will improve the court environment, with new waiting areas designed to ensure victim safety and a new court design guide focusing on accessibility for the most vulnerable.** Model waiting rooms for victims and witnesses have already been established in five criminal courts across the country. These are intended to improve the experience of the criminal justice system for all victims, including victims of domestic abuse.

Her Majesty's Courts and Tribunals Service is using these model waiting rooms along with a new design guide and the results of a facilities audit to target further improvements. As an early priority, it is focusing on **increasing the number of privacy screens available to allow vulnerable and intimidated victims and witnesses to give evidence without being seen by the defendant or the defendant's family.**

We will continue to use video links to allow vulnerable and intimidated victims to provide evidence away from the defendant and courtroom altogether. In addition, **the CPS is revising its legal guidance on special measures so that victims and witnesses can better understand what help might be available.** Her Majesty's Courts and Tribunals Service and the Ministry of Justice will develop a series of videos to explain the process of giving evidence to court and how special measures might assist.

**The National Criminal Justice Board, which is responsible for supporting local boards to bring more offences to justice, has overseen a cross-criminal justice system deep dive project to develop and test a best practice framework for use in domestic abuse cases.** This is a multi-agency project which analysed courts with high conviction rates for domestic abuse-related offences to identify the key reasons behind their performance and how these practices might be extended to other courts. There has been great innovation in the test sites, with the introduction of initiatives such as an IDVA car service, networking sessions between criminal justice agencies and victim support services, and refresher briefing sessions for magistrates.

Since September 2018, domestic abuse regional leads have been co-ordinating the implementation of this best practice framework locally. **We will continue to raise awareness of the framework and will develop implementation plans in preparation for the go-live date of the framework in January 2019.** In 2018/19, the National Domestic Abuse Best Practice Delivery Group will also support regional areas in their implementation of the domestic abuse deep dive best practice and revised specialist domestic abuse court model, which are specially adapted magistrates' court hearings that seek to increase the number of successful prosecutions and improve victim safety.

### 3.2.3 Cross-examination

**In criminal proceedings, if a defendant is unrepresented then the court can make an order for the defendant to be prevented from cross-examining the victim in person.** If this happens, the court is able to appoint a lawyer to represent the defendant. This can also be done through an application by the prosecution or by the court on its own. Under this provision, a court is currently able to prevent an alleged perpetrator of domestic abuse from cross-examining a victim.

**In proceedings relating to certain offences, including sexual offences, modern slavery offences, child cruelty, kidnapping, false imprisonment and assault, there is a prohibition on victims being cross-examined by an unrepresented defendant.** This provides reassurance to the victim as they know from the outset that they will not be cross-examined by the accused.

**We sought views on whether we should create a legislative prohibition for victims of domestic abuse in criminal proceedings,** and used the consultation as a call for evidence to determine whether there have been instances in criminal proceedings when an application to prevent cross-examination of a victim by an unrepresented defendant has been denied in a domestic abuse case.

**The family courts do not currently have the same express legislative powers that the criminal courts have to prevent cross-examination in person.** It is possible for judges in family proceedings to use their general case management powers to prevent a victim from being cross-examined in person by a perpetrator, but currently the family court is not able to appoint a legal representative to represent the victim and carry out the cross-examination in

their place. This means that in some cases the courts are unable to prevent victims from being cross-examined by their abuser.

#### You said:

Through your responses to the consultation and from your feedback at stakeholder events, you said that the courts' existing powers are sufficient to prevent a domestic abuse victim from being cross-examined by the accused in the criminal court. You also said that judges in the criminal jurisdiction have sufficient exposure to these issues to ensure that witnesses who may be intimidated by being questioned by the accused are protected.

Although we only asked about cross-examination in the criminal courts, your responses to this question overwhelmingly focused on family proceedings. You were unanimous on the need to give family courts the power to stop unrepresented perpetrators of abuse directly cross-examining their victims. This was also a key issue raised with us through stakeholder events.

#### We will:

**We have listened to your views on cross-examination in the criminal courts.** We used this question as a call for evidence to establish whether there was a need to create a legislative prohibition over direct cross-examination, and we received no evidence in response that the protections in the criminal court were inadequate. On this basis, we do not intend to create a legislative prohibition in the criminal courts.

**However, your responses overwhelmingly called for sufficient protections to be introduced into the family courts.** We recognise the importance of introducing new powers into the family court system to prohibit direct cross-examination of a victim by their abuser, and the consultation document reiterated our commitment to legislate on this. **We have therefore included these measures in the draft Domestic Abuse Bill.**

#### 3.2.4 Court communication

**We want to ensure that victims have confidence in the justice system.**

Victims need to have confidence that the justice system is a fair, impartial system that understands the dynamics of domestic abuse and recognises the full spectrum of behaviours that may occur within it.

**We recognise that the justice system can be daunting,** and that the current process can be re-traumatising, particularly when victims are repeatedly asked to recount their experiences of abuse. We know that over half of cases flagged as domestic abuse result in a non-conviction due to an issue with the complainant, which includes cases where a victim has chosen to disengage with the process. We recognise that there is much more we can do to support victims through this process to stop this from happening.

**There are measures in place to support victims using the justice system.**

These include the Witness Care Unit, which acts as the single point of contact for victims and witnesses to access updates on their cases. We want to ensure

that court communication with victims of domestic abuse provides adequate support during what can be a traumatic process, and provides sufficient reassurance to victims to facilitate their access to justice.

**You said:**

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*“The one thing that I am totally unsure of is what support measures I or any other victim can reasonably expect. It would be extremely helpful if there were easily accessible guides on this available to victims. This would take some of the uncertainty out of the process.”*

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Of those who responded to the consultation, 68% of you felt that there was more to be done to explain what help is available to support victims in court. Many of you thought that there should be an increase in sharing data between agencies, and that there was a lack of awareness of what services and support are available for victims of domestic abuse. You said that there should be increased publicity about this support, that there should be an increased use of IDVAs and that legal aid should be more widely available.

**We will:**

**We recognise that there is much more we can do to support victims through the criminal justice system process, and we want to improve the way we deliver our services to court users.** This includes improving our digital offer to victims, providing victims with a greater choice of the way in which they access services, and reviewing the information available on criminal justice system webpages to ensure that information is easier to navigate and understand. **We want to ensure that victims are provided with services that are more accessible and convenient.** We will also tailor these services to the needs of individual victims – for example, by providing face-to-face support for the most vulnerable victims.

**We recognise that even if we improve the services we offer to victims of domestic abuse, they still do not always know what services are available to them.** We will improve our overall victim communication, including when explaining a decision not to prosecute and signposting for routes to review CPS decisions and to access the Criminal Injuries Compensation Scheme.

**In 2018 we recruited 25% more registered intermediaries.** We are continuing our programme of recruitment through 2019 to ensure that victims and witnesses with communication needs have timely access to the specialist assistance that they require to be able to give evidence. We also want to help victims to feel more comfortable when telling their story, and so we aim to give victims more choice over how and when they wish to give their witness statement and their victim personal statement. **We will review the support that is provided to victims, including by IDVAs,** to ensure that they can make the best use of their role to support victims of domestic abuse.

### 3.2.5 Introducing a statutory aggravating factor

**Having the right legal framework is essential to enable the courts to deal effectively with perpetrators of domestic abuse.** We think that sentencing should recognise the devastating impact that domestic abuse has on victims. This includes children who are witnesses, children who live in a house where domestic abuse is perpetrated, and children who are used as emotional collateral to torment victims.

**To provide courts with guidance when sentencing offences linked to domestic abuse, the Sentencing Council published a revised set of domestic abuse sentencing guidelines in February 2018.** The guidelines came into effect in May 2018, and outline a non-exhaustive list of aggravating factors which could lead to a higher sentence being imposed. Courts have a statutory duty to follow sentencing guidelines unless they consider that doing so is contrary to the interests of justice.

**We asked whether we should consider creating a new statutory aggravating factor that would apply to domestic abuse-related offences.** Under this approach, courts would consider any aggravating factors and increase sentences accordingly within the statutory maximum penalty available for the offence. However, a statutory aggravating factor would require the domestic abuse aggravation to be established beyond reasonable doubt, which risks placing evidential burdens on the police and the CPS, and increases the potential for more defendants to plead not guilty to the charges.

#### You said:

Of those who responded to the question, opinions were mixed. Some 47% of you were in favour of creating a statutory aggravating factor, 13% were against, and the rest selected either don't know or no answer. Those in favour argued that creating a statutory aggravating factor would reflect the impact of domestic abuse on the victims involved, including children. Others thought it would help offences involving domestic abuse to be taken more seriously and lead to sentences that better reflect the gravity of the offence.

Some of you expressed reservations about the proposal, including concerns that it may require more children to give evidence, which might cause more victims to withdraw from proceedings in order to avoid having to subject their children to appearing in court and that it could potentially reduce the number of guilty pleas. You said that *"it is likely that more children will be called to give evidence in cases involving domestic abuse"*, and that you are *"concerned that the result of introducing a statutory aggravating factor may result in an increase in not guilty pleas from perpetrators"*. There were also comments that it could undermine judicial discretion. Many of you also noted the importance of letting the new sentencing guidelines bed in first to see what impact they have.

#### We will:

**The new sentencing guidelines recognise that the domestic context of offending behaviour makes the offence more serious, because it represents**

a violation of the trust and security that generally should exist between people in an intimate or family relationship. The guidelines acknowledge that domestic abuse can inflict long-term trauma on victims and their families, especially children and young people who may witness or have an awareness of its occurrence. Courts are now directed to guidelines which acknowledge that many different offences can involve domestic abuse, and that they should seek to ensure the sentence reflects that an offence has been committed within that context.

**We will work with our stakeholders to understand how the new sentencing guidelines are working in practice** and whether the concerns raised by those who were in favour of this proposal have been sufficiently addressed by the guidelines. We will carry out an internal review, once the guidelines have been in place for a year, to assess whether legislation in this area is needed. If the review concludes that legislation is required, we will include such measures in the Domestic Abuse Bill when it is introduced.

### 3.2.6 Conditional cautions

**Out-of-court disposals are measures that allow the police to deal with lower risk offending in a proportionate manner.** One such measure is a conditional caution, which requires an adult offender to comply with conditions that are rehabilitative, reparative or punitive. If the offender fails to comply, they may subsequently face prosecution for the offence.

**Current guidance from the Director of Public Prosecutions restricts the use of conditional cautions in cases of domestic abuse.** The guidance says that this is because such a measure would rarely be appropriate.

**A trial project, called Project CARA, gave permission for conditional cautions to be issued for lower risk, normally first time reported, domestic abuse incidents.** The evaluation of the project showed that the combination of a conditional caution and a workshop had a positive effect on reoffending rates, in comparison with those of people receiving just a conditional caution. This indicates the need for more widespread testing, so we intend to build this evidence base by first looking at rehabilitation programmes for eligible domestic abuse offenders.

#### You said:

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*“There needs to be an alternative that can support rehabilitation of the offender. Victims usually just want the behaviour to stop; the conditional caution would provide some options in relation to lower level offending. This could encourage victims to report sooner.”*

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Of those who responded to the question, 52% supported further trials of conditional cautions and 18% were opposed. Those in favour suggested that further trials might “*encourage early intervention and prevent escalation of risk for the victim*”.

You recognised that support for further testing of conditional cautions could contribute to the evidence base in a controlled way. However, you also highlighted the importance of ensuring that perpetrators fully completed rehabilitation programmes which “*would need to be robustly supported by enforcements if the perpetrator did not engage*”, and that these programmes would need to be of high quality.

You highlighted that the first reported offence is not necessarily the first domestic abuse incident, and would be concerned if a conditional caution were offered to repeat offenders. You suggested it would be important to consider victim engagement, early education and behavioural change as part of pilots.

### **We will:**

We are committed to building evidence on the effectiveness of early rehabilitative intervention to tackle domestic abuse offenders. **The Director of Public Prosecutions has agreed for some police forces to pilot conditional cautions for lower risk first reports of domestic abuse**, building on the success of Project CARA. Conditional cautions, when used appropriately and when feeding into good local early intervention programmes for offenders, could reduce reoffending.

**The CPS is working with the National Police Chiefs’ Council to agree a robust minimum standards framework for participating forces** to ensure that there is a consistent approach to eligibility and a high-quality intervention for perpetrators, as well as a robust evaluation and monitoring process. Issues and concerns raised in this consultation have been considered as part of the design of the minimum standards. Only lower-level first reports of domestic abuse where there is no evidence of controlling or coercive behaviour are in scope of the pilots. On an ongoing basis, the CPS, police partners, the Ministry of Justice and the Home Office will discuss any challenges or implementation issues arising from these pilots.

### **3.2.7 The Istanbul Convention: extra-territorial jurisdiction**

**The Council of Europe’s Istanbul Convention is an international set of standards designed to prevent and combat violence against women and domestic violence.** It was adopted on 7 April 2011 and came into force on 1 August 2014. The UK signed the convention on 8 June 2012 and we are committed to ratifying it as soon as possible.

The full version of this consultation set out how the government proposed to satisfy, in England and Wales, the UK’s obligations under Article 44 (jurisdiction) of the Istanbul Convention, and why the government believes that our national law already satisfies our obligations under Article 40 (sexual harassment).

#### *Extra-territorial jurisdiction*

A key element of the convention is making sure that ratifying states can use their national law to prosecute offences required by Articles 33–39 of the

convention when they are committed by their nationals or residents overseas.<sup>29</sup> The consultation set out a list of offences over which the government proposed to take extra-territorial jurisdiction. The list included the offence of procuring abortion under section 58 of the Offences Against the Person Act 1861, but did not include the common law offence of murder for which the courts in England and Wales already have extra-territorial jurisdiction to a significant extent.

### You said:

A small number of you responded to this question: 286 of you agreed that taking extra-territorial jurisdiction over the listed offences would be sufficient to satisfy the jurisdiction requirements of the convention, and 143 disagreed. This means that 23% of you agreed with the proposal and 12% disagreed, with 65% of you saying either you didn't know or no answer. Those of you who disagreed suggested several other offences over which extra-territorial jurisdiction should be taken. However, most of the other offences suggested are not offences required by the convention, such as burglary and fraud, so there is no requirement to have extra-territorial jurisdiction over them. Some of the other offences suggested were ones where we already have extra-territorial jurisdiction, such as female genital mutilation and forced marriage.

Some of you expressed concern that jurisdiction for offences of murder and manslaughter does not go far enough, in the belief that the courts of England and Wales do not have jurisdiction over non-British nationals who commit these offences outside the UK.

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*“The major and serious omission from this list is domestic violence-related homicide. The government has said that the common law offence of murder is already subject to extra-territorial jurisdiction – however, current criminal law only extends extra-territorial jurisdiction to crimes committed by a British national or subject and not British resident, as some BAME perpetrators live in the UK as residents not citizens.”*

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Others of you expressed significant concerns about the proposal to take extra-territorial jurisdiction over the offence of procuring abortion, and the implications of this for women in Northern Ireland, following the Supreme Court judgment of 7 June 2018 in a case brought by the Northern Ireland Human Rights Commission (NIHRC).<sup>30</sup>

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<sup>29</sup> Article 44 read with Article 78 (reservations). See Council of Europe (2011) *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*. Available at: <https://rm.coe.int/168008482e>.

<sup>30</sup> The NIHRC was seeking a declaration that abortion law in Northern Ireland is incompatible with the European Convention on Human Rights (ECHR). A majority of the Supreme Court found that the NIHRC did not have standing to bring the application for judicial review, and dismissed the appeal on that basis. But the Supreme Court nevertheless went on to deliver substantive judgments and a majority considered that the current law in Northern Ireland is disproportionate and incompatible with Article 8 ECHR insofar as it prohibits abortion in cases of (a) fatal foetal abnormality, (b) pregnancy resulting from rape and (c) pregnancy resulting from incest.

## We will:

The draft bill 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 the UK. **This will ensure that the law in England and Wales meets the requirements of the Istanbul Convention.**

Section 9 of the Offences Against the Person Act provides the courts of England and Wales with extra-territorial jurisdiction over British citizens who commit murder or manslaughter outside the UK. This provision does not include a non-British national who is habitually resident in the UK. A provision in the Suppression of Terrorism Act 1978, however, provides the UK with extra-territorial jurisdiction over murder and manslaughter committed: (a) in specified convention countries<sup>31</sup> by persons of any nationality; and (b) in cases where the person is a national of a convention country, and not a UK citizen, and the offence is committed in a third country. Despite its title, the Act does not only apply to terrorism-related offences, but to any offences specified in Schedule 1, including both murder and manslaughter.

The effect of these two statutory provisions is to provide extra-territorial jurisdiction in all cases where murder or manslaughter is committed abroad by a UK national and in most cases where those offences are committed abroad by a person who is habitually resident in the UK. There is, however, a small gap in UK law where murder or manslaughter is committed abroad by UK residents who are not nationals of 'convention countries' for the purposes of the Suppression of Terrorism Act. For example, the courts in England and Wales would not have jurisdiction over a UK resident of Pakistani nationality who commits murder in Pakistan.

**We will therefore include provisions to close this gap so that the courts in England and Wales have jurisdiction in all cases where murder or manslaughter is committed abroad by a person who is habitually resident in the UK.**

The proposal to take extra-territorial jurisdiction over the offence of procuring abortion was intended to ensure that the courts of England and Wales have jurisdiction over criminal acts covered by Article 39(a) of the convention when those acts are committed outside the UK by a UK national or a person habitually resident in the UK.

**Article 39(a) requires parties to ensure that intentionally performing an abortion on a woman without her prior and informed consent is criminalised.** Section 58 of the Offences Against the Person Act 1861 covers such behaviour, but it also covers situations where a woman has given her full and informed consent to an abortion. As highlighted by the consultation responses, we now recognise that taking extra-territorial jurisdiction over the offence of procuring abortion would do more than is necessary to satisfy our

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<sup>31</sup> For the purposes of the 1978 Act, 'convention country' means a country designated in an order made by the Secretary of State as a party to the European Convention on the Suppression of Terrorism.

obligations under Article 39(a), and therefore we now do not intend to take extra-territorial jurisdiction over this offence.

Instead, we believe that our obligations under Article 39(a) can be satisfied by relying on the following offences:

- section 47 of the Offences Against the Person Act 1861 (assault occasioning actual bodily harm)
- sections 18 and 20 of the Offences Against the Person Act 1861 (wounding, causing grievous bodily harm)
- sections 23 and 24 of the Offences Against the Person Act 1861 (administering poison or noxious thing so as to endanger life or inflict grievous bodily harm; or with intent to injure)
- section 1(1) of the Infant Life (Preservation) Act 1929 (child destruction)

**Taken together, these offences cover every stage of a pregnancy in which a forced abortion might take place, while recognising and respecting lawful terminations.**

This alternative approach is supported by organisations seeking to decriminalise abortion in the UK.

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*“Decriminalising abortion may require the creation of explicit new offences to cover forced or coerced abortion; to cover cases where abortion is not consensual, in the future. The welcome government commitment to ratify the convention however, should not be delayed by this process. Taking extra-territorial jurisdictions over the other offences listed – with the addition of the offence of ‘child destruction’, discussed below – will satisfy the requirements of the Convention ... Child destruction is the criminal offence of killing a child who is ‘capable of being born alive’ – and recorded convictions show clearly that it is an offence that is routinely perpetrated by intimate partners in a domestic abuse context.”*

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**We will therefore take extra-territorial jurisdiction over the offences listed in Annex B to satisfy our obligations under Article 44 of the convention.**

#### *Sexual harassment*

The consultation set out the government’s view that the civil law remedy in the Protection from Harassment Act 1997 is sufficient to satisfy our obligations under Article 40 of the convention. Article 40 requires sexual harassment<sup>32</sup> to be subject to criminal or ‘other’ legal sanction, which means that the drafters decided to leave it to the parties to choose the type of consequences that perpetrators of sexual harassment would face.

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<sup>32</sup> Defined as “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person by in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”. The provision is intended to capture a pattern of behaviour whose individual elements, if taken on their own, may not necessarily result in a sanction (see Explanatory Report: paragraph 208).

## You said:

This section of the consultation was about whether the law of England and Wales already complies with the requirements of Article 40 of the convention or whether legislative changes are necessary before ratification. A total of 159 (13%) of you agreed that the civil law remedy in the Protection from Harassment Act 1997 is sufficient to satisfy the requirements of Article 40 of the Convention, while 202 (17%) of you disagreed. Most of those who disagreed called for stronger measures to tackle sexual harassment within the UK.

## We will:

Pursuing a course of conduct which amounts to harassment, and which the offender knows or ought to know amounts to harassment, is prohibited by section 1 of the Protection from Harassment Act 1997. This could include sexual harassment. The 'course of conduct' element accords with the intention of the convention to capture a pattern of behaviour whose individual elements, if taken on their own, may not necessarily result in a sanction.

Section 2 of the Protection from Harassment Act 1997 makes it a criminal offence for a person to breach the section 1 prohibition on harassment, and section 3 provides a civil remedy for an actual or apprehended breach of the prohibition. Our law therefore provides both criminal and civil sanctions against harassment, but Article 40 requires criminal or 'other' legal sanctions so the UK is not required to have both to ratify the convention.

**We will therefore rely on the civil law remedy in the 1997 Act to satisfy the requirements of Article 40 of the convention.** This does not mean that victims cannot have recourse to criminal and other sanctions against harassment as appropriate, but simply that there is no barrier to ratification in terms of sexual harassment because the law of England and Wales is already compliant with the requirements of the convention.

## 3.3 Family justice system

### 3.3.1 Family courts

**We recognise that family court proceedings can be incredibly difficult for victims, and over the past year we have taken several steps to improve the family court process for vulnerable people in the family justice system.**

This includes work with the judiciary on improved guidance for family judges on vulnerability, new court rules, and an accompanying Practice Direction 3AA aimed at improving in-court protections such as protective screens or giving evidence via video link. This came into effect in November 2017.

**We also introduced a revised Practice Direction 12J, which makes clear that the court should have full regard to the harm caused by domestic abuse when deciding child arrangements,** including the harm that can be caused to children from witnessing such abuse. We have also reformed the

arrangements for making legal aid available to victims of domestic abuse in private law cases, which took effect in January 2018.

**In addition, we provide ongoing training to all professionals working within the family justice system.** Her Majesty's Courts and Tribunal Service is committed to increasing the awareness and understanding of domestic abuse among all family court staff. At the end of November 2017, a new training programme was rolled out to all court staff focusing on the needs of vulnerable court users, including victims of domestic abuse.

**The Judicial College also ensures that awareness and understanding of domestic abuse are addressed on an ongoing basis as part of the College's regular training for family judges and magistrates.** Between April 2016 and April 2018, all family court judges received training from the Judicial College on how to address the challenges faced by vulnerable persons in the courts, including those who are victims of domestic abuse.

We have also allocated £1m funding through the Tampon Tax fund to Finding Legal Options for Women Survivors (FLOWS), a project which provides front-line domestic abuse workers with access to the legal resources they need to adequately safeguard the women they support.

**You said:**

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*“The bill [must] ensure that women and children do not fall between the gaps between the criminal and family courts and that all justice processes prioritise the safety of women and children at risk of harm from domestic abuse.”*

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We did not ask any specific questions in the consultation about reforms to the family justice system, but in your responses and through stakeholder events many of you raised issues about the family courts and the family justice system. You said there is a need for better awareness and understanding of domestic abuse and controlling or coercive behaviour on the part of everyone involved in the family justice process, and that there is an urgent need to stop perpetrators of domestic abuse being able to directly cross-examine their victims in the family court. You called for oversight of child arrangement orders, and for all family justice professionals to have a better awareness of Practice Direction 12J, which outlines the court's requirements in child arrangement or child contact order cases where there is domestic abuse between family members.

You also said that better provision of in-court protection is needed for victims of domestic abuse, and that there is a need for better training for all family justice professionals on perpetrator behaviour and how abuse can be continued through the family justice system. You said that more training is needed on how technology can be misused by perpetrators to further their abuse, including through spyware and GPS tracking on mobile phones. You said that there is a need for better information sharing between jurisdictions, and for more

consistent data collection and more substantial research within the family justice system as a whole.

**We will:**

**We recognise the importance of introducing new powers to the family court system to prohibit cross-examination of a victim by their abuser.** As set out in Section 3.2.2, we are committed to introducing powers to prevent this from happening, and we have therefore included these measures in the draft Domestic Abuse Bill.

**We will improve the in-court protections available to victims of domestic abuse.** We are allocating £900,000 funding to organisations based in a number of family courts to provide specially trained staff who will offer dedicated emotional and practical support to domestic abuse victims before, during and after hearings. These organisations will also deliver a programme of awareness raising amongst key family justice stakeholders and practitioners. We have also asked all family courts to draw up local protocols setting out their operational procedures for dealing with vulnerable court users, and we are committed to ensuring that court staff are aware of and are implementing these procedures.

