



# Domestic Abuse Act 2021

## 2021 CHAPTER 17

An Act to make provision in relation to domestic abuse; to make provision for and in connection with the establishment of a Domestic Abuse Commissioner; to make provision for the granting of measures to assist individuals in certain circumstances to give evidence or otherwise participate in civil proceedings; to prohibit cross-examination in person in family or civil proceedings in certain circumstances; to make further provision about orders under section