**We recognise that a better and more consistent approach to information sharing across jurisdictions is needed.** We understand that, currently, information is not shared across jurisdictions, meaning that family court judges are sometimes solely reliant on the information provided by the parties in the proceedings. You have said that this sometimes leads to unacceptable occurrences where orders issued by the family court contradict conditions imposed by the criminal court, and we are exploring options to better share information across jurisdictions to prevent this from happening.

**We also recognise that it is possible for perpetrators of domestic abuse to exercise coercive control over their spouse through divorce proceedings in the family courts,** and that the requirement to show evidence of conduct or separation in a divorce petition may not give equal access to all groups. For example, it is possible that a victim of domestic abuse might well have evidence of their spouse's conduct, but might find it unsafe to disclose due to the nature of the evidence required. This may compel them to remain in an abusive marriage until the requirements of the relevant separation fact could be met.

To address these concerns, in our recently published Reducing Family Conflict consultation we proposed to abolish the ability of parties to contest divorce as a general rule. **We also put forward the proposal that replacing the requirement to evidence conduct or separation may also help victims to move on from the perpetrator at an earlier opportunity.** We will publish our full response to the consultation in due course.

**We will continue to work with our stakeholders on what more can be done to support victims of domestic abuse in the family courts.**

### 3.3.2 The Children and Family Court Advisory and Support Service

**The Children and Family Court Advisory and Support Service (Cafcass) is appointed by the family court to safeguard and promote the welfare of the child.** It gives advice to the court, makes provision for the child to be represented, and provides information, advice and other support for the child and their family. Its role in private law proceedings is to provide the court with the information needed for a safe decision to be made about arrangements for whom the child should live or spend time with and what is in the child's best interests.

**The Cafcass social worker, known as a Family Court Adviser, writes a safeguarding letter to the court** which includes checks with police and local authorities, as well as interviews with both parties. If the court requires further work, this is usually in the form of a Section 7 report. Section 7 reports provide the court with relevant information about the child's welfare, as well as the practitioner's assessment of what is in the child's best interests.

#### You said:

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*"[The] recognition of harm on children must also go hand in hand with Cafcass and be considered in child contact arrangements. I have seen all too often the devastating impact where perpetrators are not interested in the wellbeing of their children and simply use child contact as a means of exerting power and control over their victims."*

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We did not ask any specific questions about the family courts or the role of Cafcass, but many of your responses to other questions highlighted the need to ensure that victim and child safety come first in all family court decisions and all Cafcass recommendations to the family court about whom the child should live or have contact with. You said the presumption that contact with both parents is in the best interests of the child is putting victims and their children at risk. You particularly highlighted concerns over Cafcass' guidance documents on domestic abuse and parental alienation. You also said that there is a need for better training for Cafcass practitioners on the dynamics of domestic abuse, on controlling or coercive behaviour, and on recognising perpetrator tactics.

#### We will:

**Cafcass takes victim and child safety extremely seriously**, and it follows the direction of legislation and Practice Direction 12J that *"in proceedings relating to a child arrangements order, the court presumes that the involvement of a parent in a child's life will further the child's welfare, unless there is evidence to the contrary"*. A key role of Cafcass social work practitioners is to identify and assess those issues that could affect the child's welfare, including domestic abuse, and to advise the court on the implications for child arrangements. To aid in the assessment of domestic abuse, Cafcass practitioners use evidence-based tools in the Domestic Abuse Practice Pathway, which was commended by Ofsted in its recent inspection of Cafcass.

**Cafcass has listened to stakeholder views in developing its Child Impact Assessment Framework.** In April 2018, Cafcass held a series of discussion groups with a range of sector experts and family justice stakeholders, and the feedback received during these events, including feedback on the new referral pathways, has informed the design of the updated framework. **The Child Impact Assessment Framework was published in October 2018**, and brings together and strengthens existing guidance and tools along with introducing new tools that practitioners can use to assess different case factors. All Cafcass practitioners working in private law will be trained in the use of the framework by the end of March 2019.

**In response to stakeholder comments, Cafcass has restructured this framework to begin with the question, ‘What is happening for this child?’** Cafcass has also removed alienation from the harmful conflict guide, and has developed its guidance on identification and response to alienating behaviours as part of a wider guide supporting assessment of child refusal. **The guide emphasises that the first step in assessing reasons for child resistance is to consider whether an appropriate justified rejection is present, including any indicators that the child’s resistance is due to domestic abuse or any other form of harmful parenting.** The guide also emphasises that children may be subject to controlling or coercive behaviour as part of a longer history of the perpetrator controlling the victim and continuing their abuse through litigation in the family court.

**Cafcass has also renamed the ‘high conflict pathway’ the ‘harmful conflict guide’, to emphasise that conflict that is harmful to the child is not limited to high conflict.** Cafcass recognises that, as with all forms of harm to children, conflict can vary in nature, intensity and impact. The new framework emphasises that domestic abuse and harmful conflict are two distinct behaviours and should not be conflated or referenced interchangeably. Where cases feature allegations or indicators of both domestic abuse and harmful conflict, Family Court Advisers must prioritise the assessment of domestic abuse and check that the risk has been adequately and safely considered before assessing harmful conflict. In all cases, the primary focus is on the impact on the child, not the labelling of parental behaviours.

**Cafcass is committed to continuous learning and up-to-date training.** It has a range of tools for identifying domestic abuse, assessing its impact and making recommendations to the court about programmes to address perpetrator behaviour, and the implications for child arrangements. Guidance and programmes have been developed in collaboration with a range of organisations with specialist knowledge of domestic abuse. In addition, **Cafcass has recently commissioned additional training from Barnardo’s on the domestic violence risk identification matrix tool**, and it has recently introduced a new e-learning package for its practitioners on controlling and coercive behaviour, which was developed in collaboration with SafeLives and Research in Practice.

### 3.3.3 Legal aid

**We are committed to ensuring that legal aid and other forms of legal support are available to victims of domestic abuse and child abuse.** To be eligible for legal aid, applicants must usually have a legal issue that is in scope, that meets any relevant merits test, and meets any relevant means criteria.

**In emergency situations, legal aid is available without any evidence requirements and the Legal Aid Agency has the power to waive all upper financial eligibility limits.** An example of an emergency situation may be if a victim of domestic abuse needs a non-molestation order to protect them or their children from being harmed. In this case, their solicitor would be able to grant emergency representation straight away even if the victim's income or capital exceeds the eligibility limits, although a contribution from them may be required later.

**The Legal Aid Agency has put several steps in place to ensure high-quality advice is delivered in domestic abuse matters.** The agency requires that providers who deal with a large number of matters must employ at least one member of staff with specialist training, and that providers under the 2018 contract must employ a full-time supervisor who is either a member of the Law Society's Family Law Advanced Accreditation Scheme or is a Resolution Accredited Specialist in domestic abuse. Providers must also have appropriate arrangements in place to refer clients to local family support services, and have access to details of services locally available, and they must offer a first appointment to their client within a defined time limit.

#### You said:

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*“Survivors must have access to high-quality, non-means tested legal representation. The need for this is clear in regards to domestic abuse victims and survivors, particularly as professional legal representation in the courts is essential but expensive and many survivors are unable to afford this representation, particularly if they have experiences of economic abuse.”*

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You highlighted the need for victims of domestic abuse to have access to high-quality legal representation, who in turn must have a clear understanding of all forms of domestic abuse. You also emphasised the need for the legal aid means test to be reviewed. You pressed the need for the income thresholds to be adjusted to ensure that victims on modest incomes are able to access legal aid, and stressed the need to allow an exception to the capital means test for victims of domestic abuse, especially victims of economic abuse who are often unable to access capital from shared assets. You highlighted the issue of some GPs charging fees to provide evidence letters of domestic abuse in support of applications for legal aid, and that this can act as a barrier for victims trying to access legal aid.

## We will:

**In 2018, we made changes to legislation that aimed to make it easier for victims of domestic abuse to obtain and provide the evidence required to access legal aid**, and to reduce the risk of victims not being able to obtain the required evidence. We introduced new forms of evidence, expanded the scope of existing evidence and removed the time limit from all forms of evidence for domestic abuse and child abuse.

**We have already started to see a difference:** the latest statistics for July to September 2018 show an increase of 15% in applications by domestic abuse victims for legal aid in family cases compared to the same period of the previous year, without an observed increase in the rate of rejection due to evidence requirements.

We are aware that some GPs have been charging to provide letters as evidence of domestic abuse to support legal aid applications. Charges for services provided by GPs are set through the contractual relationship between GPs and the NHS. However, the changes introduced to January 2018 aim to **the revised legislation aims to reduce the reliance on GPs by broadening the categories of health professionals who can provide evidence letters for legal aid applications, so that now any medical practitioner or health professional who is registered with a relevant regulator body can provide this evidence**. We are also working with the DHSC to see if there is anything more we can do to reduce this reliance.

We are conducting a post-implementation review of the changes made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. This will be an evidence-based review of the effects of the legislation when considered against its original objectives, and will include an assessment of the effect of changes to legal aid provision for private family law cases. The review is also an opportunity to inform wider consideration of the future of legal support in the justice system. **We have engaged with more than 100 organisations and individuals as part of the evidence-gathering phase. Having finalised this engagement at the end of November 2018, the review is now near completion and will be published in early 2019.**

## 3.4 The perpetrator journey

**Domestic abuse usually occurs as a repeated pattern of behaviours, with some perpetrators abusing multiple partners over a number of years.**

To reduce and prevent domestic abuse, it is vital that we tackle perpetrators, including repeat and serial perpetrators, to stop them offending and to ensure that victims are properly protected by the justice system.

**Perpetrator interventions are available for those who have been convicted of offences and those who may be at risk of re-offending.** Her Majesty's Prison and Probation Service delivers interventions to those convicted of an

offence, and these interventions can be made a requirement of community sentence, or a condition of release.

**There are also options for interventions for perpetrators who have not been convicted of an offence.** These interventions can be delivered or commissioned by the police, local authorities, or by Cafcass, and are designed to support perpetrators to change their behaviour to prevent an initial offence from occurring. These interventions can also prevent the escalation of offences, or any instances of further abuse.

**We also support the important work of Respect, who through their service standards are helping to ensure that programmes targeted at a range of perpetrators are delivered safely and effectively.** One recent innovation for which Respect has been a key partner is the Drive programme. Drive works with a range of perpetrators, including those who are high risk and those who report multiple complex needs, and ensures that these primary support needs are met alongside interventions to change harmful behaviour.

**We recognise that the criminal justice framework for working with perpetrators of domestic abuse is complex and that there are variations in approaches across agencies and local areas.** We recognise that the criminal justice response to perpetrators needs to be improved through better multi-agency working with other statutory partners, better use of risk assessment to identify perpetrators, and clearer pathways for managing, monitoring and mitigating the risk that perpetrators pose.

**You said:**

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*“My ex-husband recently finished a 7-year sentence. I was contacted by probation shortly before his sentence ended to inform me that I should seek civil measures to protect myself as he was still considered a risk. I believe that this is completely unacceptable and really highlights the need for serial offenders (he is one) to be managed.”*

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You said that better information sharing and a stronger multi-agency approach would improve how the police and their partner agencies, including the National Probation Service and Community Rehabilitation Companies (CRCs), manage serial and repeat abusers. A register of domestic abuse perpetrators was suggested as a way of improving information sharing in relation to serial and repeat abusers. You made it clear that you think that the police response to perpetrators needs to be improved, with more regular monitoring of offenders and more robust risk assessments. Many of you want to see harsher penalties for abusers and think that attending a perpetrator programme should be made a condition of release. You also mentioned electronic monitoring as a way of strengthening the management of serial and repeat abusers.

In addition, many of you want to see harsher penalties for abusers. You said that a stronger multi-agency approach would also help to ensure that perpetrator's complex needs are identified and addressed, such as the impact of trauma, mental health difficulties, substance and alcohol misuse, and precarious housing or employment.

Many of you mentioned the importance of providing effective interventions to help perpetrators change their behaviour, and that programmes should take account of a range of individual needs and circumstances' at the end of the previous sentence. You told us that those on short prison sentences should be able to start a programme in prison and complete it in the community. You also suggested that educational materials should be provided to people who are unable to start a programme or who are waiting to start one.

Many of you also highlighted the need for common standards to guide the quality of perpetrator programmes and interventions, and that more research is needed on the effectiveness of programmes and on which approaches work best with different groups of perpetrators.

### **We will:**

**Our aim in working with perpetrators is to prevent reoffending in order to protect victims and their children, and to give victims the space and security to rebuild their lives.**

#### **3.4.1 Criminal justice agencies' response**

**To achieve this aim, it is crucial that all criminal justice agencies have access to the right information at the right time**, so that they can work together to accurately identify, assess and manage dangerous perpetrators in order to keep victims safe.

**We will improve the framework for managing perpetrators and strengthen multi-agency working** by promoting the changes made to the guidance on referrals to national Multi-Agency Public Protection Arrangements teams. The aim of the guidance is to ensure that serial and repeat perpetrators of domestic abuse are considered for management.

**To improve identification and risk assessment of perpetrators**, we will review Her Majesty's Prison and Probation Service risk assessment model for perpetrators of intimate partner violence, pilot the use of the spousal assault risk assessment model with abusers prior to conviction, and strengthen guidance on the identification and management of domestic abuse perpetrators as potentially dangerous persons.

**We will also work with the police to improve the use of current information recording and analysis systems.** We will ensure that the introduction in 2020 of the Law Enforcement Data Service, which will bring together the current Police National Computer and Police National Database, reflects and sustains these improvements.

**To increase the range of tools available to professionals working with perpetrators, we propose to introduce notification requirements through the new DAPOs,** which will require abusers to tell the police if their personal details or circumstances change. As mentioned in Section 2, the new orders will also enable courts to impose electronic monitoring requirements on perpetrators and will carry a criminal penalty for breach.

**We recognise that the practical tools and systems available to frontline professionals working with perpetrators must be underpinned by robust training and guidance.** This will help to ensure that these tools are used safely and effectively to prevent reoffending and to protect victims. We will work with the National Police Chiefs' Council Lead on domestic abuse and the College of Policing to develop national guidance for police on serial and repeat perpetrators and share promising police work developing in this area. **We will also fund the development of online domestic abuse training materials for frontline professionals working in probation services and community rehabilitation companies.**

#### *Perpetrator interventions*

**We are committed to transforming our response to perpetrators of domestic abuse at all points in the criminal justice system, from pre-conviction to custody and through to post-conviction in the community.**

**Our aim is for people to receive the right intervention at the right time,** and this is based on effective assessment, sentence planning and the delivery of evidence-informed interventions. We will ensure that those convicted of a domestic abuse offence are properly targeted for programme intervention through the use of an effective proposal tool at court. This tool will guide practitioners on the suitability of programme recommendations.

**To support people to fully participate in programmes, we will promote the use of interventions that can help motivate people in prison to engage in a programme** or overcome barriers that are preventing them from engaging. We will also promote interventions that can help people to practise and maintain what they have learnt after they have attended a programme, such as the New Me MOT programme, which is available to programme graduates of Her Majesty's Prison and Probation Service high-intensity domestic abuse programme.

We also want to ensure we are meeting the needs of people who are not suitable for or who are not able to participate in the perpetrator programmes accredited by the Ministry of Justice, which may include people on shorter sentences. **We will therefore further specify the range of rehabilitation activity requirements to be delivered to people serving community sentences who are not eligible for an accredited programme.**

**We will also test the viability of a new digital toolkit for community-based staff working with people who have been released from prison or who are serving community sentences.** The toolkit could be delivered as a rehabilitation activity requirement, or as a part with regular supervision of people who are unsuitable for an accredited programme or unable to participate in one.

We will design the toolkit using the best available evidence, and carefully test the materials to ensure that people can understand and engage with them.

**We will work with specialist domestic abuse organisations to assess the range of interventions currently available for perpetrators who have not been convicted of a domestic abuse offence.** We will use this information to identify gaps in provision and develop a strategy for improving the availability of safe and effective interventions for this cohort.

**We will also introduce a measure through the Domestic Abuse Bill which will enable the National Probation Service to pilot polygraph testing with high risk domestic abuse perpetrators to monitor compliance with licence conditions in the community.** Polygraph examinations are already successfully used in the management of sexual offenders released on licence. Extending these examinations to perpetrators will provide an additional source of information for offender managers to enable them to formulate improved risk management plans, share information related to risk with other relevant agencies, and support victim safety planning.

*Ensuring the quality of interventions*

**To increase confidence in the quality of programmes, we will promote the use of recognised standards for the perpetrator programmes used by the Ministry of Justice.** Programmes targeted at convicted perpetrators are accredited by the Ministry of Justice's Correctional Services Accreditation and Advice Panel (CSAAP). A set of CSAAP-approved standards will also be developed to guide the quality of other interventions that may not be suitable for full accreditation.

**We will issue guidance that promotes approaches to programme delivery that ensure perpetrator programmes are flexible, trauma-informed, and adapted to accommodate people's individual needs and circumstances.** For example, Her Majesty's Prison and Probation Service is currently trialling and monitoring the application of its programme materials with male perpetrators who have offended against male partners, and with transgender male perpetrators.

**Her Majesty's Prison and Probation Service will also issue a new domestic abuse policy framework** which will set out expectations for working with domestic abuse perpetrators and access to interventions and referral routes, including those aimed at protecting victims and children.

**Alongside launching new initiatives in relation to working with perpetrators, we recognise the importance of evaluating existing projects and sharing evidence on what works throughout the sector.** In 2019, we will conduct an evaluation of the accredited moderate- intensity perpetrator programme Building Better Relationships and the high-intensity perpetrator programme Kaizen; this will include an assessment of the most appropriate methods and timing for a robust evaluation of both programmes. This will seek to understand the challenges and complexities facing domestic abuse programme evaluations and how these can be overcome.

**We will also work with the College of Policing, voluntary sector partners and local multi-agency partnerships** to ensure that learning from promising work with perpetrators is shared and embedded, such as the Drive project – of which Respect is a key partner – and perpetrator panels such as the Multi-Agency Tasking and Co-ordination model.

## Section 4: Improving performance

### 4.1 Domestic Abuse Commissioner

**We want to establish a Domestic Abuse Commissioner in law.** The Commissioner will provide public leadership on domestic abuse issues and play a key role in overseeing and monitoring provision of domestic abuse services in England and Wales.

**The role of the Commissioner will be critical in ensuring consistency and shining a light on both effective and poor practice.** The majority of domestic abuse services accessed by victims are commissioned locally. The funding for these services is largely provided by local authorities as well as local police, health bodies and PCCs. We think that these bodies are best placed to determine the needs for local provision in their areas, though we understand that this means that the quality and quantity of services might vary from region to region.

**We need to do more to embed guidance and share best practice by appointing a Domestic Abuse Commissioner who will oversee the provision of services and will have the power to hold those delivering them to account.**

#### You said:

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*“Having a Domestic Abuse Commissioner gives the crime some status. It has been too long in the making. Finally it is being recognised as a serious offence!”*

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**The introduction of a Domestic Abuse Commissioner was strongly supported.** Of those who responded to the consultation, 65% either agreed or strongly agreed with the proposed model. Of the 22% who disagreed, just over half did so on the basis that they wanted the role to be expanded to consider all forms of violence against women and girls. The Home Affairs Select Committee also welcomed the creation of a new Commissioner but recommended that the new post be established as a Violence Against Women and Girls and Domestic Abuse Commissioner.

On the proposed role of the Domestic Abuse Commissioner, the following three elements were considered the most important:

- provide recommendations to both national and local government to improve the response to domestic abuse, accompanied by a duty on the responsible person/organisation to respond to these recommendations

- map and monitor provision of domestic abuse services against the National Statement of Expectations<sup>33</sup>, and publish this information to showcase and share best practice, as well as to highlight where local provision falls short of what is expected
- require local statutory agencies to co-operate and provide information

**You said that the Commissioner should give a voice to victims and survivors of domestic abuse**, reflecting their experiences in the work that they do, and should work closely with specialist third sector organisations. You also said that the Commissioner must stand up for the children of victims and survivors of domestic abuse, and that marginalised groups of vulnerable women need to be properly represented and their particular needs considered.

The Home Affairs Select Committee recommended that the Commissioner should be able to comment on the impact of central government services on victims of domestic abuse, such as access to justice, health, housing and welfare benefits, as well as on specific domestic abuse services, and that the Commissioner should report directly to Parliament to safeguard the office's independence.

#### **We will:**

**The draft bill will establish the office of the Domestic Abuse Commissioner and set out the Commissioner's functions and powers.** Given the challenges of improving the statutory agencies' responses to domestic abuse, and the huge scale of the problem, we believe that the Commissioner's remit should be focused on this issue alone, rather than being dissipated across all forms of violence against women and girls. The government is committed to addressing this through the separate Violence Against Women and Girls Strategy.

We will be clear that the Domestic Abuse Commissioner has a unique opportunity to represent and magnify the voices of victims and survivors and must make those voices heard. **We will require the Commissioner, through the terms of appointment, to establish a victims' and survivors' advisory group, which will provide the Commissioner with expertise through their own experience.** The Commissioner will be required to meet the group regularly and take account of their insight and views. The draft bill will also require the Commissioner to establish a broader advisory board consisting of representatives from the specialist third sector, criminal justice agencies, local government and the health sector, and academia, as well as victims and survivors. They will provide advice, guidance and challenge to the Commissioner, and ensure that the Commissioner continues to exercise the functions as set out in law.

**In setting out the Commissioner's functions, the draft bill will expressly require the Commissioner to consider the impact of domestic abuse on**

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<sup>33</sup> Home Office (2016) *Violence Against Women and Girls National Statement of Expectations*. Available at: <https://www.gov.uk/government/publications/violence-against-women-and-girls-national-statement-of-expectations>

**children**, including within the remit the ability to review children's services and other agencies that interact and work with children. We will require the Commissioner, through the terms of appointment, to establish a thematic lead within the Commissioner's office to represent the interests of children. To ensure there is better continuity of support for those children affected by domestic abuse, we will expect the Commissioner to co-operate with the Children's Commissioner and the Victims' Commissioner, among others.

**We will ensure that the Commissioner has a sufficiently broad remit to cover the provision of specialist services, such as IDVAs, as well as considering how central services support and interact with victims and their families;** all government departments, as well as the health sector, education, social care and criminal justice agencies, will fall within the Commissioner's remit.

**To safeguard the Commissioner's independence, we will develop a charter setting out the relationship between the Commissioner and the Home Office as sponsoring department.**

The Commissioner will be able to provide, on request, advice on specific issues to ministers and specified public authorities. In the interests of transparency, the Commissioner will be under a duty to publish the advice to public authorities. In addition, the Home Secretary will be required to lay the Commissioner's annual report and other reports and strategic plans before Parliament.

**We will require the Commissioner to have a specific focus on the needs of victims and survivors from minority or marginalised groups.** And through the terms of appointment, the Commissioner will be required to establish thematic leads within the office for victims and survivors who are BAME, LGBT+, disabled, migrant, or who have complex needs.

But we don't need to wait for the bill to become law before making progress. That is why **we have launched a competition to recruit a non-statutory Designate Domestic Abuse Commissioner**, who will perform the same role as the statutory Commissioner, lacking only their formal legal powers. The role description for the Designate Commissioner incorporates many of the comments made by those who responded to the consultation.

## 4.2 Data

**We know that high-quality, insightful data analysis is critical to understanding and responding to domestic abuse.** A useful source is the Office for National Statistics' annual domestic abuse statistical bulletin. It aims to bring together domestic abuse statistics in one place to allow a more thorough analysis of how domestic abuse is dealt with both nationally and locally. First published in 2016, the bulletin has evolved and become more comprehensive each year and includes contributions from government departments, statutory agencies and domestic abuse charities. The third annual bulletin was published

on the Office for National Statistics' website on 22 November 2018, alongside an interactive data tool<sup>34</sup> allows users to compare data between police force areas.

We expect the data bulletin to be used in conjunction with local knowledge to enable practitioners and commissioners to ask hard and critical questions about performance and identify areas for improvement.

**The Ministry of Justice is taking work forward on data sharing to make existing information, data and evidence more easily accessible.**

Working with the CPS, it continues to develop a shared, single source of case information, known as the Common Platform, that will facilitate better collection, reporting and tracking of courts and sentencing data on domestic abuse data.

**You said:**

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*“Data needs to work across statutory services – what the police collect impacts on what Crown Prosecution Service can do, what housing, health and schools collect impacts on women’s access to safety and services.”*

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59% of you said your top three priorities are:

- improving data to enable better tracking of domestic abuse cases/interventions
- the collection and reporting of data on when domestic abuse is a feature of a case/intervention
- linking data to enable better tracking of interventions and reoffending

You wanted an evidence-led response to domestic abuse and stressed the importance of using data from across a number of sources including data from third sector organisations and ensuring the best possible use is made of existing evidence and analysis.

**We will:**

**We will continue to develop means to better collect, report and track domestic abuse data through both the Common Platform and the Office for National Statistics' domestic abuse bulletin.** Future versions of the bulletin will continue to fill gaps on domestic abuse data by exploring new data sources and expanding on the detail of data such as the demographics of victims.

**In a similar vein, we will also work with the CPS and police to improve the gender breakdown of their data to better understand the numbers of both female victims and perpetrators of domestic abuse in the criminal justice system.**

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<sup>34</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2018>

We are working across government to understand what sources of available evidence could be included in the domestic abuse bulletin to ensure that we continue to increase our understanding of the prevalence of domestic abuse cases.

**We will pilot bringing together local data to assist commissioning.** The police, health and other agencies all gather data on domestic abuse; we will explore bringing that data together in a local area to see if it can help inform better commissioning, while being mindful to retain anonymity.

**DfE, through the Review of Children in Need, will continue to develop their data and analysis of how child, family and school-level factors, including the risk of domestic abuse, make a difference to children’s outcomes over time.** This will support future changes in policy or practice to address the long-term impact of being in need.

**DWP are committed to providing better data on those with complex needs, including domestic abuse, and this work has already been prioritised as part of the wider work to improve Universal Credit.**

### 4.3 Learning from Domestic Homicide Reviews

**Domestic Homicide Reviews (DHRs) exist so that agencies and community organisations can learn from shortcomings and improve their future response to domestic abuse.** We want to ensure that this learning is acted upon and put into practice to avoid future homicides and instances of domestic abuse.

**We want to increase awareness of the learning from DHRs at a local and national level.** This might be achieved by making DHRs more accessible by sharing recommendations and providing updates through newsletters.

**We asked you about how we can make sure that learning from DHRs is understood and acted upon.** This includes how we can increase awareness of the learning from DHRs and how local areas can best hold agencies to account in terms of monitoring delivery against DHR action plans.

#### You said:

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*“There should be a structure and a duty upon local agencies to report upon their delivery against DHR action plans. If the role of Commissioner was created, they could have an inspecting brief, similar to Ofsted or the Care Quality Commission.”*

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You said that we should focus on training and awareness-raising and that we should publish DHRs in an accessible place. You also told us that there should

be regular inspection or monitoring of action plans and that the role of local partnerships and PCCs should also be considered.

**We will:**

**We will create a public, searchable repository of DHRs and strengthen the DHR statutory guidance to ensure that published reviews remain publicly accessible for longer.<sup>35</sup>**

**We will work with the Domestic Abuse Commissioner, when appointed, to look at how learning is being implemented both locally and nationally.** We will also introduce regular updates on key learning from DHRs for local areas. We will work with PCCs to look at how they can best work with other local partners on the implementation of recommendations at a local level.

**At a national level, we will work across government to ensure that national recommendations from DHRs are shared and acted upon.**

**We will share learning from the pilot taking place in Wales which brings together DHRs and Adult Practice Reviews into a single review process.**

In addition, **we are providing £200,000 of extra funding to the Ministry of Justice's National Homicide Service to increase provision of advocacy for bereaved families. We are also providing a further £200,000 to specialist organisation Advocacy After Fatal Domestic Abuse to increase awareness of the advocacy service to ensure that families are supported to contribute towards DHRs.**

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<sup>35</sup> Home Office (2013, rev. 2016) Domestic Homicide Reviews: statutory guidance. Available at: <https://www.gov.uk/government/publications/reviced-statutory-guidance-for-the-conduct-of-domestic-homicide-reviews>.

## Annex A: Nine projects being funded through the government's Children's Fund, 2018/19

Project	Description
Project 1	A project in Hounslow to create four Parent and Child Workers who will work with schools to support children affected by domestic abuse and also work with the non-abusive parent.
Project 2	A project in Cambridgeshire to provide specialist support for children giving evidence in the criminal justice system, and for children participating in Domestic Homicide Reviews.
Project 3	A project spanning several local authorities in the Black Country to ensure there is a schools-based support service for children affected by domestic abuse, including one-to-one casework and group programmes. There will also be training and advice for schools to deal with disclosures, and integration with adult services to ensure a family approach to tackling domestic abuse.
Project 4	A project in London to provide free and confidential one-to-one support for children aged 5–18 affected by domestic abuse. Caseworkers will co-locate with social services and provide eight weeks of supportive interventions and nine months of one-to-one mentoring for most-in-need cases.
Project 5	A project in Stockport which targets children living on the edge of care. It will deliver intensive interventions and build toolkits to share with the wider workforce. It will also recruit Independent Domestic Violence Advisors to work in maternity wards and ante-/post-natal clinics; create Domestic Abuse Champions to raise awareness for all sectors; and provide therapeutic interventions for children, including counselling, through youth/community groups.
Project 6	A project in Lewisham which centres around awareness raising; implementing a series of interventions in schools; and delivering bespoke therapeutic support services.
Project 7	A Wales-based project run by a national charity to embed workers in children's social care to implement a variety of existing initiatives and programmes. These will enable children and young people to recover from their experiences of domestic abuse and to build resilience, as well as strengthening parenting capacity and supporting system change.

<b>Project</b>	<b>Description</b>
Project 8	A project in Northumbria to create the new role of School Safeguarding Liaison Officer, who will be responsible for: the delivery of input to KS1–KS4 children to increase their awareness of domestic abuse through Personal, Social and Health Education; training for school staff on domestic abuse and how to support children; and the creation of drop-in facilities at schools for parents, children and school staff.
Project 9	A project in North Somerset to create a new support service for children and young people recovering from their experience of domestic abuse. A team of advocates will use specialist therapeutic interventions and develop individualised programmes based on the child’s developmental needs and experience of domestic abuse.

## Annex B: List of offences we intend to take extra-territorial jurisdiction over to satisfy our obligations under Article 44 of the Istanbul Convention

Offence	Relevant convention articles
<b>Putting people in fear of violence:</b> section 4 of the Protection from Harassment Act 1997	33
<b>Controlling or coercive behaviour in an intimate or family relationship:</b> section 76 of the Serious Crime Act 2015	33
<b>Stalking involving fear of violence or serious alarm or distress:</b> section 4A of the Protection from Harassment Act 1997	33, 34
<b>Murder and manslaughter:</b> common law	35
<b>Actual bodily harm:</b> section 47 of the Offences Against the Person Act 1861	33, 35, 39
<b>Grievous bodily harm:</b> section 20 of the Offences Against the Person Act 1861	33, 35, 39
<b>Grievous bodily harm with intent:</b> section 18 of the Offences Against the Person Act 1861	33, 35, 39
<b>Child destruction:</b> section 1(1) of the Infant Life (Preservation) Act 1929	39
<b>Administering poison or noxious thing so as to endanger life or inflict grievous bodily harm:</b> section 23 of the Offences Against the Person Act 1861	39
<b>Administering poison or noxious thing with intent to injure, aggrieve or annoy another person:</b> section 24 of the Offences Against the Person 1861	39
<b>Rape:</b> section 1 of the Sexual Offences Act 2003	36
<b>Assault by penetration:</b> section 2 of the Sexual Offences Act 2003	36
<b>Sexual assault:</b> section 3 of the Sexual Offences Act 2003	36
<b>Causing a person to engage in sexual activity without consent:</b> section 4 of the Sexual Offences Act 2003	36

## Annex C: Grid of commitments

Section 1		
Ref.	Commitment	Lead
1	Include a statutory definition of domestic abuse in the draft Domestic Abuse Bill based on the one proposed in the consultation document.	Home Office
2	Issue statutory guidance to accompany the definition.	Home Office
3	Introduce Regulations and Statutory Guidance for Schools on Relationships Education, Relationships and Sex Education, and Health Education.	Department for Education
4	Support schools to teach high-quality relationships education and relationships and sex education.	Department for Education
5	Invest in the Domestic Abuse Matters police change programme to extend the roll-out.	Home Office
6	Provide £220,000 for the development and pilot of a training programme for social workers on coercive control.	Home Office
7	Fund the development of domestic abuse training materials for probation services and community rehabilitation companies.	Ministry of Justice
8	Develop future learning and development products for all Universal Credit work coaches.	Department for Work and Pensions
9	Continue to raise awareness of Keeping Children Safe in Education, keep its effectiveness under review and consider strengthening it if required.	Department for Education
10	Drive forward wide-ranging reforms to children's social care to provide effective support to children and families affected by domestic abuse.	Department for Education
11	Invest £2 million to fund the expansion of the Standing Together Against Domestic Violence Pathfinder Programme to eight areas to create a model health response to domestic abuse.	Department for Health and Social Care
12	Continue working with NHS England to raise awareness and improve the understanding that healthcare professionals have of domestic abuse.	Department for Health and Social Care
13	Implement a domestic abuse specialist in each Jobcentre who will receive further training on how to support claimants who are victims of domestic abuse.	Department for Work and Pensions
14	Continue to provide annual funding of £1.1 million up to 2021/22 for seven helplines, subject to the outcome of the Spending Review.	Home Office

15	Continue to show leadership in supporting the Employers' Initiative events and raising awareness of the Business in the Community domestic abuse toolkit.	Home Office
16	Work with partners to review, evaluate and understand current communications activities, which will help inform next steps.	Home Office
17	Work to tackle harmful gender norms, in recognition that all forms of violence against women and girls are both a cause and a consequence of wider gender inequality.	Gender Equality Office
18	Update existing Universal Credit communication products and materials, create a tailored factsheet and a series of digital assets to raise awareness of DWP support for victims of domestic abuse.	Department for Work and Pensions

## Section 2

Ref.	Commitment	Lead
19	Allocate £8 million of funding to support children affected by domestic abuse.	Home Office
20	Undertake research to understand why more perpetrators of domestic abuse are not convicted of causing emotional harm to children	Department for Education and Home Office
21	Through the Review of Children in Need, identify what needs to be done in policy and in practice to address the injustice of poorer educational outcomes for children in need.	Department for Education
22	Monitor the implementation of the rollout of Operation Encompass and share findings from the evaluation to increase effectiveness and develop the scheme further.	Home Office
23	Develop a new victims services delivery model to increase the availability of services through more joined-up and sustainable funding.	Ministry of Justice
24	Explore the benefits of full local commissioning of rape and sexual violence support services by Police and Crime Commissioners.	Ministry of Justice
25	Provide £500,000 to help build long-term capacity and expertise about immigration rights for those working to combat domestic abuse.	Home Office
26	Consider producing a communications product to raise awareness of the destitute domestic violence concession.	Home Office
27	Consider the argument for widening the cohort of individuals eligible under the destitute domestic violence concession.	Home Office

28	Work with police forces to raise awareness of guidance on supporting victims with insecure immigration status to help overcome barriers to reporting and accessing protection and support.	National Police Chiefs' Council
29	Legislate to provide for the new Domestic Abuse Protection Notice (DAPN) and DAPO (DAPO).	Home Office
30	Issue statutory guidance and a programme of training and practical toolkits on the DAPO for professionals.	Home Office
31	Work with domestic abuse specialists and agencies to ensure the process for obtaining a DAPO through the family court is straightforward.	Home Office and Ministry of Justice
32	Work with police, courts, victims and the domestic abuse sector to make sure DAPOs and DAPN are effective, testing the new approach through a pilot.	Home Office
33	Ensure that guidance is clear on the contempt of court option for a breach of a DAPO, discussing its availability with victims when an order is made.	Ministry of Justice
34	Monitor the implementation of multi-agency approaches to domestic abuse as set out in <i>Working Together to Safeguard Children</i> and the Safeguarding Early Adopters programme and disseminate the learning to safeguarding partners.	Department for Education
<b>2.4.1 Specialist needs</b>		
35	Support LGBT+ victims by providing £500,000 to build capacity in the charitable sector, raise awareness and improve monitoring and recording practice.	Home Office
36	Improve capacity within the women's sector by providing £250,000 to improve the response to disabled victims.	Home Office
37	Provide £250,000 to improve support for deaf users of domestic abuse services.	Home Office
38	Provide £100,000 to support domestic abuse organisations to respond to domestic abuse involving older people.	Home Office
39	Invest £300,000 to build capacity within specialist BAME organisations which support domestic abuse victims.	Ministry of Housing Communities and local Government
<b>2.4.2 Female offenders</b>		
40	Invest £2 million into community provision for women with experience of domestic abuse.	Ministry of Justice
41	Give grants to local communities to focus on issues such as health, finance and accommodation.	Ministry of Justice
42	Develop a National Concordat on Female Offenders to improve outcomes.	Ministry of Justice

43	Publish guidance with the National Police Chiefs' Council on working with vulnerable women.	Home Office and National Police Chiefs' Council
44	Support the rollout of trauma-informed training for probation and prison staff working with female offenders.	Ministry of Justice
<b>2.4.3 Substance misuse</b>		
45	We will consider the impact of alcohol on domestic abuse and develop a response as part of the Home Office's alcohol policy work.	Home Office
46	Hold workshops to improve our understanding of the links between alcohol and domestic abuse.	Home Office
47	Identify gaps in the evidence base on the relationship between substance misuse and domestic abuse.	Home Office
48	Learn from a recent roundtable on women's substance misuse about the importance of multi-agency women-only provision which is commissioned collaboratively and the need to address women's specific needs in drug and alcohol policies.	Home Office
49	Allocate funding for training to promote greater joining up between substance misuse and domestic abuse services.	Home Office
<b>2.5.1 Economic abuse</b>		
50	Include reference to economic abuse in the statutory guidance for the offence of controlling or coercive behaviour and in the statutory guidance for future Stalking Protection Orders and DAPOs.	Home Office
51	Update legal guidance for prosecutors to ensure cases of economic abuse can be successfully prosecuted.	Crown Prosecution Service
52	Continue to work with UK Finance to encourage banks and financial authorities to do more to support victims of domestic abuse.	Home Office
53	Provide £200,000 to the National Skills Academy for Financial Services to develop and deliver financial capability training for front-line workers.	Home Office
54	Provide funding to update the Domestic Abuse Matters police change programme so that it includes economic abuse.	Home Office
55	Provide approximately £250,000 of funding to create a national advice service for banks and building societies, increase the capacity of existing telephone casework services for victims of domestic abuse and develop resources to help people identify if they are experiencing economic abuse.	Home Office

56	Work closely with the Scottish Government to establish the practicalities of delivering split payments in Universal Credit in Scotland.	Department for Work and Pensions
<b>2.5.2 Online abuse</b>		
57	Publish an online harms white paper to introduce further online safety legislation and non-legislative measures on how we will tackle online harms.	Department for Digital, Culture, Media and Sport and Home Office
<b>2.5.3 Adolescent to parent violence</b>		
58	Develop best practice, training and resources to improve the response to victims of adolescent to parent violence.	Home Office
59	Promote and embed existing Home Office guidance and work with experts to develop service-specific guidance.	Home Office
<b>2.6.1 Anonymous voter registration</b>		
60	Continue to work closely with domestic abuse charities and electoral administrators and refuge managers to promote further uptake of the anonymous voter registration scheme.	Cabinet Office
61	Raise awareness of the scheme through communication and targeted engagement to ensure that more applicants can register securely and easily.	Cabinet Office
<b>2.6.2 The Domestic Violence Disclosure Scheme</b>		
62	Put the guidance on which the Domestic Violence Disclosure Scheme is based into statute.	Home Office
63	Work with the police to enable online applications to the DVDS to improve the accessibility of the scheme.	Home Office
<b>2.7 Male victims</b>		
64	Publish a Male Victims' Position Statement to recognise the needs of male victims and clarify the government's position.	Home Office
65	Provide £500,000 of funding to improve support to male victims of domestic abuse.	Home Office
66	Improve the gender breakdown of Crown Prosecution Service and police data to better understand the numbers of male victims of domestic abuse who engage with the criminal justice system.	Home Office and Crown Prosecution Service
67	Conduct a review of the National Statement of Expectations and its impact on the commissioning of male support services.	Home Office

Section 3		
Ref.	Commitment	Lead
<b>3.1 Transforming the police response</b>		
68	Design a licence to practise model for high risk and high harm areas of policing, including domestic abuse.	College of Policing
69	Consider the introduction of a national effective practice toolkit for police forces.	Home Office
70	Continue to drive progress on the police response to domestic abuse through the National Oversight Group and assess the response in the annual Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services PEEL inspections.	Home Office
71	Undertake further testing of a new risk assessment process to establish whether it supports better identification of coercive and controlling behaviour.	College of Policing
72	Update guidance to help prosecutors address complex issues in domestic abuse cases, and to further challenge myths and stereotypes.	Ministry of Justice, Crown Prosecution Service and Home Office
73	Conduct a joint inspection of the effectiveness of cases which are prosecuted on evidence other than that provided directly by the victim.	Her Majesty's Crown Prosecution Service Inspectorate and Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services
74	Continue to roll out body-worn videos, which have been shown to have an impact on the number of charges made and can strengthen the case for prosecution.	Police
<b>3.2.1 Controlling or coercive behaviour offence</b>		
75	Improve awareness and understanding of the offence throughout all statutory agencies that work within the criminal justice system.	Home Office
76	Issue statutory guidance to the police on future Stalking Protection Orders to ensure it is clear that the order can be used in domestic abuse contexts.	Home Office
77	Update the statutory guidance and Crown Prosecution Service legal guidance for the controlling or coercive behaviour offence.	Home Office and Crown Prosecution Service

78	Review the effectiveness of the legislation offence to ensure it is fit for purpose and that it adequately protects victims from abuse.	Home Office and Crown Prosecution Service
79	Legislate to provide for automatic eligibility for special measures in domestic abuse cases.	Ministry of Justice
80	Improve the court environment, with new waiting areas designed to ensure victim safety and a new court design guide focusing on accessibility for the most vulnerable.	Her Majesty's Courts and Tribunals Service
81	Increase the number of privacy screens that are available to allow vulnerable victims and witnesses to give evidence without being seen by the defendant or the defendant's family.	Her Majesty's Courts and Tribunals Service
82	Revise legal guidance on special measures so that victims and witnesses can better understand what help might be available.	Crown Prosecution Service
83	Implement the Domestic Abuse Best Practice Framework, including the revised specialist domestic abuse courts system.	Crown Prosecution Service Ministry of Justice, the National Police Chiefs Council'
<b>3.2.3 Cross-examination</b>		
84	Introduce new powers to the family court system to prohibit direct cross-examination of a victim by their abuser.	Ministry of Justice
<b>3.2.4 Court communication</b>		
85	Improve the way in which we deliver services to court users to make services more accessible, convenient and tailored to individual needs.	Ministry of Justice
86	Improve our overall victim communication, including when explaining a decision not to prosecute and signposting for routes to review Crown Prosecution Service decisions and to access the Criminal Injuries Compensation Scheme.	Ministry of Justice
87	Review the support that is provided to victims in the criminal court, including by IDVAs.	Ministry of Justice
<b>3.2.5 Introducing a statutory aggravating factor</b>		
88	Work with our stakeholders to understand the impact the new sentencing guidelines are having in practice before committing to any new action.	Ministry of Justice
<b>3.2.6 Conditional cautions</b>		

89	Pilot the further use of conditional cautions for first-time reported domestic abuse incidents.	Crown Prosecution Service, National Police Chiefs' Council, Home Office and Ministry of Justice
<b>3.2.7 The Istanbul Convention: extra-territorial jurisdiction</b>		
90	Take extra-territorial jurisdiction over the offences listed in Annex B to satisfy our obligations under Article 44 of the Istanbul Convention.	Ministry of Justice
91	Rely on the civil law remedy in the Protection from Harassment Act 1997 to satisfy the requirements of Article 40 of the Istanbul Convention.	Ministry of Justice
<b>3.3.1 Family courts</b>		
92	Provide £1 million funding to organisations which provide in- court support to domestic abuse victims.	Ministry of Justice
93	Explore options to develop a better and more consistent approach to information sharing across court jurisdictions.	Ministry of Justice
94	Continue to work with our stakeholders on what more can be done to support victims of domestic abuse in the family courts.	Ministry of Justice
<b>3.3.3 Legal aid</b>		
95	Publish findings from the post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.	Ministry of Justice
<b>3.4 The perpetrator journey</b>		
96	Promote the revised guidance on referrals to the national Multi-Agency Public Protection Arrangements (MAPPA) teams to improve the framework for managing perpetrators and strengthen multi-agency working.	Home Office
97	Improve the identification and risk assessment of perpetrators.	Ministry of Justice and Home Office
98	Work with the police to improve the use of current information recording and analysis systems for perpetrators.	Home Office

99	Work with the National Police Chiefs' Council Lead on domestic abuse and the College of Policing to develop national guidance on serial and repeat perpetrators.	Home Office and National Police Chiefs' Council
100	Fund the development of online domestic abuse training materials for frontline professionals working in probation services and community rehabilitation companies.	Ministry of Justice
101	Improve assessment and identification of people convicted of a domestic abuse offence for perpetrator programmes.	Ministry of Justice
102	Promote the use of interventions that can help motivate and remove barriers for people in prison to engage in a programme.	Ministry of Justice
103	Further specify the range of rehabilitation activity requirements to be delivered to people serving community sentences.	Ministry of Justice
104	Test the viability of a new digital toolkit for community-based staff.	Ministry of Justice
105	Work with specialist domestic abuse organisations to assess the range of interventions currently available for perpetrators who have not been convicted of a domestic abuse offence.	Home Office
106	Legislate to pilot polygraph testing with high risk domestic abuse perpetrators to monitor compliance with licence conditions in the community.	Ministry of Justice and National Probation Service
107	Promote the use of recognised standards for perpetrator programmes.	Ministry of Justice and Home Office
108	Promote approaches to perpetrator programmes that are flexible and trauma-informed.	Ministry of Justice
109	Issue a new domestic abuse policy framework for working with perpetrators of domestic abuse.	Ministry of Justice and Her Majesty's Prison and Probation Service
110	Conduct an evaluability study of the accredited moderate-intensity perpetrator programme Building Better Relationships and the high-intensity perpetrator programme Kaizen.	Ministry of Justice
111	Work with the College of Policing, voluntary sector partners, and local multi-agency partnerships to ensure that learning from promising work with perpetrators is shared and embedded.	Ministry of Justice and Home Office

Section 4		
Ref.	Commitment	Lead
<b>4.1 Domestic Abuse Commissioner</b>		
112	Establish the office of the Domestic Abuse Commissioner and legislate on the Commissioner's functions and powers.	Home Office
113	Require the Commissioner, through the terms of appointment, to establish a victims' and survivors' advisory group, which will provide the Commissioner with expertise through their own experience.	Home Office
114	Develop a charter to safeguard the Commissioner's independence, setting out the relationship between the Commissioner and the Home Office as the sponsoring department.	Home Office
<b>4.2 Data</b>		
115	Continue to develop means to better collect, report and track domestic abuse data through the Ministry of Justice's Common Platform and the Office for National Statistics' domestic abuse bulletin.	Home Office, Ministry of Justice and Office for National Statistics
116	Pilot bringing local data together to assist commissioning.	Home Office
117	Continue to develop our data and analysis of how child, family and school-level factors, including the risk of domestic abuse, make a difference to children's outcomes over time through the Review of Children in Need.	Department for Education
118	Prioritise providing better data on complex needs as part of the wider work to improve Universal Credit.	Department for Work and Pensions
<b>4.3 Learning from Domestic Homicide Reviews</b>		
119	Create a public, searchable repository of Domestic Homicide Reviews (DHRs) and strengthen the Domestic Homicide Review Statutory Guidance to ensure that published reviews remain publicly accessible for longer.	Home Office
120	Work with the Domestic Abuse Commissioner, when appointed, to look at how learning from DHRs is being implemented both locally and nationally.	Home Office
121	Work across government to ensure that national recommendations from DHRs are shared and acted upon at the national level.	Home Office
122	Share learning from work under way in Wales to pilot joint DHR and Adult Practice Reviews.	Home Office
123	Provide £200,000 of funding to increase provision of advocacy and £200,000 to increase awareness of the advocacy service for bereaved families to ensure that families are supported to contribute to DHRs.	Home Office

## Annex D: Draft Domestic Abuse Bill

# Domestic Abuse Bill

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**B I L L**

TO

Make provision in relation to domestic abuse; to make provision for and in connection with the establishment of a Domestic Abuse Commissioner; to prohibit cross-examination in person in family proceedings in certain circumstances; to make provision about certain offences committed outside the United Kingdom; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

DEFINITION OF “DOMESTIC ABUSE”

**1 Definition of “domestic abuse”**

- (1) This section defines what is meant by “domestic abuse” in this Act.
- (2) Behaviour by a person (“A”) towards another person (“B”) is “domestic abuse” if—
  - (a) A and B are each aged 16 or over and are personally connected, and
  - (b) the behaviour is abusive.
- (3) Behaviour is “abusive” if it consists of any of the following—
  - (a) physical or sexual abuse; 10
  - (b) violent or threatening behaviour;
  - (c) controlling or coercive behaviour;
  - (d) economic abuse (see subsection (4));
  - (e) psychological, emotional or other abuse.
- (4) “Economic abuse” means any behaviour that has a substantial adverse effect on B’s ability to—
  - (a) acquire, use or maintain money or other property, or
  - (b) obtain goods or services. 15

- (5) For the purposes of this Act A’s behaviour may be behaviour “towards” B despite the fact that it consists of conduct directed at another person (for example, B’s child).
- (6) References in this Act to being abusive towards another person are to be read in accordance with this section. 5
- (7) For the meaning of “personally connected”, see section 2.

## 2 Definition of “personally connected”

- (1) Two people are “personally connected” if any of the following applies –
- (a) they are, or have been, married to each other;
  - (b) they are, or have been, civil partners of each other; 10
  - (c) they have agreed to marry one another (whether or not the agreement has been terminated);
  - (d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
  - (e) they are, or have been, in an intimate personal relationship with each other; 15
  - (f) there is a child in relation to whom they each have a parental relationship (see subsection (2));
  - (g) they are relatives.
- (2) For the purposes of subsection (1)(f) a person has a parental relationship in relation to a child if – 20
- (a) the person is a parent of the child, or
  - (b) the person has, or has had, parental responsibility for the child.
- (3) In this section –
- “child” means a person under the age of 18 years; 25
  - “civil partnership agreement” has the meaning given by section 73 of the Civil Partnership Act 2004;
  - “parental responsibility” has the same meaning as in the Children Act 1989;
  - “relative” has the meaning given by section 63(1) of the Family Law Act 1996. 30

## PART 2

### THE DOMESTIC ABUSE COMMISSIONER

#### *Domestic Abuse Commissioner*

- ## 3 Appointment of Commissioner 35
- (1) The Secretary of State must appoint a person as the Domestic Abuse Commissioner (“the Commissioner”).
- (2) The Commissioner is to hold and vacate office in accordance with the terms of the Commissioner’s appointment.
- (3) The Commissioner is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown. 40

#### 4 Funding

- (1) The Secretary of State may make payments to the Commissioner out of money provided by Parliament for the purpose of enabling the Commissioner to meet expenditure incurred in the exercise of the Commissioner’s functions.
- (2) Payments are to be made at such times, and subject to any such conditions, as the Secretary of State considers appropriate. 5
- (3) The Secretary of State may pay, or make provision for paying, to or in respect of the Commissioner –
  - (a) remuneration;
  - (b) allowances; 10
  - (c) sums by way of or in respect of pensions.

#### 5 Staff etc

- (1) The Secretary of State must provide the Commissioner with –
  - (a) such staff, and
  - (b) such accommodation, equipment and other facilities, 15as the Secretary of State considers necessary for the carrying out of the Commissioner’s functions.
- (2) Before providing any staff, the Secretary of State must –
  - (a) consult the Commissioner, and
  - (b) obtain the Commissioner’s approval as to the persons to be provided as staff. 20
- (3) The Secretary of State must consult the Commissioner before providing any accommodation, equipment or other facilities.
- (4) A person employed in the civil service of the State continues to be employed in the civil service of the State during any period of service as a member of the staff mentioned in subsection (1)(a). 25

#### *Functions of Commissioner*

#### 6 General functions of Commissioner

- (1) The Commissioner must encourage good practice in –
  - (a) the prevention of domestic abuse; 30
  - (b) the prevention, detection, investigation and prosecution of offences involving domestic abuse;
  - (c) the identification of –
    - (i) people who carry out domestic abuse;
    - (ii) victims of domestic abuse; 35
    - (iii) children affected by domestic abuse;
  - (d) the provision of protection and support to people affected by domestic abuse.
- (2) The things that the Commissioner may do in pursuance of the general duty under subsection (1) include – 40
  - (a) assessing, monitoring, and publishing information about, the provision of services to people affected by domestic abuse;

- (b) making recommendations to any public authority about the exercise of its functions;
  - (c) undertaking or supporting (financially or otherwise) the carrying out of research;
  - (d) providing information, education or training; 5
  - (e) taking other steps to increase public awareness of domestic abuse;
  - (f) consulting public authorities, voluntary organisations and other persons;
  - (g) co-operating with, or working jointly with, public authorities, voluntary organisations and other persons, whether in England and Wales or outside the United Kingdom. 10
- (3) Subject to subsection (4), the Commissioner may not do anything in pursuance of the general duty under subsection (1) that –
- (a) relates to a devolved Welsh authority, or
  - (b) otherwise relates to Welsh devolved matters. 15
- (4) Subsection (3) does not prevent the Commissioner from –
- (a) doing anything falling within subsection (2)(c),(d) or (e), to the extent that the thing done does not relate to Welsh devolved matters;
  - (b) doing anything falling within subsection (2)(f) or (g);
  - (c) disclosing information to a devolved Welsh authority, or information which relates to Welsh devolved matters, under section 15. 20
- (5) For the purposes of this section something relates to Welsh devolved matters so far as it relates to –
- (a) any matter provision about which would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of the Assembly, or
  - (b) (so far as it is not within paragraph (a)), any matter functions with respect to which are exercisable by the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government or the National Assembly for Wales Commission. 25
- (6) In this section –
- “devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006;
  - “public authority” means any public authority within the meaning of section 6 of the Human Rights Act 1998, other than a court or tribunal. 30

## 7 Reports

- (1) The Commissioner may report to the Secretary of State on any matter relating to domestic abuse.
- (2) The Commissioner must publish every report made under this section.
- (3) Before publishing a report under this section, the Commissioner must send a draft of the report to the Secretary of State. 40
- (4) The Secretary of State may direct the Commissioner to omit material from any report before publication if the Secretary of State thinks the publication of that material –
  - (a) might jeopardise the safety of any person, or
  - (b) might prejudice the investigation or prosecution of an offence. 45

- (5) The Secretary of State must lay before Parliament a copy of any report published under this section.

## 8 Advice and assistance

- (1) The Commissioner may provide the Secretary of State with any advice or assistance that the Secretary of State may request. 5
- (2) The Commissioner may, at the request of any other person, provide the person with advice or assistance relating to the exercise of any of the person’s functions, or the carrying out of any activities by the person, in relation to people affected by domestic abuse.
- (3) The Commissioner may charge a person for providing the person with advice or assistance under subsection (2). 10
- (4) The Commissioner must publish any advice given to a person under subsection (2).
- (5) Before publishing any advice given under this section, the Commissioner must send a draft of what is proposed to be published to the Secretary of State. 15
- (6) The Secretary of State may direct the Commissioner to omit anything contained in the advice before publication if the Secretary of State thinks the publication of that material –
- (a) might jeopardise the safety of any person, or
  - (b) might prejudice the investigation or prosecution of an offence. 20

## 9 Incidental powers

- (1) The Commissioner may do anything which the Commissioner considers will facilitate, or is incidental or conducive to, the carrying out of the Commissioner’s functions.
- (2) But the Commissioner may not borrow money. 25

### *Advisory Board*

## 10 Advisory Board

- (1) The Commissioner must establish an Advisory Board (“the Board”) for the purposes of providing advice to the Commissioner about the exercise of the Commissioner’s functions. 30
- (2) The Board is to consist of not fewer than six and not more than ten members appointed by the Commissioner.
- (3) Each member of the Board holds and vacates office in accordance with the member’s terms and conditions of appointment.
- (4) The members of the Board must include – 35
- (a) persons appearing to the Commissioner to represent the interests of victims of domestic abuse;
  - (b) persons appearing to the Commissioner to represent the interests of charities and other voluntary organisations that work with victims of domestic abuse in England; 40

- (c) persons appearing to the Commissioner to represent the interests of providers of health care services in England;
  - (d) persons appearing to the Commissioner to represent the interests of providers of social care services in England;
  - (e) persons appearing to the Commissioner to represent the interests of persons with functions relating to policing or criminal justice; 5
  - (f) persons appearing to the Commissioner to have academic expertise in relation to domestic abuse.
- (5) The Commissioner may pay such remuneration or allowances to members of the Board as the Commissioner may determine. 10
- (6) In this section –
- “health care services” means services relating to health care (within the meaning of section 9 of the Health and Social Care Act 2008);
  - “social care services” means services relating to social care (within the meaning of that section). 15

*Strategic plans and annual reports*

## 11 Strategic plans

- (1) The Commissioner must, as soon as reasonably practicable after the Commissioner’s appointment, prepare a strategic plan and submit it to the Secretary of State for approval. 20
- (2) A strategic plan is a plan setting out how the Commissioner proposes to exercise the Commissioner’s functions in the period to which the plan relates, which must be not less than one year and not more than three years.
- (3) A strategic plan must in particular –
- (a) state the Commissioner’s objectives and priorities for the period to which the plan relates; 25
  - (b) state any matters on which the Commissioner proposes to report under section 7 during that period;
  - (c) state any other activities the Commissioner proposes to undertake during that period in the exercise of the Commissioner’s functions. 30
- (4) The Commissioner must, before the end of the period to which a strategic plan relates (“the current period”), prepare a strategic plan for a period immediately following the current period and submit it to the Secretary of State for approval.
- (5) The Commissioner may, at any time during the period to which a strategic plan relates, revise that plan and submit the revised plan to the Secretary of State for approval. 35
- (6) The Secretary of State may approve a strategic plan either without modifications or with modifications agreed with the Commissioner.
- (7) As soon as reasonably practicable after approving a strategic plan, the Secretary of State must lay a copy of the plan before Parliament. 40

## 12 Annual reports

- (1) As soon as reasonably practicable after the end of each financial year, the Commissioner must submit to the Secretary of State an annual report on the exercise of the Commissioner’s functions during the year.
- (2) The annual report must include— 5
  - (a) an assessment of the extent to which the Commissioner’s objectives and priorities have been met in that year;
  - (b) a statement of the matters on which the Commissioner has reported under section 7 during the year;
  - (c) a statement of the other activities the Commissioner has undertaken during the year in the exercise of the Commissioner’s functions. 10
- (3) As soon as reasonably practicable after receiving a report under this section, the Secretary of State must lay a copy of the report before Parliament.
- (4) The Secretary of State may remove material from a report under this section if the Secretary of State thinks the publication of that material— 15
  - (a) might jeopardise the safety of any person, or
  - (b) might prejudice the investigation or prosecution of an offence.
- (5) In this section “financial year” means—
  - (a) the period beginning with the day on which the first Domestic Abuse Commissioner takes office and ending with the following 31 March, 20  
and
  - (b) each successive period of 12 months.

### *Duties of public authorities in relation to Commissioner*

## 13 Duty to co-operate with Commissioner

- (1) The Commissioner may request a specified public authority to co-operate with the Commissioner in any way that the Commissioner considers necessary for the purposes of the Commissioner’s functions. 25
- (2) A specified public authority must, so far as reasonably practicable, comply with a request made to it under this section.
- (3) In this section “specified public authority” means any of the following— 30
  - (a) a chief officer of police of a police force maintained for a police area in England and Wales;
  - (b) a local policing body;
  - (c) the Chief Constable of the British Transport Police Force;
  - (d) the British Transport Police Authority; 35
  - (e) the Ministry of Defence Police;
  - (f) an immigration officer or other official of the Secretary of State exercising functions in relation to immigration or asylum;
  - (g) the Crown Prosecution Service;
  - (h) the Parole Board; 40
  - (i) the Criminal Cases Review Commission;
  - (j) an English local authority;
  - (k) an NHS body in England;
  - (l) Her Majesty’s Inspectors of Constabulary;

(m)	Her Majesty’s Chief Inspector of the Crown Prosecution Service;	
(n)	Her Majesty’s Chief Inspector of Education, Children’s Services and Skills;	
(o)	a body approved as an independent inspectorate under section 106 of the Education and Skills Act 2008 (inspection of registered independent educational institutions);	5
(p)	the Care Quality Commission;	
(q)	Monitor.	
(4)	The Secretary of State may by regulations amend this section so as to—	
(a)	add a public authority as a specified public authority for the purposes of this section;	10
(b)	remove a public authority added by virtue of paragraph (a);	
(c)	vary any description of a public authority.	
(5)	Before making regulations under subsection (4) the Secretary of State must consult the Commissioner.	15
(6)	Regulations under subsection (4) may not contain provision adding a devolved Welsh authority as a specified public authority for the purposes of this section.	
(7)	In this section—	
	“devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006;	20
	“English local authority” means—	
(a)	a county council or district council in England,	
(b)	a London borough council,	
(c)	the Greater London Authority,	
(d)	the Common Council of the City of London, or	25
(e)	the Council of the Isles of Scilly;	
	“immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;	
	“NHS body in England” means—	
(a)	a National Health Service trust in England established under section 25 of the National Health Service Act 2006,	30
(b)	an NHS foundation trust within the meaning given by section 30 of that Act,	
(c)	the National Health Service Commissioning Board,	
(d)	a clinical commissioning group established under section 14D of that Act, or	35
(e)	the National Health Service Trust Development Authority;	
	“public authority” means any public authority within the meaning of section 6 of the Human Rights Act 1998, other than a court or tribunal.	
<b>14</b>	<b>Duty to respond to Commissioner’s recommendations</b>	<b>40</b>
(1)	This section applies where the Commissioner publishes a report under section 7 containing recommendations in relation to any public authority that is a specified public authority for the purposes of section 13.	
(2)	The public authority must prepare comments on the report.	

- (3) The comments must include in respect of each recommendation made in the report an explanation of –
  - (a) the action which the public authority has taken, or proposes to take, in response to the recommendation, or
  - (b) why the public authority has not taken, or does not propose to take, any action in response. 5
- (4) The public authority must arrange for its comments to be published in such manner as the authority considers appropriate.
- (5) The comments must be published before the end of the period of 56 days beginning with the day on which the report is published. 10
- (6) The public authority must send a copy of anything published under subsection (4) to –
  - (a) the Commissioner, and
  - (b) the Secretary of State.

*Disclosure of information* 15

**15 Disclosure of information**

- (1) The Commissioner may disclose to a person any information received by the Commissioner in connection with the Commissioner’s functions if the disclosure is made for a purpose connected with a function of the Commissioner. 20
- (2) A person may disclose any information to the Commissioner if the disclosure is made for the purposes of enabling or assisting the Commissioner to exercise any function.
- (3) A disclosure of information authorised by this section does not breach –
  - (a) any obligation of confidence owed by the person making the disclosure in relation to that information, or
  - (b) any other restriction on the disclosure of information (however imposed). 25
- (4) But nothing in this Part requires or authorises any of the following –
  - (a) the disclosure of any patient information (see subsection (5)); 30
  - (b) the making of a disclosure which contravenes the data protection legislation (see subsection (6));
  - (c) the making of a disclosure which is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (5) “Patient information” means information (however recorded) which – 35
  - (a) relates to –
    - (i) the physical or mental health or condition of an individual,
    - (ii) the diagnosis of an individual’s condition, or
    - (iii) an individual’s care or treatment,or is (to any extent) derived directly or indirectly from information relating to any of those matters, and 40
  - (b) identifies the individual or enables the individual to be identified (either by itself or in combination with other information).

- (6) In this section “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).
- (7) This section does not affect any power to disclose that exists apart from this section.

*Miscellaneous and supplementary* 5

**16 Restriction on exercise of functions in individual cases**

- (1) The Commissioner may not exercise any function in relation to an individual case.
- (2) But subsection (1) does not prevent the Commissioner considering individual cases and drawing conclusions about them for the purpose of, or in the context of, considering a general issue. 10

**17 Amendments relating to Commissioner**

- (1) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership), at the appropriate place insert –  
“Domestic Abuse Commissioner.” 15
- (2) In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general), at the appropriate place insert –  
“The Domestic Abuse Commissioner.”

**PART 3**

POWERS FOR DEALING WITH DOMESTIC ABUSE 20

*Domestic abuse protection notices*

**18 Power to give a domestic abuse protection notice**

- (1) A senior police officer may give a domestic abuse protection notice to a person (“P”) if conditions A and B are met.
- (2) A domestic abuse protection notice is a notice prohibiting P from being abusive towards a person aged 16 or over to whom P is personally connected. 25  
(Section 19 contains further provision about the provision that may be made by notices.)
- (3) Condition A is that the senior police officer has reasonable grounds for believing that P has been abusive towards a person aged 16 or over to whom P is personally connected. 30
- (4) Condition B is that the senior police officer has reasonable grounds for believing that it is necessary to give the notice to protect that person from domestic abuse, or the risk of domestic abuse, carried out by P.
- (5) It does not matter whether the abusive behaviour referred to in subsection (3) took place in England and Wales or elsewhere. 35
- (6) A domestic abuse protection notice may not be given to a person who is under the age of 18.

- 
- (7) A domestic abuse protection notice has effect in all parts of the United Kingdom.
- (8) In this Part—
- “senior police officer” means a member of a relevant police force who is a constable of at least the rank of inspector; 5
  - “relevant police force” means—
    - (a) a force maintained by a local policing body;
    - (b) the British Transport Police Force;
    - (c) the Ministry of Defence Police.
- 19 Provision that may be made by notices 10**
- (1) A domestic abuse protection notice may provide that the person to whom the notice is given (“P”) may not contact the person for whose protection the notice is given.
- (2) If P lives in premises in England or Wales in which the person for whose protection the notice is given also lives, the notice may also contain provision— 15
- (a) prohibiting P from evicting or excluding that person from the premises;
  - (b) prohibiting P from entering the premises;
  - (c) requiring P to leave the premises;
  - (d) prohibiting P from coming within a specified distance of the premises.
- “Specified” means specified in the notice. 20
- 20 Matters to be considered before giving a notice**
- (1) Before giving a domestic abuse protection notice to a person (“P”), a senior police officer must, among other things, consider the following—
- (a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the giving of the notice (whether or not that person is a person to whom P is personally connected); 25
  - (b) the opinion of the person for whose protection the notice would be given as to the giving of the notice;
  - (c) any representations made by P about the giving of the notice;
  - (d) in a case where the notice includes provision relating to premises lived in by P and the person for whose protection the notice would be given, the opinion of any other person— 30
    - (i) to whom P is personally connected, and
    - (ii) who lives in the premises.
- (2) The officer must take reasonable steps to discover the opinions mentioned in subsection (1). 35
- (3) The officer may give a domestic abuse protection notice in circumstances where the person for whose protection it is given does not consent to the giving of the notice.
- 21 Further requirements in relation to notices 40**
- (1) A domestic abuse protection notice must be in writing.
- (2) A domestic abuse protection notice given to a person (“P”) must state—

- (a) the grounds on which it has been given,
  - (b) that a constable may arrest P without warrant if the constable has reasonable grounds for believing that P is in breach of the notice,
  - (c) that an application for a domestic abuse protection order under section 25 will be heard by a magistrates’ court within 48 hours of the time of giving the notice and a notice of the hearing will be given to P, 5
  - (d) that the notice continues in effect until that application has been determined or withdrawn, and
  - (e) the provision that a magistrates’ court may include in a domestic abuse protection order. 10
- (3) The notice must be served on P personally by a constable.
- (4) On serving the notice on P, the constable must ask P for an address at which P may be given the notice of the hearing of the application for the domestic abuse protection order.
- (5) Subsection (6) applies where – 15
- (a) a senior police officer gives a domestic abuse protection notice to a person (“P”) who the officer believes is a person subject to service law in accordance with sections 367 to 369 of the Armed Forces Act 2006,
  - (b) the notice includes provision by virtue of section 19(2) prohibiting P from entering premises, or requiring P to leave premises, and 20
  - (c) the officer believes that the premises are relevant service accommodation.
- (6) The officer must make reasonable efforts to inform P’s commanding officer of the giving of the notice.
- (7) In this section – 25
- “commanding officer” has the meaning given by section 360 of the Armed Forces Act 2006;
  - “relevant service accommodation” means premises which fall within paragraph (a) of the definition of “service living accommodation” in section 96(1) of that Act. 30

## 22 Breach of notice

- (1) If a constable has reasonable grounds for believing that a person is in breach of a domestic abuse protection notice, the constable may arrest the person without warrant.
- (2) A person arrested by virtue of subsection (1) must be held in custody and brought before the appropriate magistrates’ court – 35
- (a) before the end of the period of 24 hours beginning with the time of the arrest, or
  - (b) if earlier, at the hearing of the application for a domestic abuse protection order against the person (see section 25(3)). 40
- (3) In subsection (2) “the appropriate magistrates’ court” means the magistrates’ court which is to hear the application mentioned in subsection (2)(b).
- (4) If the person is brought before the court as mentioned in subsection (2)(a), the court may remand the person. 45
- (For power to remand a person brought before the court as mentioned in subsection (2)(b), see section 26(8).)

- (5) In calculating when the period of 24 hours mentioned in subsection (2)(a) ends, the following days are to be disregarded –
- (a) any Saturday or Sunday,
  - (b) Christmas Day,
  - (c) Good Friday, and 5
  - (d) any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.
- (6) In section 17(1) of the Police and Criminal Evidence Act 1984 (entry for purpose of arrest etc), after paragraph (c) insert – 10
- “(cza) of arresting a person who the constable has reasonable grounds for believing is in breach of a domestic abuse protection notice given under section 18 of the Domestic Abuse Act 2019;”.

### **23 Remand of person arrested for breach of notice**

- (1) This section applies where under section 22(4) a magistrates’ court remands a person who has been given a domestic abuse protection notice. 15
- (2) In the application of section 128(6) of the Magistrates’ Courts Act 1980 to such remand, the reference to the “other party” is to be read as a reference to the senior police officer who gave the notice.
- (3) If the court has reason to suspect that a medical report will be required, the power to remand a person may be exercised for the purpose of enabling a medical examination to take place and a report to be made. 20
- (4) If the person is remanded in custody for that purpose, the adjournment may not be for more than 3 weeks at a time.
- (5) If the person is remanded on bail for that purpose, the adjournment may not be for more than 4 weeks at a time. 25
- (6) If the court has reason to suspect that the person is suffering from mental disorder within the meaning of the Mental Health Act 1983, the court has the same power to make an order under section 35 of that Act (remand to hospital for report on accused’s mental condition) as it has under that section in the case of an accused person (within the meaning of that section). 30
- (7) The court may, when remanding the person on bail, require the person to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

### *Domestic abuse protection orders* 35

### **24 Meaning of “domestic abuse protection order”**

- (1) In this Part a “domestic abuse protection order” means an order which, for the purpose of preventing a person (“P”) from being abusive towards a person aged 16 or over to whom P is personally connected –
- (a) prohibits P from doing things described in the order, or 40
  - (b) requires P to do things described in the order.
- (2) A domestic abuse protection order may be made –
- (a) on application (see section 25), or

- (b) in the course of certain proceedings (see section 27).
- (3) Section 28 sets out the conditions for making a domestic abuse protection order.

## 25 Domestic abuse protection orders on application

- (1) A court may make a domestic abuse protection order under this section against a person (“P”) on an application made to it in accordance with this section. 5
- (2) An application for an order under this section may be made by –
- (a) the person for whose protection the order is sought;
  - (b) the appropriate chief officer of police (see subsection (4));
  - (c) a person specified in regulations made by the Secretary of State; 10
  - (d) any other person with the leave of the court to which the application is to be made.
- (3) Where P is given a domestic abuse protection notice by a member of a relevant police force under section 18, the chief officer of police in relation to that force must apply for a domestic abuse protection order against P. 15  
(For further provision about such applications, see section 26.)
- (4) The appropriate chief officer of police is –
- (a) in a case where subsection (3) applies, the chief officer of police referred to in that subsection;
  - (b) in any other case, any of the following – 20
    - (i) the chief officer of police of the force maintained for the police area in which P resides;
    - (ii) the chief officer of police of any other force maintained for a police area who believes that P is in that police area or is intending to come to it; 25
    - (iii) the Chief Constable of the British Transport Police Force;
    - (iv) the Chief Constable of the Ministry of Defence Police.
- (5) An application for an order under this section must be made to the family court, except where subsection (6) or (7) applies.
- (6) An application made by a chief officer of police for an order under this section must be made by complaint to a magistrates’ court. 30
- (7) In a case where –
- (a) P, and the person for whose protection the order is sought, are parties to any family or civil proceedings, and
  - (b) the court would have power to make a domestic abuse protection order under section 27 in those proceedings without an application being made, 35
- an application for an order under this section may be made in those proceedings by the person for whose protection the order is sought.
- (8) Where an application is made to a magistrates’ court in accordance with this section – 40
- (a) the magistrates’ court may adjourn the hearing of the application;
  - (b) on the hearing of the application, section 97 of the Magistrates’ Courts Act 1980 (summons to witness and warrant for arrest) does not apply in relation to the person for whose protection the order is sought, 45

except where the person has given oral or written evidence at the hearing.

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

- (1) This section applies where, as a result of a person (“P”) being given a domestic abuse protection notice under section 18, a chief officer of police is required by section 25(3) to apply for a domestic abuse protection order against P. 5
- (2) The application must be heard by the magistrates’ court not later than 48 hours after the notice was given to P.
- (3) In calculating when the period of 48 hours mentioned in subsection (2) ends, the following days are to be disregarded – 10
  - (a) any Saturday or Sunday,
  - (b) Christmas Day,
  - (c) Good Friday, and
  - (d) any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971. 15
- (4) P must be given a notice of the hearing of the application.
- (5) The notice under subsection (4) is to be treated as having been given if it has been left at the address given by P under section 21(4).
- (6) But if the notice has not been given because P did not give an address under section 21(4), the court may hear the application if satisfied that the chief officer of police has made reasonable efforts to give P the notice. 20
- (7) If the court adjourns the hearing of the application, the notice continues in effect until the application has been determined or withdrawn.
- (8) If – 25
  - (a) P is brought before the court at the hearing of the application as a result of P’s arrest by virtue of section 22(1) (arrest for breach of domestic abuse protection notice), and
  - (b) the court adjourns the hearing, the court may remand P.
- (9) Section 23 applies in relation to a remand under subsection (8) as it applies in relation to a remand under section 22(4), but as if the reference in section 23(2) to the senior police officer who gave the notice were a reference to the chief officer of police who applied for the order. 30

## 27 Domestic abuse protection orders otherwise than on application

- (1) A court may make a domestic abuse protection order under this section in any of the cases set out below. 35

### *Family proceedings*

- (2) The High Court or the family court may make a domestic abuse protection order against a person (“P”) in any family proceedings to which both P and the person for whose protection the order would be made are parties. 40

### *Criminal proceedings*

- (3) Where a person (“P”) has been convicted of an offence, the court dealing with P for that offence may (as well as sentencing P or dealing with P in any other way) make a domestic abuse protection order against P.
- (4) But subsection (3) does not apply where the Court of Appeal is dealing with a person for an offence. 5
- (5) A court by or before which a person is acquitted of an offence may make a domestic abuse protection order against the person.
- (6) Where the Crown Court allows a person’s appeal against conviction, the Crown Court may make a domestic abuse protection order against the person.
- Civil proceedings* 10
- (7) The county court may make a domestic abuse protection order against a person (“P”) in any relevant proceedings to which both P and the person for whose protection the order would be made are parties.
- (8) In subsection (7) “relevant proceedings” means proceedings of a description specified in regulations made by the Secretary of State. 15
- 28 Conditions for making an order**
- (1) The court may make a domestic abuse protection order under section 25 or 27 against a person (“P”) if conditions A and B are met.
- (2) Condition A is that the court is satisfied that P has been abusive towards a person aged 16 or over to whom P is personally connected. 20
- (3) Condition B is that the order is necessary and proportionate to protect that person from domestic abuse, or the risk of domestic abuse, carried out by P.
- (4) It does not matter –
- (a) whether the abusive behaviour referred to in subsection (2) took place in England and Wales or elsewhere, or 25
- (b) whether it took place before or after the coming into force of this section.
- (5) A domestic abuse protection order may not be made against a person who is under the age of 18.
- 29 Matters to be considered before making an order** 30
- (1) Before making a domestic abuse protection order against a person (“P”), the court must, among other things, consider the following –
- (a) the welfare of any person under the age of 18 whose interests the court considers relevant to the making of the order (whether or not that person is a person to whom P is personally connected); 35
- (b) any opinion of the person for whose protection the order would be made –
- (i) which relates to the making of the order, and
- (ii) of which the court is made aware;
- (c) in a case where the order includes provision relating to premises lived in by P and the person for whose protection the order would be made, any opinion of which the court is made aware of any other person – 40
- (i) to whom P is personally connected, and

(ii) who lives in the premises.

- (2) The court may make a domestic abuse protection order in circumstances where the person for whose protection it is made does not consent to the making of the order.

**30 Making of orders without notice** 5

- (1) A court may, in any case where it is just and convenient to do so, make a domestic abuse protection order against a person (“P”) even though P has not been given such notice of the proceedings as would otherwise be required by rules of court.

- (2) Subsection (1) does not apply in relation to the making of an order under section 25 on an application made in accordance with subsection (3) of that section (see instead section 26(4) to (6)). 10

- (3) In deciding whether to exercise its powers under subsection (1), the court must have regard to all the circumstances, including –

(a) any risk that, if the order is not made immediately, P will cause significant harm to the person for whose protection the order would be made, 15

(b) in a case where an application for the order has been made, whether it is likely that the person making the application will be deterred or prevented from pursuing the application if an order is not made immediately, and 20

(c) whether there is reason to believe that –

(i) P is aware of the proceedings but is deliberately evading service, and 25

(ii) the delay involved in effecting substituted service will cause serious prejudice to the person for whose protection the order would be made.

- (4) If a court makes an order against a person by virtue of subsection (1), it must give the person an opportunity to make representations about the order –

(a) as soon as just and convenient, and 30

(b) at a hearing of which notice has been given to all the parties in accordance with rules of court.

**31 Provision that may be made by orders**

- (1) A court may by a domestic abuse protection order impose any requirements that the court considers necessary to protect the person for whose protection the order is made from domestic abuse or the risk of domestic abuse. 35

“Requirement” includes any prohibition or restriction.

- (2) The court must, in particular, consider what requirements (if any) may be necessary to protect the person for whose protection the order is made from different kinds of abusive behaviour. 40

- (3) Subsections (4) to (6) contain examples of the type of provision that may be made under subsection (1), but they do not limit the type of provision that may be so made.

- (4) A domestic abuse protection order may provide that the person against whom a domestic abuse protection order is made (“P”) may not contact the person for whose protection it is made.
- (5) If P lives in premises in England or Wales in which the person for whose protection the order is made also lives, the order may contain provision— 5
- (a) prohibiting P from evicting or excluding that person from the premises;
  - (b) prohibiting P from entering the premises;
  - (c) requiring P to leave the premises;
  - (d) prohibiting P from coming within a specified distance of the premises.
- “Specified” means specified in the order. 10
- (6) A domestic abuse protection order may require P to submit to electronic monitoring of P’s compliance with other requirements imposed by the order. In this Part a requirement imposed by virtue of this subsection is referred to as an “electronic monitoring requirement”.
- (7) Sections 32 and 33 contain further provision about the requirements that may be imposed by a domestic abuse protection order. 15

### 32 Further provision about requirements that may be imposed by orders

- (1) Requirements imposed on a person by a domestic abuse protection order must, so far as practicable, be such as to avoid— 20
- (a) conflict with the person’s religious beliefs;
  - (b) interference with any times at which the person normally works or attends an educational establishment;
  - (c) conflict with the requirements of any other court order or injunction to which the person may be subject.
- (2) A domestic abuse protection order that imposes a requirement to do something on a person (“P”) must specify the person who is to be responsible for supervising compliance with that requirement. 25
- (3) Before including such a requirement in a domestic abuse protection order, the court must receive evidence about its suitability and enforceability from the person to be specified under subsection (2). 30
- (4) Subsections (2) and (3) do not apply in relation to electronic monitoring requirements (see instead section 33(3) to (6)).
- (5) It is the duty of a person specified under subsection (2)— 35
- (a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (the “relevant requirements”);
  - (b) to promote P’s compliance with the relevant requirements;
  - (c) if the person considers that— 40
    - (i) P has complied with all the relevant requirements, or
    - (ii) P has failed to comply with a relevant requirement, to inform the appropriate chief officer of police.
- (6) In subsection (5)(c) the “appropriate chief officer of police” means— 45
- (a) the chief officer of police of the force maintained for the police area in which it appears to the person specified under subsection (2) that P resides, or

- (b) if it appears to that person that P resides in more than one police area, whichever of the relevant chief officers of police the person thinks it most appropriate to inform.
  - (7) A person (“P”) who is subject to a requirement imposed by a domestic abuse protection order – 5
    - (a) must keep in touch with the person specified under subsection (2) in relation to that requirement, in accordance with any instructions given by that person from time to time, and
    - (b) if P changes home address, must notify the person specified under subsection (2) of the new home address. 10
- These obligations have effect as requirements of the order.

### 33 Further provision about electronic monitoring requirements

- (1) Subsections (2) to (4) apply for the purpose of determining whether a court may impose an electronic monitoring requirement on a person (“P”) in a domestic abuse protection order. 15
  - (2) The requirement may not be imposed in P’s absence.
  - (3) If there is a person (other than P) without whose co-operation it would be impracticable to secure the monitoring in question, the requirement may not be imposed without that person’s consent.
  - (4) The court may impose the requirement only if – 20
    - (a) it has been notified by the Secretary of State that electronic monitoring arrangements are available in the relevant area, and
    - (b) it is satisfied that the necessary provision can be made under the arrangements currently available.
  - (5) In subsection (4)(a) “the relevant area” means – 25
    - (a) the local justice area in which it appears to the court that P resides or will reside, and
    - (b) in a case where it is proposed to include in the order –
      - (i) a requirement that P must remain, for specified periods, at a specified place, or 30
      - (ii) a provision prohibiting P from entering a specified place or area,  
the local justice area in which the place or area proposed to be specified is situated.
- “Specified” means specified in the order. 35
- (6) A domestic abuse protection order that includes an electronic monitoring requirement must specify the person who is to be responsible for the monitoring.
  - (7) The person specified under subsection (6) (“the responsible person”) must be of a description specified in regulations made by the Secretary of State. 40
  - (8) Where a domestic abuse protection order imposes an electronic monitoring requirement on a person, the person must (among other things) –
    - (a) submit, as required from time to time by the responsible person, to –
      - (i) being fitted with, or the installation of, any necessary apparatus, and 45

- (ii) the inspection or repair of any apparatus fitted or installed for the purposes of the monitoring,
- (b) not interfere with, or with the working of, any apparatus fitted or installed for the purposes of the monitoring, and
- (c) take any steps required by the responsible person for the purpose of keeping in working order any apparatus fitted or installed for the purposes of the monitoring. 5

These obligations have effect as requirements of the order.

### 34 Duration and geographical application of orders

- (1) A domestic abuse protection order takes effect on the day on which it is made. This is subject to subsection (2). 10
- (2) If, on the day on which a domestic abuse protection order (“the new order”) is made against a person, the person is subject to another domestic abuse protection order (“the previous order”), the new order may be made so as to take effect on the day on which the previous order ceases to have effect. 15
- (3) A domestic abuse protection order has effect –
  - (a) for a specified period,
  - (b) until the occurrence of a specified event, or
  - (c) until further order.
 “Specified” means specified in the order. 20
- (4) A domestic abuse protection order may also specify periods for which particular requirements imposed by the order have effect.
- (5) But a domestic abuse protection order may not provide for an electronic monitoring requirement to have effect for more than 12 months.
- (6) Subsection (5) is subject to any variation of the order under section 40. 25
- (7) A requirement imposed by a domestic abuse protection order has effect in all parts of the United Kingdom unless expressly limited to a particular locality.

### 35 Breach of order

- (1) A person who is subject to a domestic abuse protection order commits an offence if without reasonable excuse the person fails to comply with any requirement imposed by the order. 30
- (2) In a case where the order was made against the person without that person being given notice of the proceedings, the person commits an offence under this section only in respect of conduct engaged in at a time when the person was aware of the existence of the order. 35  
(See also section 41(8), which makes similar provision where an order has been varied.)
- (3) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.
- (4) A person may not be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court. 40
- (5) A person guilty of an offence under this section is liable –

- (a) on summary conviction –
    - (i) to imprisonment for a period not exceeding 12 months (or 6 months, if the offence was committed before the coming into force of section 154(1) of the Criminal Justice Act 2003), or
    - (ii) to a fine, 5or both;
  - (b) on conviction on indictment, to imprisonment for a period not exceeding 5 years or to a fine, or both.
- (6) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge. 10
- (7) In subsection (6) “order for conditional discharge” means an order under any of the following provisions discharging the offender conditionally –
  - (a) section 12 of the Powers of Criminal Courts (Sentencing) Act 2000;
  - (b) section 185 of the Armed Forces Act 2006. 15
- (8) In proceedings for an offence under this section, a copy of the original domestic abuse protection order, certified by the proper officer of the court that made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those matters is admissible in those proceedings. 20

### **36 Arrest for breach of order**

- (1) This section applies where a relevant court has made a domestic abuse protection order against a person (“P”).
- (2) In this section “relevant court” means –
  - (a) the High Court, 25
  - (b) the family court, or
  - (c) the county court.
- (3) A person mentioned in subsection (4) may apply to the relevant judge for the issue of a warrant for P’s arrest if the person considers that P has failed to comply with the order or is otherwise in contempt of court in relation to the order. 30
- (4) The persons referred to in subsection (3) are –
  - (a) the person for whose protection the order was made;
  - (b) where the order was made under section 25, the person who applied for the order (if different); 35
  - (c) any other person with the leave of the relevant judge.
- (5) The relevant judge may issue a warrant on an application under subsection (3) only if –
  - (a) the application is substantiated on oath, and
  - (b) the relevant judge has reasonable grounds for believing that P has failed to comply with the order or is otherwise in contempt of court in relation to the order. 40
- (6) If –
  - (a) P is brought before a relevant court as a result of a warrant issued under this section, and 45

(b) the court does not immediately dispose of the matter, the court may remand P.

- (7) The Schedule contains further provision about remand under this section.
- (8) In this section “the relevant judge” means –
- (a) where the order was made by the High Court, a judge of that court; 5
  - (b) where the order was made by the family court, a judge of that court;
  - (c) where the order was made by the county court, a judge of that court.
- (9) For the power of a constable to arrest P without warrant for breach of a domestic abuse protection order, see section 24 of the Police and Criminal Evidence Act 1984. 10

### 37 Notification requirements

- (1) Subsections (2) to (5) apply where a person is subject to a domestic abuse protection order.
- (2) The person must, within the period of 3 days beginning with the day on which the order is made, notify the police of the information in subsection (3). 15
- (3) The information referred to in subsection (2) is –
- (a) the person’s name and, if the person uses one or more other names, each of those names;
  - (b) the person’s home address.
- (4) If the person uses a name which has not been notified under this section, the person must, within the period of 3 days beginning with the day on which the person first uses that name, notify the police of that name. 20
- (5) If the person changes home address, the person must, before the end of the period of 3 days beginning with the day on which that happens, notify the police of the new home address. 25
- (6) The Secretary of State may by regulations specify further notification requirements which a court may impose when making or varying a domestic abuse protection order.  
In this subsection a “notification requirement” is a requirement for the person against whom the order is made to provide specified information to the police. 30
- (7) The requirements imposed by subsections (2), (4) and (5) do not apply where the person is subject to notification requirements under –
- (a) Part 2 of the Sexual Offences Act 2003, or
  - (b) section 9 of the Stalking Protection Act 2019.
- (8) If on any day the person ceases to be subject to any notification requirements mentioned in subsection (7), the requirements imposed by subsections (2), (4) and (5) apply to the person on and after that day, but as if the reference in subsection (2) to the day on which the order was made were a reference to that day. 35
- (9) For provision about how to give a notification under subsection (2), (4) or (5), see section 38. 40

### 38 Further provision about notification under section 37

- (1) A person gives a notification under section 37(2), (4) or (5) by –
  - (a) attending at a police station in the appropriate police area, and
  - (b) giving an oral notification to –
    - (i) a police officer, or 5
    - (ii) any person authorised for the purpose by the officer in charge of the station.
- (2) In subsection (1) “the appropriate police area”, in relation to a person, means –
  - (a) if the person’s home address is in England and Wales, the police area in which that home address is situated; 10
  - (b) if the person does not have a home address in England and Wales, the police area in which the court that last made a domestic abuse protection order against the person is situated.
- (3) In a case of a person giving a notification under section 37(5), any reference in subsection (2) to the person’s home address is a reference to the person’s home address at the time of giving the notification. 15
- (4) A notification given in accordance with this section must be acknowledged –
  - (a) in writing, and
  - (b) in such form as the Secretary of State may direct.
- (5) When a person (“P”) gives a notification under section 37, P must, if requested to do so by the person to whom notification is given, allow that person to do any of the following things – 20
  - (a) take P’s fingerprints;
  - (b) photograph, or otherwise produce an image of, P or any part of P.
- (6) The power in subsection (5) is exercisable for the purpose of verifying P’s identity. 25

### 39 Offences relating to notification

- (1) A person (“P”) commits an offence if P –
  - (a) fails, without reasonable excuse, to comply with a requirement imposed by or under section 37, or 30
  - (b) notifies the police, in purported compliance with such a requirement, of any information which P knows to be false.
- (2) A person who fails, without reasonable excuse, to comply with section 38(5) commits an offence.
- (3) A person guilty of an offence under subsection (1) or (2) is liable – 35
  - (a) on summary conviction –
    - (i) to imprisonment for a period not exceeding 12 months (or 6 months, if the offence was committed before the coming into force of section 154(1) of the Criminal Justice Act 2003), or
    - (ii) to a fine, 40
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or both.

- (4) A person commits an offence under subsection (1)(a) on the day on which the person first fails, without reasonable excuse, to comply with a requirement imposed by or under section 37.
- (5) The person continues to commit the offence throughout any period during which the failure continues. 5
- (6) But the person may not be prosecuted more than once in respect of the same failure.

#### 40 Variation and discharge of orders

- (1) A court may vary or discharge a domestic abuse protection order made by that or any other court. 10  
This is subject to section 41.
- (2) A court may vary or discharge an order under this section –  
(a) on the application of a person mentioned in subsection (3), or  
(b) in any case in which it could make a domestic abuse protection order under section 27. 15
- (3) The persons referred to in subsection (2)(a) are –  
(a) the person for whose protection the order was made;  
(b) the person against whom the order was made (“P”);  
(c) where the order was made under section 25, the person who applied for the order; 20  
(d) the chief officer of police of the force maintained for the police area in which P resides;  
(e) the chief officer of police of any other force maintained for a police area who believes that P is in that police area or is intending to come to it.
- (4) Before deciding whether to vary or discharge an order under this section, the court must hear from – 25  
(a) any relevant chief officer of police who wishes to be heard, and  
(b) in a case where the person for whose protection the order was made is seeking to discharge the order, or to remove or make less onerous any requirement imposed by the order, the person for whose protection it was made. 30
- (5) For the purposes of subsection (4)(a) each of the following is a “relevant chief officer of police” – 35  
(a) where the order was made on an application by a chief officer of police, that chief officer;  
(b) the chief officer of police of the force maintained for the police area in which P resides;  
(c) the chief officer of police of any other force maintained for a police area who believes that P is in that police area or is intending to come to it.
- (6) Section 29 (matters to be considered before making an order) applies in relation to the variation or discharge of a domestic abuse protection order as it applies in relation to the making of such an order, but as if references to the person for whose protection the order would be made were references to the person for whose protection the order was made. 40

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- (7) Section 30 (making of orders without notice) applies in relation to the variation of a domestic abuse protection order as it applies in relation to the making of such an order, but as if—
- (a) references to the person for whose protection the order would be made were references to the person for whose protection the order was made, 5
  - (b) subsection (2) were omitted, and
  - (c) the reference in subsection (4) to making representations about the order were a reference to making representations about the variation.
- (8) The court may make any order varying or discharging a domestic abuse protection order that it considers appropriate. 10  
This is subject to subsections (9) to (13).
- (9) The court may include an additional requirement in the order, or extend the period for which the order, or a requirement imposed by the order, has effect, only if it is satisfied that it is necessary to do so in order to protect the person for whose protection the order was made from domestic abuse, or the risk of domestic abuse, carried out by P. 15
- (10) The court may not extend the period for which an electronic monitoring requirement has effect by more than 12 months at a time.
- (11) The court may remove any requirement imposed by the order, or make such a requirement less onerous, only if satisfied that the requirement as imposed is no longer necessary to protect the person for whose protection the order was made from domestic abuse, or the risk of domestic abuse, carried out by P. 20
- (12) If it appears to the court that any conditions necessary for a requirement to be imposed are no longer met, the court—
- (a) may not extend the requirement, and 25
  - (b) must remove the requirement.
- (13) The court may discharge the order only if satisfied that the order is no longer necessary to protect the person for whose protection the order was made from domestic abuse, or the risk of domestic abuse, carried out by P.
- 41 Variation and discharge: supplementary 30**
- (1) Any application to vary or discharge a domestic abuse protection order under section 40 must be made to the court that made the order. 40  
This is subject to subsections (2) and (3).
- (2) Where the order was made by a magistrates’ court, an application to vary or discharge the order may be made to any other magistrates’ court acting in the local justice area in which that court acts. 35
- (3) Where—
- (a) the order was made under section 27 on an appeal in relation to a person’s conviction or sentence for an offence, or
  - (b) the order was made by a court under that section against a person committed or remitted to that court for sentencing for an offence, 40
- any application to vary or discharge the order must be made to the court by or before which the person was convicted (but see subsection (4)).
- (4) Where the person mentioned in subsection (3)(b)—
- (a) was convicted by a youth court, but 45

- (b) is aged 18 or over at the time of the application,  
the reference in subsection (3) to the court by or before which the person was convicted is to be read as a reference to a magistrates' court.
- (5) Except as provided for by subsection (3), a domestic abuse protection order made by the Crown Court may only be varied or discharged by the Crown Court. 5
- (6) A domestic abuse protection order made by the High Court may only be varied or discharged by the High Court.
- (7) An order that has been varied under section 40 remains an order of the court that first made it for the purposes of any further application under that section. 10
- (8) In a case where –
- (a) an order made against a person is varied under section 40 so as to include an additional requirement, or to extend the period for which the order, or a requirement imposed by the order, has effect, and
- (b) the person was not given notice of the proceedings, 15  
the person commits an offence under section 35 only in respect of conduct engaged in at a time when the person was aware of the making of the variation.

## 42 Appeals

- (1) A person against whom a domestic abuse protection order is made may appeal against the making of the order. 20
- (2) An appeal may be made against the decision of a court not to make a domestic abuse protection order under section 25 –
- (a) by the person who applied for the order, or
- (b) if different, by the person for whose protection the order was sought.
- (3) An appeal may be made against any decision of a court under section 40 in relation to a domestic abuse protection order. 25
- (4) An appeal under subsection (3) may be made by any of the following –
- (a) the person for whose protection the order was made;
- (b) the person against whom the order was made (“P”);
- (c) where the order was made under section 25, the person who applied for the order; 30
- (d) the chief officer of police of the force maintained for the police area in which P resides;
- (e) the chief officer of police of any other force maintained for a police area who believes that P is in that police area or is intending to come to it. 35
- (5) An appeal under any of subsections (1) to (3) is to be made to the relevant court.
- (6) The relevant court is –
- (a) in the case of a decision made by a youth court or a magistrates' court, the Crown Court;
- (b) in the case of a decision made by the family court or the county court, the High Court; 40
- (c) in the case of a decision made by the High Court or the Crown Court, the Court of Appeal.

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- (7) Before determining an appeal made in accordance with this section, the relevant court must hear from any relevant chief officer of police who wishes to be heard.
- (8) For the purposes of subsection (7) each of the following is a “relevant chief officer of police” – 5
- (a) where the order was made on an application by a chief officer of police, that chief officer;
  - (b) the chief officer of police of the force maintained for the police area in which the person (“P”) against whom the order was made, or (in the case of an appeal under subsection (2)) was sought, resides; 10
  - (c) the chief officer of police of any other force maintained for a police area who believes that P is in that police area or is intending to come to it.
- (9) In determining an appeal made in accordance with this section, the relevant court must apply the same principles as would be applied by a court on an application for judicial review. 15
- (10) The relevant court must either –
- (a) dismiss the appeal, or
  - (b) quash the whole or part of the decision to which the appeal relates.
- (11) If the relevant court quashes the whole or part of a decision made by a court, it may refer the matter back to that court with a direction to reconsider and make a new decision in accordance with its ruling. 20
- (12) A person may not exercise any other right of appeal which would, apart from this section, be exercisable in relation to a decision referred to in subsection (1), (2) or (3).
- 43 Nature of certain proceedings under this Part 25**
- (1) Proceedings before a court arising by virtue of section 27(3), (5) or (6), and proceedings before a court arising by virtue of section 40(2)(b) in any case within section 27(3), (5) or (6), are civil proceedings (like court proceedings before a magistrates’ court under section 25 or 40(2)(a)).
- (2) The court is not restricted in the proceedings to considering evidence that would have been admissible in the criminal proceedings in which the person concerned was convicted or (as the case may be) acquitted. 30
- (3) The court may adjourn any proceedings arising by virtue of section 27(3), (5) or (6), or any proceedings arising by virtue of section 40(2)(b) in any case within section 27(3), (5) or (6), even after sentencing or acquitting the person concerned or allowing the person’s appeal. 35
- (4) A domestic abuse protection order may be made or varied in addition to an order discharging the person conditionally in spite of anything in sections 12 and 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (which relate to orders discharging a person conditionally or absolutely and their effect). 40
- 44 Special measures for witnesses**
- (1) Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (special measures directions in the case of vulnerable and intimidated witnesses) applies to relevant proceedings under this Part as it applies to criminal proceedings, but with – 45

- (a) the omission of the provisions of that Act mentioned in subsection (2) (which make provision only in the context of criminal proceedings), and
  - (b) any other necessary modifications.
- (2) The provisions are – 5
- (a) section 17(4) to (7);
  - (b) section 21(4C)(e);
  - (c) section 22A;
  - (d) section 32.
- (3) Rules of court made under or for the purposes of Chapter 1 of Part 2 of that Act apply to relevant proceedings under this Part – 10
- (a) to the extent provided by rules of court, and
  - (b) subject to any modifications provided by rules of court.
- (4) Section 47 of that Act (restrictions on reporting special measures directions etc) applies with any necessary modifications – 15
- (a) to a direction under section 19 of that Act as applied by this section;
  - (b) to a direction discharging or varying such a direction.
- Sections 49 and 51 of that Act (offences) apply accordingly.
- (5) In this section “relevant proceedings under this Part” means – 20
- (a) proceedings under section 25, 27(2) or (7), 40(2)(a) or 42;
  - (b) proceedings arising by virtue of section 27(3), (5) or (6);
  - (c) proceedings arising by virtue of section 40(2)(b) in any case within section 27(3), (5) or (6).

*Notices and orders: supplementary*

- 45 Data from electronic monitoring: code of practice** 25
- (1) The Secretary of State must 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 domestic abuse protection orders.
  - (2) A failure to act in accordance with a code issued under this section does not of itself make a person liable to any criminal or civil proceedings. 30
- 46 Guidance**
- (1) The Secretary of State may from time to time issue guidance relating to the exercise by a relevant person of functions under or by virtue of this Part.
  - (2) In this section “relevant person” means – 35
    - (a) a constable;
    - (b) a person specified in regulations under subsection (2)(c) of section 25 for the purpose of making applications for orders under that section.
  - (3) A relevant person must have regard to any guidance issued under this section when exercising a function to which the guidance relates. 40

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- (4) Before issuing guidance under this section, the Secretary of State must consult—
- (a) the Domestic Abuse Commissioner, and
  - (b) such other persons as the Secretary of State considers appropriate.
- (5) The Secretary of State must arrange for any guidance issued under this section to be published in such manner as the Secretary of State considers appropriate. 5
- 47 Amendment of the Children Act 1989**
- In section 8 of the Children Act 1989 (child arrangements orders and other orders with respect to children), in subsection (4), at the end insert—
- “(k) Part 3 of the Domestic Abuse Act 2019, where the proceedings are in the family court or the Family Division of the High Court.” 10
- 48 Repeal of provisions about domestic violence protection notices and orders**
- (1) Sections 24 to 33 of the Crime and Security Act 2010 (which make provision for domestic violence protection notices and domestic violence protection orders) are repealed. 15
- (2) In consequence of the repeal made by subsection (1), the following provisions are repealed—
- (a) in Schedule 8 to the Crime and Courts Act 2013, paragraph 179;
  - (b) in Schedule 14 to the Policing and Crime Act 2017, paragraph 7(g). 20
- 49 Interpretation of Part 3**
- (1) In this Part—
- “chief officer of police” means—
    - (a) in relation to a police force maintained by a local policing body, the chief officer of police of that force; 25
    - (b) in relation to the British Transport Police Force, the Chief Constable of the Force;
    - (c) in relation to the Ministry of Defence Police, the Chief Constable of the Ministry of Defence Police;
  - “domestic abuse protection notice” has the meaning given by section 18(2); 30
  - “domestic abuse protection order” has the meaning given by section 24(1);
  - “electronic monitoring requirement” has the meaning given by section 31(6);
  - “family proceedings” means— 35
    - (a) proceedings in the family court (other than proceedings under this Part), and
    - (b) family proceedings within the meaning of Part 5 of the Matrimonial and Family Proceedings Act 1984;
  - “home address”, in relation to a person, means— 40
    - (a) the address of the person’s sole or main residence in the United Kingdom, or

- (b) if the person has no such residence, the address or location of a place in the United Kingdom where the person can regularly be found;
- “relevant police force” has the meaning given by section 18(8);
- “requirement”, in relation to a domestic abuse protection order, is to be read in accordance with section 31(1);
- “senior police officer” has the meaning given by section 18(8).
- (2) Any reference to a member of a police force includes, in the case of a police force maintained by a local policing body, a reference to a special constable appointed by the chief officer of police of that force.
- (3) See also –
- (a) section 1 (meaning of “domestic abuse”);
- (b) section 2 (meaning of “personally connected”).

#### PART 4

#### PROTECTION FOR VICTIMS AND WITNESSES IN COURT 15

##### *Cross-examination in family proceedings*

#### 50 Prohibition of cross-examination in person in family proceedings

In the Matrimonial and Family Proceedings Act 1984, after Part 4A insert –

#### “PART 4B

#### FAMILY PROCEEDINGS: PROHIBITION OF CROSS-EXAMINATION IN PERSON 20

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

In this Part –

“the court” means the family court or the High Court;

“family proceedings” means –

- (a) proceedings in the family court, and
- (b) proceedings in the Family Division of the High Court which are business assigned, by or under section 61 of (and Schedule 1 to) the Senior Courts Act 1981, to that Division of the High Court and no other;

“witness”, in relation to any proceedings, includes a party to the proceedings. 30

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

- (1) In family proceedings, no party to the proceedings who has been convicted of or given a caution for, or is charged with, a specified offence may cross-examine in person a witness who is the victim, or alleged victim, of that offence. 35
- (2) In family proceedings, no party to the proceedings who is the victim, or alleged victim, of a specified offence may cross-examine in person a witness who has been convicted of or given a caution for, or is charged with, that offence. 40

- (3) Subsections (1) and (2) do not apply to a conviction or caution that is spent for the purposes of the Rehabilitation of Offenders Act 1974, unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3) or (4) of that Act. 5
- (4) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction, caution or charge when the cross-examination took place.
- (5) In this section – 10
- “caution” means –
- (a) a conditional caution given under section 22 of the Criminal Justice Act 2003;
- (b) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998; 15
- (c) any other caution given to a person in England and Wales or Northern Ireland in respect of an offence which, at the time the caution is given, that person has admitted;
- (d) anything corresponding to a caution falling within paragraph (a), (b) or (c) (however described) which is given to a person in respect of an offence under the law of Scotland; 20
- “conviction” means –
- (a) a conviction before a court in England and Wales, Scotland or Northern Ireland; 25
- (b) a conviction in service disciplinary proceedings (in England and Wales, Scotland, Northern Ireland, or elsewhere);
- (c) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged; 30
- and “convicted” is to be read accordingly;
- “service disciplinary proceedings” means – 35
- (a) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (except proceedings before a civilian court within the meaning of that Act);
- (b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence); 40
- (c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976; 45
- “specified offence” means an offence which is specified, or of a description specified, in regulations made by the Lord Chancellor.
- (6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this 50

- section to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally –
- (a) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000; 5
  - (b) section 187 of the Armed Forces Act 2006 or any corresponding earlier enactment.
- (7) For the purposes of this section “offence” includes an offence under a law that is no longer in force.
- 31S Prohibition of cross-examination in person: persons protected by injunctions etc** 10
- (1) In family proceedings, no party to the proceedings against whom an on-notice protective injunction is in force may cross-examine in person a witness who is protected by the injunction.
  - (2) In family proceedings, no party to the proceedings who is protected by an on-notice protective injunction may cross-examine in person a witness against whom the injunction is in force. 15
  - (3) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place. 20
  - (4) In this section “protective injunction” means an order, injunction or interdict specified, or of a description specified, in regulations made by the Lord Chancellor.
  - (5) For the purposes of this section, a protective injunction is an “on-notice” protective injunction if – 25
    - (a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked (or could have asked) for the injunction to be set aside or varied, or 30
    - (b) the protective injunction was made at a hearing of which the court is satisfied that both the person who applied for it and the person against whom it is in force had notice.
- 31T Direction for prohibition of cross-examination in person: other cases**
- (1) In family proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if – 35
    - (a) neither section 31R nor section 31S operates to prevent the party from cross-examining the witness, and
    - (b) it appears to the court that – 40
      - (i) the quality condition or the significant distress condition is met, and
      - (ii) it would not be contrary to the interests of justice to give the direction.
  - (2) The “quality condition” is met if the quality of evidence given by the witness on cross-examination – 45

- (a) is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and
  - (b) would be likely to be improved if a direction were given under this section.
- (3) The “significant distress condition” is met if— 5
  - (a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and
  - (b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person. 10
- (4) A direction under this section may be made by the court—
  - (a) on an application made by a party to the proceedings, or
  - (b) of its own motion.
- (5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard, among other things, to— 15
  - (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person;
  - (b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person; 20
  - (c) the nature of the questions likely to be asked, having regard to the issues in the proceedings;
  - (d) any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or any other family proceedings; 25
  - (e) any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or any other family proceedings;
  - (f) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness; 30
  - (g) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party;
  - (h) any relationship (of whatever nature) between the witness and the party. 35
- (6) References in this section to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy.
- (7) For this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which— 40
  - (a) address the questions put to the witness, and
  - (b) can be understood, both individually and collectively.

**31U Directions under section 31T: supplementary**

- (1) A direction under section 31T has binding effect from the time it is made until the witness in relation to whom it applies is discharged.
- (2) But the court may revoke a direction under section 31T before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either — 45

- (a) on an application made by a party to the proceedings, or
    - (b) of its own motion.
  - (3) The court may revoke a direction under section 31T on an application made by a party to the proceedings only if there has been a material change of circumstances since – 5
    - (a) the direction was given, or
    - (b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.
  - (4) The court must state its reasons for – 10
    - (a) giving a direction under section 31T;
    - (b) refusing an application for a direction under section 31T;
    - (c) revoking a direction under section 31T;
    - (d) refusing an application for the revocation of a direction under section 31T. 15
- 31V Alternatives to cross-examination in person**
- (1) This section applies where a party to family proceedings is prevented from cross-examining a witness in person by virtue of section 31R, 31S or 31T.
  - (2) The court must consider whether (ignoring this section) there is a satisfactory alternative means – 20
    - (a) for the witness to be cross-examined in the proceedings, or
    - (b) of obtaining evidence that the witness might have given under cross-examination in the proceedings.
  - (3) If the court decides that there is not, the court must – 25
    - (a) invite the party to the proceedings to arrange for a qualified legal representative to act for the party for the purpose of cross-examining the witness, and
    - (b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether a qualified legal representative is to act for the party for that purpose. 30
  - (4) Subsection (5) applies if, by the end of the period specified under subsection (3)(b), either – 35
    - (a) the party has notified the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness, or
    - (b) no notification has been received by the court and it appears to the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness.
  - (5) 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 appointed by the court to represent the interests of the party. 40
  - (6) If the court decides that it is, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the party. 45

- (7) A qualified legal representative appointed by the court under subsection (6) is not responsible to the party.
- (8) For the purposes of this section –
  - (a) a reference to cross-examination includes (in a case where a direction is given under section 31T after the party has begun cross-examining the witness) a reference to continuing to conduct cross-examination; 5
  - (b) “qualified legal representative” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act) in family proceedings. 10

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

- (1) The Lord Chancellor may by regulations make provision for the payment out of central funds of sums in respect of – 15
  - (a) fees or costs properly incurred by a qualified legal representative appointed under section 31V, and
  - (b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.
- (2) The regulations may provide for the amounts to be determined by the Lord Chancellor or such other person as the regulations may specify. 20
- (3) The regulations may provide for the amounts paid to be calculated in accordance with –
  - (a) a rate or scale specified in the regulations, or
  - (b) other provision made by or under the regulations. 25

### **31X Regulations under Part 4B**

- (1) Any power of the Lord Chancellor to make regulations under this Part –
  - (a) is exercisable by statutory instrument,
  - (b) includes power to make different provision for different purposes, and 30
  - (c) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.
- (2) A statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.” 35

### *Special measures*

## **51 Special measures directions in cases involving domestic abuse**

- (1) Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (giving of evidence or information for purposes of criminal proceedings: special measures directions in case of vulnerable and intimidated witnesses) is amended as follows. 40
- (2) In section 17 (witnesses eligible for assistance on grounds of fear or distress about testifying) –

- (a) in subsection (4), for “a sexual offence or an offence under section 1 or 2 of the Modern Slavery Act 2015” substitute “an offence listed in subsection (4A)”;
- (b) after subsection (4) insert –
- “(4A) The offences are – 5
- (a) a sexual offence;
- (b) an offence under section 1 or 2 of the Modern Slavery Act 2015;
- (c) any other offence where it is alleged that the behaviour of the accused amounted to domestic abuse within the meaning of the Domestic Abuse Act 2019 (see section 1 of that Act).” 10
- (3) In section 25(4)(a) (evidence given in private), for “a sexual offence or an offence under section 1 or 2 of the Modern Slavery Act 2015” substitute “an offence listed in section 17(4A)”. 15

## PART 5

### MISCELLANEOUS AND GENERAL

#### *Management of offenders*

## 52 Polygraph conditions for offenders released on licence

- (1) In Part 3 of the Offender Management Act 2007 (other provisions about the management of offenders), section 28 (application of polygraph condition) is amended as follows. 20
- (2) After subsection (2) insert –
- “(2A) This section also applies to a person serving a relevant custodial sentence in respect of a relevant offence involving domestic abuse who – 25
- (a) is released on licence by the Secretary of State under any enactment; and
- (b) is not aged under 18 on the day on which he is released.”
- (3) After subsection (4) insert – 30
- “(4A) In this section “relevant offence involving domestic abuse” means –
- (a) an offence listed in subsection (4B) which involved behaviour by the offender amounting to domestic abuse within the meaning of the Domestic Abuse Act 2019 (see section 1 of that Act); 35
- (b) an offence under section 35 of that Act (breach of domestic abuse protection order).
- (4B) The offences are –
- (a) murder;
- (b) an offence under section 5 of the Protection from Harassment Act 1997 (breach of a restraining order); 40
- (c) an offence specified in Part 1 of Schedule 15 to the Criminal Justice Act 2003 (specified violent offences);

- (d) an offence under section 76 of the Serious Crime Act 2015 (controlling or coercive behaviour in an intimate or family relationship).”

*Disclosure of information by police*

- 53 Guidance about the disclosure of information by police forces** 5
- (1) The Secretary of State may issue guidance to chief officers of police about the disclosure of police information by police forces for the purposes of preventing domestic abuse.  
“Police information” means information held by a police force.
- (2) Each chief officer of police of a police force must have regard to any guidance issued under this section. 10
- (3) The Secretary of State may from time to time revise any guidance issued under this section.
- (4) Before issuing or revising guidance under this section the Secretary of State must consult – 15
- (a) the Domestic Abuse Commissioner,
  - (b) the National Police Chiefs’ Council, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) Subsection (4) does not apply in relation to any revisions of guidance issued under this section if the Secretary of State considers the proposed revisions of the guidance are insubstantial. 20
- (6) The Secretary of State must publish –
- (a) any guidance issued under this section, and
  - (b) any revisions of that guidance.
- (7) In this section – 25
- “chief officer of police” means –
- (a) in relation to the British Transport Police Force, the Chief Constable of that Force;
  - (b) in relation to any other police force, the chief officer of police of that force; 30
- “police force” means –
- (a) a police force maintained by a local policing body, or
  - (b) the British Transport Police Force.

*Secure tenancies*

- 54 Grant of secure tenancies in cases of domestic abuse** 35
- (1) Part 4 of the Housing Act 1985 (secure tenancies and rights of secure tenants) is amended as follows.

(2) After section 81 insert –

**“81ZA Grant of secure tenancies in cases of domestic abuse**

- (1) This section applies where a local housing authority grants a secure tenancy of a dwelling-house in England before the day on which paragraph 4 of Schedule 7 to the Housing and Planning Act 2016 (grant of new secure tenancies in England) comes fully into force. 5
- (2) The local housing authority must grant a secure tenancy that is not a flexible tenancy if –
- (a) the tenancy is offered to a person who is or was a tenant of some other dwelling-house under a qualifying tenancy (whether as the sole tenant or as a joint tenant), and 10
- (b) the authority is satisfied that –
- (i) the person or a member of the person’s household is or has been a victim of domestic abuse carried out by another person, and 15
- (ii) the new tenancy is granted for reasons connected with that abuse.
- (3) The local housing authority must grant a secure tenancy that is not a flexible tenancy if –
- (a) the tenancy is offered to a person who was a joint tenant of the dwelling-house under a qualifying tenancy, and 20
- (b) the authority is satisfied that –
- (i) the person or a member of the person’s household is or has been a victim of domestic abuse carried out by another person, and 25
- (ii) the new tenancy is granted for reasons connected with that abuse.
- (4) In this section –
- “abuse” means –
- (a) physical or sexual abuse; 30
- (b) violent or threatening behaviour;
- (c) controlling or coercive behaviour;
- (d) economic abuse (within the meaning of section 1(4) of the Domestic Abuse Act 2019);
- (e) psychological, emotional or other abuse; 35
- “domestic abuse” means abuse carried out by a person who is personally connected to the victim of the abuse (within the meaning of section 2 of the Domestic Abuse Act 2019);
- “qualifying tenancy” means a tenancy of a dwelling-house in England which is – 40
- (a) a secure tenancy other than a flexible tenancy, or
- (b) an assured tenancy –
- (i) which is not an assured shorthold tenancy, and
- (ii) which is granted by a private registered provider of social housing, by the Regulator of Social Housing or by a housing trust which is a charity. 45

- (5) For the purposes of this section, a person may be a victim of domestic abuse despite the fact that the abuse is directed at another person (for example, the person’s child).”
- (3) In section 81B (cases where old-style English secure tenancies may be granted) – 5
- (a) in subsection (2C) –
- (i) for the definition of “abuse” substitute –
- ““abuse” means –
- (a) physical or sexual abuse;
- (b) violent or threatening behaviour; 10
- (c) controlling or coercive behaviour;
- (d) economic abuse (within the meaning of section 1(4) of the Domestic Abuse Act 2019);
- (e) psychological, emotional or other abuse;” 15
- (ii) for the definition of “domestic abuse” substitute –
- ““domestic abuse” means abuse carried out by a person who is personally connected to the victim of the abuse (within the meaning of section 2 of the Domestic Abuse Act 2019);” 20
- (b) after subsection (2C) insert –
- “(2D) For the purposes of this section, a person may be a victim of domestic abuse despite the fact that the abuse is directed at another person (for example, the person’s child).” 25

*Offences committed outside the United Kingdom*

**55 Offences against the person committed outside the United Kingdom**

- (1) If –
- (a) a person who is a United Kingdom national or United Kingdom resident does an act in a country outside the United Kingdom, 30
- (b) the act constitutes an offence under the law in force in that country, and
- (c) the act, if done in England and Wales, would constitute an offence to which this subsection applies,
- the person is guilty in England and Wales of that offence.
- (2) The offences to which subsection (1) applies are – 35
- (a) murder;
- (b) manslaughter;
- (c) an offence under section 18, 20 or 47 of the Offences Against the Person Act 1861 (offences relating to bodily harm or injury);
- (d) an offence under section 23 or 24 of that Act (administering poison); 40
- (e) section 1 of the Infant Life (Preservation) Act 1929 (child destruction).
- (3) Subsection (1) does not apply where a person would, in the absence of that subsection, be guilty of an offence of murder or manslaughter under the law of England and Wales.

- 
- (4) An act punishable under the law in force in any country constitutes an offence under that law for the purposes of subsection (1)(b) however it is described in that law.
- (5) The condition in subsection (1)(b) is to be taken to be met unless, not later than rules of court may provide, the defendant serves on the prosecution a notice – 5
- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the defendant’s opinion met,
  - (b) showing the grounds for that opinion, and
  - (c) requiring the prosecution to prove that it is met.
- (6) But the court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under subsection (5). 10
- (7) In the Crown Court the question whether the condition is met is to be decided by the judge alone.
- (8) In this section – 15
- “act” includes a failure to act;
  - “country” includes territory;
  - “United Kingdom national” means an individual who is –
    - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, 20
    - (b) a person who under the British Nationality Act 1981 is a British subject, or
    - (c) a British protected person within the meaning of that Act;
  - “United Kingdom resident” means an individual who is habitually resident in the United Kingdom. 25
- 56 Other offences committed outside the United Kingdom**
- (1) In the Protection from Harassment Act 1997, after section 4A insert –
- “4B Offences under sections 4 and 4A committed outside the United Kingdom**
- (1) If – 30
- (a) a person’s course of conduct consists of or includes conduct in a country outside the United Kingdom,
  - (b) the course of conduct would constitute an offence under section 4 or 4A if it occurred in England and Wales, and
  - (c) the person is a United Kingdom national or United Kingdom resident, 35
- the person is guilty in England and Wales of that offence.
- (2) In this section –
- “country” includes territory;
  - “United Kingdom national” means an individual who is – 40
    - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
    - (b) a person who under the British Nationality Act 1981 is a British subject, or

- (c) a British protected person within the meaning of that Act;  
“United Kingdom resident” means an individual who is habitually resident in the United Kingdom.”
- (2) The Sexual Offences Act 2003 is amended in accordance with subsections (3) and (4). 5
- (3) In section 72 (offences outside the United Kingdom) –
- (a) in subsections (1)(b) and (2)(c), for “section” substitute “subsection”;
- (b) after subsection (2) insert –
- “(2A) If– 10
- (a) a person who is a United Kingdom national or United Kingdom resident does an act in a country outside the United Kingdom,
- (b) the act constitutes an offence under the law in force in that country, and 15
- (c) the act, if done in England and Wales, would constitute a sexual offence to which this subsection applies, the person is guilty in England and Wales of that sexual offence.”;
- (c) in subsection (3)(c), for “section” substitute “subsection”; 20
- (d) in subsection (5), after “(2)” insert “, (2A)”;
- (e) in subsection (6), after “(2)(b)” insert “, (2A)(b)”;
- (f) in subsection (10), for “this section applies” substitute “subsections (1) to (3) apply”.
- (4) In Schedule 2 (sexual offences to which section 72 applies) – 25
- (a) in the heading, for “section 72” substitute “section 72(1) to (3)”;
- (b) in paragraph 1, in the opening words, for “section 72 applies” substitute “subsections (1), (2) and (3) of section 72 apply”;
- (c) after paragraph 1 insert –
- “1A In relation to England and Wales, the sexual offences to which subsection (2A) of section 72 applies are offences under any of sections 1 to 4 where the victim of the offence was 18 or over at the time of the offence.”; 30
- (d) in paragraph 3, after “paragraph 1” insert “or 1A”.
- (5) In the Serious Crime Act 2015, after section 76 insert – 35
- “76A Offences under section 76 committed outside the United Kingdom**
- (1) If–
- (a) a person’s behaviour consists of or includes behaviour in a country outside the United Kingdom,
- (b) the behaviour would constitute an offence under section 76 if it occurred in England and Wales, and 40
- (c) the person is a United Kingdom national or United Kingdom resident,
- the person is guilty in England and Wales of that offence.
- (2) In this section – 45
- “country” includes territory;

- “United Kingdom national” means an individual who is—
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or
  - (c) a British protected person within the meaning of that Act;
- “United Kingdom resident” means an individual who is habitually resident in the United Kingdom.”

*Guidance* 10

**57 Guidance about operation of Act**

- (1) The Secretary of State may issue guidance to whatever persons in England and Wales the Secretary of State considers appropriate about the effect of any provision of this Act.
- (2) A person exercising public functions to whom guidance is issued under this section must have regard to it in the exercise of those functions. 15
- (3) The Secretary of State may from time to time revise any guidance issued under this section.
- (4) Before issuing or revising guidance under this section the Secretary of State must consult— 20
  - (a) the Domestic Abuse Commissioner,
  - (b) the Welsh Ministers, so far as the guidance is to a devolved Welsh authority, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) In subsection (4)(b) “devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006. 25
- (6) Subsection (4) does not apply in relation to any revisions of guidance issued under this section if the Secretary of State considers the proposed revisions of the guidance are insubstantial.
- (7) The Secretary of State must publish— 30
  - (a) any guidance issued under this section, and
  - (b) any revisions of that guidance.
- (8) Nothing in this section permits the Secretary of State to issue guidance to any court or tribunal.

*Final provisions* 35

**58 Power to make transitional or saving provision**

- (1) The Secretary of State may by regulations make such transitional or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act.
- (2) Regulations under this section may (among other things) make any adaptations of provisions of this Act brought into force that appear to be 40

appropriate in consequence of other provisions of this Act not yet having come into force.

## 59 Regulations

- (1) Any power to make regulations under this Act is exercisable by statutory instrument. 5
- (2) Regulations under this Act may –
  - (a) make different provision for different purposes or in relation to different areas;
  - (b) contain supplementary, incidental, consequential, transitional or saving provision. 10
- (3) Subsection (2) does not apply to regulations under section 61 (see instead subsection (4) of that section).
- (4) A statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament, unless the instrument –
  - (a) is required by subsection (5) or any other enactment to be laid in draft before, and approved by a resolution of, each House, or
  - (b) contains only regulations under section 33(7), 58 or 61. 15
- (5) A statutory instrument that contains (with or without other provisions) regulations under section 37(6) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 20

## 60 Extent

This Act extends to England and Wales.

## 61 Commencement and short title

- (1) The following provisions of this Act come into force on the day on which this Act is passed –
  - (a) Part 1;
  - (b) sections 46, 53 and 57;
  - (c) sections 58, 59 and 60 and this section; 30
  - (d) any power to make regulations under or by virtue of this Act.
- (2) Sections 55 and 56 come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) The remaining provisions of this Act come into force in accordance with provision contained in regulations made by the Secretary of State. 35
- (4) Regulations under this section may make different provision for different purposes or in relation to different areas.
- (5) Regulations under this section bringing any provision of Part 3 or section 52 into force only for a specified purpose or in relation to a specified area may –
  - (a) provide for that provision or section to be in force for that purpose or in relation to that area for a specified period; 40

- (b) make transitional or saving provision related to that provision or section ceasing to be in force at the end of the specified period.
- (6) Regulations containing provision permitted by subsection (5)(a) may be amended by subsequent regulations under this section so as to continue any provision of Part 3 or section 52 in force for the specified purpose or in relation to the specified area for a further specified period.
- (7) This Act may be cited as the Domestic Abuse Act 2019.

## SCHEDULE

Section 36

### FURTHER PROVISION ABOUT REMAND UNDER SECTION 36

#### *Introductory*

- 1 This Schedule applies where a court has power to remand a person (“P”) under section 36. 5

#### *Remand in custody or on bail*

- 2 (1) The court may remand P in custody or on bail.
- (2) If remanded in custody, P is to be committed to custody to be brought before the court –
- (a) at the end of the period of remand, or 10
- (b) at such earlier time as the court may require.
- (3) The court may remand P on bail –
- (a) by taking from P a recognizance (with or without sureties) conditioned as provided in paragraph 3, or
- (b) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 7 and, in the meantime, committing P to custody as mentioned in sub-paragraph (2). 15
- (4) Where P is brought before the court after remand, the court may further remand P. 20
- 3 (1) Where P is remanded on bail, the court may direct that P’s recognizance be conditioned for P’s appearance –
- (a) before the court at the end of the period of remand, or
- (b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned. 25
- (2) Where a recognizance is conditioned for P’s appearance as mentioned in sub-paragraph (1)(b), the fixing of a time for P next to appear is to be treated as a remand.
- (3) Nothing in this paragraph affects the power of the court at any subsequent hearing to remand P afresh. 30
- 4 (1) The court may not remand P for a period exceeding 8 clear days unless –
- (a) the court adjourns proceedings for the purpose mentioned in paragraph 5(1), or
- (b) P is remanded on bail and both P and the other party to the proceedings consent. 35
- This is subject to paragraph 6.

- (2) Where the court has power to remand P in custody, P may be committed to the custody of a constable if the remand is for a period not exceeding 3 clear days.

*Remand for medical examination and report*

- 5 (1) If the court has reason to suspect that a medical report will be required, the power to remand a person under section 36 may be exercised for the purpose of enabling a medical examination to take place and a report to be made. 5
- (2) If the person is remanded in custody for that purpose, the adjournment may not be for more than 3 weeks at a time.
- (3) If the person is remanded on bail for that purpose, the adjournment may not be for more than 4 weeks at a time. 10
- (4) Sub-paragraph (5) applies if there is reason to suspect that a person who has been arrested under a warrant issued on an application made under section 36 is suffering from mental disorder within the meaning of the Mental Health Act 1983. 15
- (5) The court has the same power to make an order under section 35 of that Act (remand to hospital for report on accused’s mental condition) as the Crown Court has under that section in the case of an accused person (within the meaning of that section).

*Further remand*

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- 6 (1) If the court is satisfied that a person (“P”) who has been remanded is unable by reason of illness or accident to appear or be brought before the court at the end of the period of remand, the court may further remand P in P’s absence.
- (2) The power under sub-paragraph (1) may, in the case of a person who was remanded on bail, be exercised by enlarging the person’s recognizance and those of any sureties for the person to a later time. 25
- (3) Where a person (“P”) remanded on bail is bound to appear before the court at any time and the court has no power to remand P under sub-paragraph (1), the court may (in P’s absence) enlarge P’s recognizance and those of any sureties for P to a later time. 30
- (4) The enlargement of P’s recognizance is to be treated as a further remand.
- (5) Paragraph 4(1) (limit of remand) does not apply to the exercise of the powers conferred by this paragraph.

*Postponement of taking of recognizance*

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- 7 Where under paragraph 2(3)(b) the court fixes the amount in which the principal and the sureties, if any, are to be bound, the recognizance may afterwards be taken by a person prescribed by rules of court, with the same consequences as if it had been entered into before the court.

*Requirements imposed on remand on bail*

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- 8 The court may, when remanding a person on bail in accordance with this Schedule, require the person to comply, before release on bail or later, with

## **ANNEX E: Explanatory notes for Draft Domestic Abuse Bill**

# DOMESTIC ABUSE BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Domestic Abuse Bill as published in Draft on 21 January 2019 (Bill CP 15).

- 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 draft Bill and to help inform the pre-legislative scrutiny of the draft Bill. They do not form part of the draft Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the draft Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the draft Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the draft Bill. They are not, and are not intended to be, a comprehensive description of the draft Bill.

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*These Explanatory Notes relate to the draft Domestic Abuse Bill as published on 21 January 2019*

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*These Explanatory Notes relate to the draft Domestic Abuse Bill as published on 21 January 2019*

## Overview of the draft Bill

- 1 In June 2017, the Government was elected with a manifesto commitment to deliver “protections for victims of domestic abuse in law through a new landmark Domestic Violence and Abuse Bill”. The manifesto included further specific commitments, including to “enshrine a definition of domestic violence and abuse in law” and “create a domestic violence and abuse commissioner in law”. The draft Bill contains a number of provisions to support the delivery of those commitments.
- 2 The purpose of the draft Bill is raise awareness and understanding of domestic abuse and its impact on victims, to further improve the effectiveness of the justice system in providing protection for victims of domestic abuse and bringing perpetrators to justice, and to strengthen the support for victims of abuse provided by other statutory agencies.
- 3 The draft Bill is in five Parts.
- 4 Part 1 provides for a statutory definition of domestic abuse which underpins other provisions in the draft 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 prohibits perpetrators of certain offences from cross-examining their victims in person in the family courts; gives family courts the power in certain circumstances to appoint a legal representative to conduct the cross-examination on behalf of the prohibited person; and confers on victims of domestic abuse automatic eligibility for special measures in the criminal courts.
- 8 Part 5 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; ensures that persons who occupy discretionary local authority fixed-term tenancies are granted a further such tenancy where they need to leave, or have left their home, to escape domestic abuse and are being rehoused by the local authority; and extends the extraterritorial jurisdiction of the criminal courts in England and Wales to further violent and sexual offences. This part also confers on the Secretary of State a power to issue statutory guidance to practitioners about the effect of the provisions in the draft Bill.

## Policy background

- 9 Domestic abuse remains one of the most prevalent crimes in England and Wales. An estimated two million adults aged 16 to 59 experienced domestic abuse in the year ending March 2018, two-thirds of whom were women.<sup>1</sup> The police recorded 1.2 million domestic

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

abuse-related incidents and crimes in the same period and of these, 50% were recorded as domestic abuse-related crimes; domestic abuse-related crimes recorded by the police accounted for 33% of violent crime. 400 domestic homicides with recorded by the police between April 2014 and March 2017; 293 of the victims being women.<sup>2</sup>

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

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

Psychological;

physical;

sexual;

financial;

emotional.

#### **Controlling behaviour**

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

#### **Coercive behaviour**

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

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

- **Promote awareness** – to put domestic abuse at the top of everyone’s agenda, and raise public and professionals’ awareness;

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

- **Protect and support** – to enhance the safety of victims and the support that they receive;
  - **Pursue and protect** – to provide an effective response to perpetrators from initial agency response through to conviction and management of offenders, including rehabilitation;
  - **Improve performance** – to drive consistency and better performance in response to domestic abuse across all local areas, agencies and sectors.
- 12 The consultation sought views on a number of legislative and non-legislative measures under each of these themes. The legislative measures, now incorporated in this draft 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 order (Part 3);
  - prohibiting perpetrators of domestic abuse cross-examining their victims in family court proceedings (Clause 50);
  - creating a legislative assumption that domestic abuse victims are to be treated as eligible for special measures in criminal proceedings (Clause 51);
  - putting the guidance underpinning the Domestic Violence Disclosure Scheme on a statutory footing (Clause 53);
  - extending the extraterritorial jurisdiction of the criminal courts in England and Wales to cover further violent and sexual offences (Clauses 55 and 56).
- 13 Some 3,150 responses were received to the consultation. In its response, published in January 2019 alongside the draft Bill, the Government committed to legislate to introduce these measures.

### Civil protection orders

- 14 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.
- 15 A DVPN is an emergency non-molestation and eviction notice which can be issued by the police, when attending to a domestic abuse incident, to a perpetrator. Because the DVPN is a police-issued notice, it is effective from the time of issue, thereby giving the victim the immediate support they require in such a situation. Within 48 hours of the DVPN being served on the perpetrator, an application by the police to a magistrates’ court for a DVPO must be heard. A DVPO can prevent the perpetrator from returning to a residence and from having contact with the victim for up to 28 days. This allows the victim a degree of breathing space to consider their options with the help of a support agency. Both the DVPN and DVPO contain a condition prohibiting the perpetrator from molesting the victim. The Home Office has issued [guidance](#) to police forces on the operation of DVPNs and DVPOs.
- 16 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.

17 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 draft Bill provides for the DAPN, modelled closely on the existing DVPN, and for the DAPO which will have the following key features:

- be available in a variety of courts on application by the police, the victim, persons or bodies specified in regulations or other person with the leave of the court;
- be available to protect a person from domestic abuse, or the risk of domestic abuse, carried out by another person to whom they are personally connected;
- enable the imposition of any requirements (including, prohibitions and restrictions) on the perpetrator that are necessary to protect the victim; and
- breach of a DAPO will be a criminal offence, punishable by up to five years' imprisonment (or as a contempt of court, in the alternative).

## Cross-examination in family proceedings

18 Courts hearing family proceedings do not have a specific power to prevent an alleged perpetrator of abuse from cross-examining their alleged victim in person, nor do they have the power to order that an advocate be appointed (and funded) to ask questions on behalf of a litigant in person.

19 The fact that it is possible at present for perpetrators (alleged or otherwise) to cross-examine their victims in person in family proceedings has attracted criticism, including from the All-Party Parliamentary Group on Domestic Violence.<sup>3</sup> It is widely accepted that such cross-examination can cause the victim significant distress and, as the President of the Family Division has said, "can sometimes amount, and on occasion quite deliberately, to a continuation of the abuse".<sup>4</sup> Clause 50 prohibits cross-examination in person in certain circumstances in family proceedings and makes provision for the court, where it is considered necessary in the interests of justice, to appoint a legal representative to carry out the cross-examination on behalf of the prohibited party. The clause also allows the Lord Chancellor to make regulations concerning the payment of legal representatives in these circumstances.

## Special measures

20 Many witnesses experience stress and fear during the investigation of a crime and when

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<sup>3</sup> [Domestic Abuse, Child Contact and the Family Courts](#)

<sup>4</sup> The [annual lecture](#) of The Wales Observatory on Human Rights of Children and Young People delivered by Sir James Munby, President of the Family Division at the College of Law, Swansea University on 25 June 2015

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".

- 21 The Youth Justice and Criminal Evidence Act 1999 ("YJCEA 1999") introduced a range of measures that can be used to facilitate the gathering and giving of evidence by vulnerable and intimidated witnesses in criminal proceedings. The measures are collectively known as "special measures".
- 22 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 apply to prosecution and defence witnesses, but not to the defendant and are subject to the discretion of the court.
- 23 A vulnerable or intimidated witness will be eligible for special measures under sections 23 to 28 of the YJCEA 1999. The use of intermediaries or communication aids under sections 29 and 30 of the YJCEA 1999 are only available for vulnerable witnesses; that is witnesses who need assistance on grounds of age or disability.
- 24 Intimidated witnesses are eligible for special measures by reason of section 17 of the YJCEA 1999 on the grounds of suffering from 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. The victim of a domestic abuse-related offence may be eligible for special measures on the grounds that they are in fear or distress about testifying, but they do not currently automatically fall into this category. Clause 51 puts victims of domestic abuse in the same position as the victim of sexual offences and modern slavery offences and witnesses in relation to certain offences involving guns and knives.
- 25 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 maximise the quality of the witness's evidence before granting an application.
- 26 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 the defendant (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 or intimidation by someone other than the accused (section 25 of the YJCEA 1999);
- **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 a vulnerable or intimidated witness before the trial may be admitted by the court as the witness's evidence-in-chief (section 27 of the YJCEA 1999) but only if the witness is available for cross-examination at trial. For adult complainants in sexual offence trials in the Crown Court, a video recorded interview will be automatically presumed to be admissible unless this would not be in the interests of justice or would not maximise the quality of the complainant's evidence (section 22A of the YJCEA 1999);
- **pre-recorded cross-examination** (not commenced for any group of intimidated witnesses<sup>5</sup>) (section 28 of the YJCEA 1999), this provision allows the witness to record their cross-examination in advance of the trial and the recording is then played during the trial in place of live evidence.

## Polygraph testing

27 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. 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

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<sup>5</sup> Pre-recorded cross-examination and re-examination under section 28 of the YJCEA 1999 has been taking place in the Crown Courts at Leeds, Liverpool and Kingston-Upon-Thames for witnesses with a disability and witnesses under the age of 16 since December 2013. This was extended to 16 and 17-year-old witnesses from January 2017. It is also planned to bring section 28 into force for witnesses who are complainants of sexual offences and modern slavery offences in these three courts and for vulnerable witnesses in other Crown Courts across England and Wales.

that the results of a (failed) polygraph examination cannot be used in criminal courts or be the basis of recall. Polygraph testing of the most serious sexual offenders has operated across the whole of England and Wales since January 2014. Clause 52 extends these provisions of the 2007 Act to cover domestic abuse offenders.

## The Domestic Violence Disclosure Scheme

- 28 The Domestic Violence Disclosure Scheme, often referred to as “Clare’s Law”<sup>6</sup>, was implemented across all police forces in England and Wales in March 2014.
- 29 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.
- 30 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.
- 31 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 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.
- 32 For the year ending June 2017 there were 5,445 and 2,438 applications under the right to know and right to ask respectively. For these, there were 2,238 and 972 disclosures respectively ([Office of National Statistics](#)).
- 33 Non-statutory guidance for the police on the operation of the scheme was first published by the Home Office in July 2012 and which, following an [assessment report](#) of the pilot scheme in November 2013, was updated in December 2016. The purpose of the guidance is to support the delivery of the scheme and assist front line officers and those who work in the area of public protection with the practical application of the scheme. The updated [guidance](#) took into account the findings of an [assessment](#) by the Home Office of the first year’s operation of the scheme.
- 34 Her Majesty’s Inspectorate of Constabulary and Fire and 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

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<sup>6</sup> Named after Clare Wood who was murdered in 2009 by her former partner, George Appleton, who had a record of violence against women.

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 53).

## Secure tenancies

- 35 Under the Housing Act 1985 (“the 1985 Act”), local authority landlords may grant their tenants either secure periodic tenancies or secure flexible tenancies. Secure periodic tenancies have no fixed end date and can only be brought to an end by the landlord obtaining a possession order on one of the grounds for possession set out in Schedule 2 to the 1985 Act, which are mainly fault grounds. Flexible tenancies, which were introduced by the Localism Act 2011, are tenancies granted for a fixed term of no less than two years. Currently it is for the landlord to decide which type of tenancy to grant and in which circumstances they grant flexible tenancies.
- 36 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 flexible tenancies and instead requires that flexible 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.
- 37 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”.
- 38 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.
- 39 The Government’s Social Housing Green Paper, [A new deal for social housing](#) (Cm 9671), published on 14 August 2018, includes a commitment (at paragraph 188) to legislate to put in place similar protections for victims of domestic abuse where local authorities offer fixed term tenancies at their discretion in order to deliver on the Manifesto commitment. Clause 54 gives effect to that commitment.

## The Istanbul Convention – extraterritorial jurisdiction

- 40 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.
- 41 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. However, before the UK can ratify the Convention, there remains one outstanding issue to address. 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.
- 42 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), accordingly Clauses 55 and 56 extend extraterritorial jurisdiction to the relevant offences to satisfy the requirements of the Convention. These included certain sexual offences and offences against the person.
- 43 The Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017 requires the Government to lay an annual report before Parliament on progress toward ratification of the Convention. The second such [report](#) was laid before Parliament on 30 October 2018.

## Legal background

- 44 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.
- 45 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;
  - 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;
- 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 of that Act;
  - Section 28 of the 2007 Act which provides for polygraph testing of certain sex offenders as a condition of their licence;
  - Sections 24 to 33 of the Crime and Security Act 2010 which provide for DVPNs and DVPOs.
- 46 There is currently no legislation expressly prohibiting cross-examination in person of a victim of an offence by the perpetrator in family proceedings. There is also no legislation expressly giving courts hearing family proceedings a discretion to prohibit cross-examination in person, although there may be scope for them to do so using their general case management powers under the Family Procedure Rules 2010 (SI 2010/2955), as long as they provide an alternative to cross-examination. However, there is no legislation giving courts hearing family proceedings the power to appoint a legal representative to undertake cross-examination on behalf of a party, or for the costs of such representatives to be publicly funded. In contrast, provision on these issues is made in relation to proceedings in the criminal courts in sections 34 to 38 of the YJCEA 1999 and section 19(3)(e) of the Prosecution of Offences Act 1985.

## Territorial extent and application

- 47 Clause 60 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.
- 48 The provisions in the draft Bill extend and apply to England and Wales only or, in the case of Clause 54 (secure tenancies granted to victims of domestic abuse), to England only.
- 49 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. (In relation to Scotland and Wales, this convention is enshrined in law: see section 28(8) of the Scotland Act 1998 and section 107(6) of the Government of Wales Act 2006.)
- 50 With three exceptions, the matters to which the provisions of the draft Bill relate are not within the legislative competence of the National Assembly for Wales. The exceptions relate to the provisions in the Bill relating to the Domestic Abuse Commissioner (Part 2) together with the definition of domestic abuse (Part 1) and the power to issue statutory guidance (Clause 57) insofar as they relate to Part 2; a legislative consent motion will be sought in relation to these provisions. If, following introduction of the Bill, there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.

- 51 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”

- 52 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).
- 53 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.
- 54 Subsection (3)(c) refers to “controlling or coercive behaviour”.
- 55 **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.
- 56 **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.
- 57 Subsection (3)(d) refers to “economic abuse”, the definition of which in subsection (4) provides that behaviours which constitute such abuse must have a substantial and adverse effect on a victim’s ability to acquire, use or maintain money or other property, or to obtain goods or services. The purpose of including the qualification “substantial and adverse effect” is to ensure that isolated incidents, such as damaging someone’s car, or not disclosing financial information, are not inadvertently captured. “Property” would cover items such a mobile phone or a car and “goods and services” would cover, for example, utilities such as heating, or items such as food and clothing.
- 58 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”

- 59 This clause defines the term “personally connected” for the purposes of the relationship criteria in Clause 1(2)(a).
- 60 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.

## **Part 2: The Domestic Abuse Commissioner**

### **Clauses 3 to 5: Domestic Abuse Commissioner**

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

### **Clause 6: General Functions of the Commissioner**

- 62 Subsection (1) sets out the general functions of the Commissioner, which will be to encourage good practice in the prevention of domestic abuse; the prevention, detection, investigation and prosecution of domestic abuse-related offences; the identification of perpetrators, victims and children affected by domestic abuse; and the provision of protection and support for victims. The reference to identifying the children affected by domestic abuse is in recognition of the adverse impact of domestic abuse on children. The Commissioner will play an important role in raising awareness of this and promoting good practice in identifying and supporting the children affected by domestic abuse.
- 63 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.
- 64 The remit of the Domestic Abuse Commissioner will extend to England and Wales, however, certain of the Commissioner's functions and powers will apply to England only

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

## Clause 7: Reports

- 65 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 11). Such thematic reports are distinct from the duty to publish an annual report under Clause 12. All such reports are to be published by the Commissioner (subsection (2)) and laid before Parliament by the Secretary of State (subsection (5)).
- 66 Subsection (3) requires the Commissioner to send a draft of any report to the Home Secretary prior to its publication. The Home Secretary may 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 (subsection (4)).

## Clause 8: Advice and assistance

- 67 Subsection (1) enables the Secretary of State to request advice or assistance from the Commissioner on domestic abuse matters.
- 68 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.
- 69 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.
- 70 Subsections (5) and (6) 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.

## Clause 9: Incidental powers

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

## Clause 10: Advisory Board

- 72 Subsection (1) requires the Commissioner to establish an Advisory Board, which will provide the Commissioner with advice on the exercise of their 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 11).
- 73 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, represent the interests of victims of domestic abuse, while also representing the interests of specialist charities). In addition to this Board, the Commissioner will be required through their terms of employment to establish a Victims and Survivors Advisory Group, to ensure that they engage directly with victims and survivors in their work.

## Clause 11: Strategic plans

- 74 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). The strategic plan is subject to approval by the Home Secretary who can suggest, but cannot impose, changes to the draft submitted by the Commissioner (subsection (6)). Once agreed, the Home Secretary is required 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; any revisions are similarly subject to approval by the Home Secretary (subsection (5)).

## Clause 12: Annual reports

- 75 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 will then lay a copy of the report before Parliament (subject to omitting any material which might jeopardise the safety of any person (in the UK or internationally) or prejudice the investigation of an offence).

## Clause 13: Duty to co-operate with Commissioner

- 76 Subsection (1) enables the Commissioner to request a specific public authority (as listed in subsection (3), read with the definitions in subsection (7)) to cooperate 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.

- 77 The terms of the Commissioner's appointment will require them to approach national NHS bodies, namely NHS England (which falls under the definition of 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 they 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.
- 78 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 14: Duty to respond to the Commissioner's recommendations

- 79 This clause requires a public authority listed in Clause 13 to respond to any recommendations directed to that authority which is made in a report published by the Commission under Clause 7. The response must address each recommendation and specifically state what action the authority has or will take to address the recommendation or give reasons why they do not propose to act on the recommendation.
- 80 A public authority'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 considers to be appropriate (subsection (5)); they are also required to send the response to the Commissioner and the Secretary of State (subsection (6)).

#### Clause 15: Disclosure of information

- 81 This clause provides for a two-way information sharing gateway. Subsection (1) enables the Commissioner to disclose information to another person or organisation where 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.
- 82 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)).
- 83 The operation of this information sharing gateway is without prejudice to any other power that exists to disclose information (subsection (7)).

#### Clause 16: Restriction on exercise of functions in individual cases

- 84 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 17: Amendments relating to the Commissioner

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

## Part 3: Powers for dealing with domestic abuse

### Clause 18: Power to give a domestic abuse protection notice

- 86 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.
- 87 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”.
- 88 The issue of a DAPN triggers a police-led application for a DAPO in a magistrates’ court. This is an order which can include prohibitions and requirements necessary to protect the victim from future domestic abuse and assist in preventing the perpetrator from carrying out further domestic abuse. Clauses 24 to 44 deal with DAPOs.
- 89 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.
- 90 Subsection (2) sets out that a notice will be used to protect the victim from domestic abuse committed against them by the perpetrator.
- 91 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.
- 92 Subsection (6) sets out that the notice may not be given to a person who is under the age of 18.
- 93 Subsection (7) provides that a requirement imposed by a DAPN will have effect throughout the UK. So, for example, if a DAPN required the perpetrator not to make contact in any way with the victim, the perpetrator would breach the DAPN by sending a text message or email while they were in Scotland.

### Clause 19: Provision that may be made by notices

- 94 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). 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; require the perpetrator to leave the premises; or prohibit the perpetrator from coming within a certain distance of the premises (as specified in the DAPN) for the duration of the DAPN. It does not matter for these purposes whether the premises are owned or rented in the name of the perpetrator or the victim.

#### Clause 20: Matters to be considered before giving a notice

- 95 This clause sets out particular matters that the police officer must take into consideration before issuing a DAPN. The police officer 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 shared by the perpetrator and the victim, reasonable steps must also be taken to find out the opinion of any other person who lives in the premises.
- 96 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 (3)), 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 21: Further requirements in relation to notices

- 97 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 court within a 48 hour period; 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.
- 98 A DAPN must be in writing and served on a perpetrator personally by a constable (subsections (1) and (3)).
- 99 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.
- 100 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 22: Breach of notice

- 101 Should the subject of a DAPN breach the conditions of the notice, then a constable may arrest the person without warrant.
- 102 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 weekends and bank holidays – see subsection (5)) beginning with the time of arrest. However, if the DAPO hearing has already been arranged to take place within that 24-hour period, then the perpetrator is to be brought before the court for that hearing.

103 If the court adjourns the DAPO hearing, by virtue of Clause 26(8) the court may remand the person either in custody or on bail (subsection (4)).

104 Subsection (6) 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 23: Remand of person arrested for breach of notice

105 This clause makes provision for the remand, whether on bail or in custody, of a person arrested for breach of a DAPN. 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 officer who issued the DAPN.

106 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.

107 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.

108 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 24: Meaning of "domestic abuse protection order"

109 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 abusing his or her victim (who must be aged over 16 and personally connected to the perpetrator (see Clause 2 of the Bill)).

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

110 A DAPO may be obtained through a variety of routes. First, a DAPO may be granted by a court on application by certain categories of person (subsection (2)). Second, where a DAPN has been given to a perpetrator by a member of a police force, there is a duty on the relevant chief officer of police of that force to apply to a magistrates' court for a DAPO (subsection (3) and Clause 26). Third, a DAPO may be made by a family court, criminal court or (in prescribed circumstances) county court during any ongoing proceedings (Clause 27).

- 111 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).
- 112 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 27), 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.
- 113 Subsection (8)(a) provides that a magistrates' court may adjourn the hearing of an application for a DAPO. Subsection (8)(b) modifies the application of section 97 of the Magistrates' Court Act 1980. That section requires a magistrate to issue a summons to a witness to give evidence where the magistrate is satisfied that the person is likely to be able to give material evidence or produce any document or thing likely to be material evidence for the purpose of any proceedings before the court and the magistrate is satisfied that it is in the interests of justice to issue the summons. Under subsection (8)(b), section 97 is disapplied in respect of a hearing of an application for a DAPO such that the victim cannot be compelled to attend the hearing or answer questions unless the victim has given oral or written evidence at the hearing.

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

- 114 This clause covers the steps to be taken by the police to apply for a DAPO following issue of a DAPN. This follows on from the requirement set out in Clause 25(3) for a chief officer of police to apply to a magistrates' court for DAPO once a DAPN has been issued.
- 115 Subsections (2) and (3) requires that the application for a DAPO must be heard in a magistrates' court within 48 hours (excluding weekends and bank holidays) of the DAPN being served.
- 116 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.
- 117 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. In such a case, subsection (8) enables the court to remand the perpetrator whether in custody or on bail and the provisions in Clause 23 apply.

#### Clause 27: Domestic abuse protection orders otherwise than on application

- 118 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.

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

### Clause 28: Conditions for making an order

120 This clause sets out the conditions for making a DAPO. Two conditions must be met, namely that the court is satisfied that the perpetrator has carried out domestic abuse in relation to the person to be protected by the DAPO (the victim) and that the court considers that the making of a DAPO is necessary and proportionate to protect the victim from domestic abuse or the risk of domestic abuse carried out by the perpetrator (subsections (2) and (3)). An order may therefore be made where domestic abuse has already occurred and the victim needs protecting from continuing abuse or the threat of abuse. In determining whether the first condition is met, it would be for the court to determine the appropriate standard of proof.

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

### Clause 29: Matters to be considered before making an order

122 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 shared by the perpetrator and the victim, the opinion of any other person who lives in the premises.

123 It is not necessary that the victim consents to the order. Subsection (2) specifies that a court may make a DAPO regardless of whether or not the victim consents.

### Clause 30: Making of orders without notice

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

125 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.

### Clause 31: Provision that may be made by orders

- 126 This clause sets out the types of conditions that may be imposed by a DAPO.
- 127 Subsections (1) and (2) provides that a DAPO may include any requirements, both prohibitions and restrictions, that the court thinks are necessary to protect the victim from the various forms of domestic abuse set out in the definition of domestic abuse in Clause 1 or the risk of such abuse. This could include, for example, specific requirements to protect the victim from controlling or coercive behaviour or psychological, emotional or economic abuse.
- 128 Subsection (3) provides that whilst that 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 and electronic monitoring. However, a court may decide that other requirements, such as requiring the perpetrator to attend a behavioural change programme or drug or alcohol treatment programme, may be necessary to protect the victim from domestic abuse.
- 129 Subsection (4) specifies that a DAPO may prohibit the perpetrator from contacting the victim. This relates to all forms of contact, including online contact.
- 130 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; require the perpetrator to leave the premises; or prohibit the perpetrator from coming within a certain distance of the premises (as specified in the DAPO) for the duration of the DAPO. This provision can be made irrespective of who owns the premises.
- 131 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 32: Further provision about requirements that may be imposed by orders

- 132 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.
- 133 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 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 35 below). The perpetrator is under a duty to keep in touch with the person responsible for supervising compliance with the requirement.

### Clause 33: Further provision about electronic monitoring requirements

- 134 This clause sets out the conditions that must be satisfied to enable an electronic monitoring requirement to be attached to a DAPO.
- 135 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 a subject's ankle.
- 136 An electronic monitoring requirement cannot be imposed on a perpetrator in his or her absence, this is because the perpetrator must be present in court whilst the application to consider electronic monitoring is decided upon, to provide the court of the perpetrator's address for the purpose of the fitting and installation of the electronic monitoring equipment and in order to allow the court to make the enquiry required by subsection (3) (subsection (2)).
- 137 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.
- 138 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.
- 139 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").
- 140 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).
- 141 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 35).

### Clause 34: Duration and geographical application of orders

- 142 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.

- 143 Subsection (3) allows a court to make an order for a period specified in the order, until an event specified in the order or until a further order is made. Particular provisions of an order, for example an electronic monitoring requirement, may apply for a more limited period than the order itself (subsection (4)). Where a DAPO or a requirement of a DAPO is time limited, the duration of the order or requirement, as the case may be, may be extended on the variation of the DAPO under Clause 40.
- 144 Subsection (7) provides that a requirement imposed by a DAPO will have effect throughout the UK. So, for example, if a DAPO required the perpetrator not to make contact in any way with the victim, the perpetrator would breach the DAPO by sending a text message or email while they were in Scotland.

### Clause 35: Breach of order

- 145 This clause provides that it is an offence to breach any requirement of a DAPO without reasonable excuse. 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.
- 146 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)).
- 147 Subsection (6) provides that a conditional discharge is not an option open to the court in respect of the offence. A conditional discharge means that if the offender commits another crime, they can be sentenced for the first offence and the new one.
- 148 As an alternative to prosecution for the offence under subsection (1), breach of a DAPO may be dealt with as a contempt of court (the maximum penalty for which is two years' imprisonment). 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 section, 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 36: Arrest for breach of order

- 149 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)).
- 150 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: Further provision about remand under section 36

- 151 Schedule 1 makes provision for the remand, whether on bail or in custody, of a person arrested for breach of a DAPO.
- 152 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.

- 153 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.
- 154 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 37: Notification requirements

- 155 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 service 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.
- 156 The perpetrator's "home address" for these purposes is defined in Clause 49 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. Therefore, if a person can be found at two locations (for example at a family home at the weekend and at a flat near their work during the week) they would need to provide details of the location where they are for the majority of their time. Equally, if a person is homeless they would need to provide details of one location where they can regularly be found.
- 157 Subsection (6) 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 renewing a DAPO. Where additional notification requirements are imposed by a court, the perpetrator must supply the required information to the police in the manner prescribed in the regulations.
- 158 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 (subject to enactment by Parliament), accordingly where the subject of a DAPO is already liable to one or other of these notification requirements, the provisions in this clause do not apply to avoid unnecessary duplication (subsection (7)). However, if the notification requirements under one or other of these enactments 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 or Stalking Protection Act, as the case may be, ceasing to apply (subsection (8)).

### Clause 38: Further provision about notification under section 37

- 159 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.

- 160 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.
- 161 Where the perpetrator is notifying the police of a change of address as required by Clause 37(5), the notification must be made at a police station within the police area where the perpetrator now resides.
- 162 Subsection (4) provides that a notification must be acknowledged in writing and in such form as the Secretary of State may direct.
- 163 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 39: Offences relating to notification

- 164 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.
- 165 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. 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.

### Clause 40: Variation and discharge of orders

- 166 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.
- 167 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 27). The court must hear from specified interested parties before making a decision to vary or discharge an order (subsections (4) and (5)). In cases where an application is made to vary or discharge a DAPO the court must hear from any relevant chief officer of police who wishes to be heard (subsection (4)(a)) and in cases where the victim is applying to have the order discharged or made less onerous, the court must also hear from the victim (subsection (4)(b)). This is in order to help the court assess whether the victim is being coerced or intimidated.
- 168 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 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 41: Variation and discharge: supplementary

169 This clause sets the relevant court at which proceedings in relation to the variation and discharge of a DAPO are to take place. Generally, such proceedings are to take place in the court where the original DAPO was made, but this is subject to certain exceptions, for example where a DAPO was made in a magistrates' court, proceedings to vary or discharge the order may take place in any other magistrates' court acting in the local justice area in which that court acts. 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.

170 Subsection (8) provides that where a DAPO is varied in such a way as to make it more onerous and the perpetrator is not given notice of the variation, the perpetrator can only breach the order from the time when they are aware of the variation.

## Clause 42: Appeals

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

172 Subsections (1) to (4) provides 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 refuse to make an order, or a decision to vary or discharge an order, or a decision to refuse to vary or discharge an order. Subsection (1) provides that the perpetrator may appeal against the making of a DAPO. Subsection (2) provides that either the applicant or victim may appeal against a decision of a court not to make a DAPO. Subsection (3) provides that those named in subsection (4) may appeal against a decision of the court made following an application to vary or discharge a DAPO.

173 Subsections (5) and (6) set out the relevant court to which the appeal is to be made depending on whether the decision appealed against was made in a criminal, civil or family court. In any case where the relevant chief officer of police is not the appellant, the court must afford them the opportunity to be heard before determining an appeal (subsections (7) and (8)); 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).

174 In determining an appeal, a court would apply judicial review principles (subsection (9)). In applying such principles, the court would be able to consider a wide range of issues, including necessity, proportionality and lawfulness.

## Clause 43: Nature of certain proceedings under this Part

175 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.

176 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.

177 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.

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

#### Clause 44: Special measures for witnesses

- 179 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 26 above) when giving evidence in relation to an application for a DAPO or an application to renew, vary or discharge a DAPO.

#### Clause 45: Data from electronic monitoring: code of practice

- 180 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.
- 181 The processing of such data will be subject to the requirements in the General Data Protection Regulation and the Data Protection Act 2018. The code of practice issued under this clause is intended to set out the appropriate tests and safeguards for the processing of such data, in order to assist with compliance of the data protection legislation. For example, it is envisaged that the code will set out the length of time for which data may be retained and the circumstances in which it may be permissible to share data with the police to assist with crime detection.

#### Clause 46: Guidance

- 182 This clause enables the Secretary of State to issue guidance to the police and other persons eligible to apply for a DAPO by virtue of being specified in regulations made under Clause 25(2)(c). Such persons are under a duty to have regard to the guidance when exercising functions under this Part.
- 183 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 47: Amendment of the Children Act 1989

- 184 This clause inserts a reference to Part 3 to the Bill into section 8(4) of the Children Act 1989. By doing so, the Bill would amend the Children Act 1989 to state that proceedings under Part 3 of the Domestic Abuse Act 2019 are “family proceedings” for the purposes of the Children Act 1989. This would thereby enable a judge (sitting in the family court or Family Division of the High Court) hearing an application to make or vary a DAPO, or in civil proceedings relating to the breach of 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.

## Clause 48: Repeal of provisions about domestic violence protection notices and orders

185 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 49: Interpretation of Part 3

186 This clause defines terms used in Part 3.

## Part 4: Protection of victims and witnesses in court

### Clause 50: Prohibition of cross-examination in person in family proceedings

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

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

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

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

189 Section 31R provides that any person involved in family proceedings who has an unspent conviction or caution (as defined in subsection (5)) for, or who is charged with, a “specified offence” cannot cross-examine in person the victim of that offence, or alleged offence, during the course of the family proceedings. The section also provides that the (alleged) victim cannot, in person, cross examine the (alleged) perpetrator. The prohibition will not apply if the conviction is spent (under the Rehabilitation of Offenders Act 1974) unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3), or (4) of that Act (which disapply the provisions of the 1974 Act in respect of specified, or proscribed, 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.

190 Section 31R(6) makes clear that the prohibition applies even where a conviction has been discharged (either absolutely or conditionally).

191 The offences that are relevant here are to be specified in regulations to be made by the Lord Chancellor under the power in section 31R(5). It is intended to use regulations to specify a comprehensive list of sexual offences, child abuse offences and domestic abuse offences, based on the list of offences set out in documents issued by the Lord Chancellor as referred to in regulations 33 and 34 of the Civil Legal Aid (Procedure) Regulations 2012.

The regulations may also specify offences which have been repealed and replaced but which remain in force insofar as they could be prosecuted in respect of conduct committed prior to their repeal.

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

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

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

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

195 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.

196 Section 31S(4) provides that “protective injunctions” are to be specified in regulations made by the Lord Chancellor. It is intended to use those regulations to specify a comprehensive list of protective injunctions, based on the definition of “protective injunction” in regulation 33 of the Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098). 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.

197 If cross-examination takes place in breach of the provision, because the court was not aware of the existence of the on-notice protective injunction at the time the cross-examination took place, then the validity of decisions made by the court is not affected.

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

198 Section 31T provides that, in addition to the absolute bar on cross-examination in person provided for in sections 31R or 31S, there are circumstances where the court has the discretion to prohibit cross-examination in person. The discretion can be exercised if someone involved in the proceedings applies for this to happen or if the court raises the issue. The court can prohibit the cross-examination in person if it is satisfied that either the “quality condition” or the “significant distress condition” is met and that it will not be contrary to the interests of justice to direct that cross-examination by a party in person is prohibited.

199 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.

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

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

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

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

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

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

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

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

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

207 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 would have given under cross-examination. Examples for doing this include the court putting questions to the witness, or the court accepting pre-recorded evidence that was given in cross-examination in related criminal proceedings.

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

209 If, after the specified time, the party has either notified the court that there is no qualified legal representative to act for them, or the court has not received any notification of which legal representative will cross-examine the witness, then the court must consider if it should appoint a qualified legal representative to undertake the cross-examination on behalf of the party. If the court decides it is in the interests of justice for this to be done, then the court should appoint such a qualified legal representative. This legal representative, appointed by the court, is not responsible to the party.

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

210 Section 31W confers a power for the Lord Chancellor to make regulations about the

payment of fees and costs of a qualified legal representative appointed under section 31V and to cover related costs connected to their appointment.

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

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

### **Clause 51: Special measures directions in cases involving domestic abuse**

212 This clause extends the eligibility for assistance given to intimidated witnesses to complainants of any offence where it is alleged that the behaviour amounts 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 (see paragraph 26 above for the types of special measures available). This is unless they tell the court that they do not want to be so eligible.

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

214 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 eligible on grounds of fear and distress (unless the witness does not want to be eligible), so 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).

## **Part 5: Miscellaneous and general**

### **Clause 52: Polygraph conditions for offenders released on licence**

215 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.

216 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

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<sup>7</sup> Pre-recorded cross-examination and re-examination under section 28 of the YJCEA 1999 has been taking place in the Crown Courts at Leeds, Liverpool and Kingston-Upon-Thames for witnesses with a disability and witnesses under the age of 16 since December 2013. This was extended to 16 and 17-year-old witnesses from January 2017. It is also planned to bring section 28 into force for witnesses who are complainants of sexual offences and modern slavery offences in these three courts and for vulnerable witnesses in other Crown Courts across England and Wales.

be required to undertake polygraph tests.

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

“While subject to a polygraph condition an offender must–

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

218 Subsections (2) and (3) inserts new subsections (2A), (4A) and (4B) into section 28 of the 2007 Act, the effect of which is to extend the provisions of that section so that they not only apply to offenders released from custody having served a sentence for a relevant sexual offence, but also to offenders released from custody having served a sentence for a relevant offence involving domestic abuse (as defined in new section 28(4B) – the definition includes offences relating to breach of a restraining order or a DAPO which may not, of themselves, involve domestic abuse). A polygraph condition may only be applied to offenders who are aged 18 or over on the day of their release from custody (new section 28(2A)(b)).

219 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 53: Guidance about the disclosure of information by police forces

220 This clause confers a power on 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 33 above).

221 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, rational reasons for doing so.

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

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

224 Topics which may 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
- Suggested forms of wording for communicating outcomes at each stage of the DVDS process.

#### Clause 54: Grant of secure tenancies in cases of domestic abuse

225 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 periodic tenancy granted by a local authority or under an assured tenancy, granted by a private registered provider of social housing other than an assured periodic tenancy), to grant such a person a new lifetime tenancy if the person, or a member of their household, is or has been a victim of domestic abuse (as defined by Clause 1 of the Bill) carried out by another person, and the new tenancy is being granted for reasons connected with that abuse.

226 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 35 to 39 above).

## Clause 55: Offences against the person committed outside the United Kingdom

- 227 This and the following clause extend 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 the UK.
- 228 Subsection (1) makes it an offence in England and Wales for a UK national or resident (as defined in subsection (8)) 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.
- 229 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.
- 230 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.
- 231 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 56: Other offences committed outside the United Kingdom

- 232 Subsection (1) inserts a new section 4B in the Protection from Harassment Act 1997 (“the 1997 Act”).
- 233 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.
- 234 New section 4B(1) makes it an offence in England and Wales for a UK national or resident (as defined in new section 4B(2)) 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.
- 235 Subsection (3) 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.
- 236 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, subsection (4) 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.

- 237 Subsection (5) inserts a new section 76A in the 2015 Act.
- 238 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.
- 239 New section 76A(1) makes it an offence in England and Wales for a UK national or resident (as defined in new section 76A(2)) 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.

### Clause 57: Guidance about operation of Act

- 240 This clause confers a power on the Secretary of State to issue guidance about any of the provisions in the Bill. Amongst other things, such guidance would provide further explanation of the definition of domestic abuse, for example by illustrating the different forms it can take, including economic abuse, the preponderance of female victims and the adverse impact on children. Such statutory guidance would help promote understanding amongst public authorities of domestic abuse and the powers available to them to protect and support victims.
- 241 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). Persons exercising public functions to whom the guidance is given will be under a duty to have regard to the guidance when exercising such functions and must have good, rational reasons for departing from the guidance.

## Commencement

- 242 Clause 61(1) provides for Clauses 1 and 2 (definition of “domestic abuse”), 46 (guidance about DAPNs and DAPOs), 53 (guidance about the disclosure of information by the police) and 57 (guidance about the operation of the Act) and the general provisions in Clauses 58 to 61 (regulations, 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.
- 243 Clauses 55 and 56 (offences committed outside the UK) come into force two months after Royal Assent (Clause 61(2)).
- 244 The remaining provisions will be brought into force by means of commencement regulations made by the Secretary of State (Clause 61(3)). Clause 61(5) and (6) enable the provisions in Part 3 (DAPNs and DAPOs) and 52 (polygraph testing) to be piloted.

## Financial implications of the Bill

- 245 The main public sector financial implications of the Bill fall to criminal, civil and family justice agencies, including the police, prosecutors, the courts, the Legal Aid Agency, and prison and probation services. In addition, the office of the Domestic Abuse Commissioner will cost an estimated £1.1 million per annum. The best estimate annual cost of the measures in the draft Bill once fully implemented is £34 to £43 million. This figure is estimated based on a number of assumptions about implementation which are

subject to change. Further details of the costs and benefits of individual provisions are set out in the impact assessment published alongside the draft Bill.

## Parliamentary approval for financial costs or for charges imposed

246 A Money resolution will be needed in respect of the Bill as introduced. The House of Commons will be asked to agree that any expenditure arising from the Bill (should it become an Act) incurred by the Treasury will be taken out of money provided by Parliament.

## Compatibility with the European Convention on Human Rights

247 The Government considers the provisions of the draft Bill to be compatible with the European Convention on Human Rights.

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

## Related documents

249 The following documents are relevant to the draft 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, HM Government, January 2019.
- [Domestic abuse in England and Wales: year ending March 2018](#), Office of National Statistics, November 2018.
- The Economic and Social Costs of Domestic Abuse, Home Office, January 2019.
- [Violence against Women and Girls Report 2017-18](#), Crown Prosecution Service, September 2018.
- Ratification of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence (Istanbul Convention) – [2018 Report on Progress](#), Home Office, October 2018.
- Impact assessment.
- ECHR memorandum.
- 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.
DAPN	Domestic abuse protection notice
DAPO	Domestic abuse protection order
DVDS	Domestic Violence Disclosure Scheme
DVPN	Domestic violence protection notice
DVPO	Domestic violence protection order
MFPA 1984	Matrimonial and Family Proceedings Act 1984
Negative procedure	Statutory instruments that are subject to the “negative procedure” automatically become law unless there is an objection from the House of Commons or House of Lords.
The 1985 Act	Housing Act 1985
The 1997 Act	Protection from Harassment Act 1997
The 2003 Act	Criminal Justice Act 2003
The 2007 Act	Offender Management Act 2007
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

The provisions of the Bill extend and apply to England and Wales only or, in the case of Clause 54 (secure tenancies granted to victims of domestic abuse), England only. However, provision is made for DAPNs and DAPOs to have effect throughout the UK (see paragraphs 93 and 144 above).

In the view of the Government of the UK, the provisions of the Bill are within the legislative competence of the Scottish Parliament or Northern Ireland Assembly; the provisions in Part 2, and in Clauses 1, 2 and 57 insofar as they relate to Part 2, are in part within the legislative competence of the National Assembly for Wales.<sup>8</sup>

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1 and 2	Yes	Yes	No	No	In part	Yes	Yes	Yes (W)
Clauses 3 to 17	Yes	Yes	No	No	In part	Yes	Yes	Yes (W)
Clauses 18 to 49	Yes	Yes	No	No	No	Yes	Yes	No
Clause 50	Yes	Yes	No	No	No	Yes	Yes	No
Clause 51	Yes	Yes	No	No	No	Yes	Yes	No
Clause 52	Yes	Yes	No	No	No	Yes	Yes	No
Clause 53	Yes	Yes	No	No	No	Yes	Yes	No
Clause 54	Yes	No	No	No	Yes	Yes	Yes	No
Clause 55 and 56	Yes	Yes	No	No	No	Yes	Yes	No
Clause 57	Yes	Yes	No	No	In part	Yes	Yes	Yes (W)

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

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Schedule	Yes	Yes	No	No	No	Yes	Yes	No

## Minor and consequential effects

There are no minor or consequential effects which are relevant to this analysis.

## Subject matter and legislative competence of devolved legislatures

The provisions of the Bill deal with the prevention of domestic abuse; the prevention, detection, investigation and prosecution of offences involving domestic abuse; 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) and section 97 of and Schedule 7 to the Justice Act (Northern Ireland) 2015 (which makes provision for domestic violence protection notices and orders).

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

DOMESTIC ABUSE **BILL**

# EXPLANATORY NOTES

These Explanatory Notes relate to the Domestic Abuse Bill as published in Draft on 21 January 2019 (Bill CP 15).

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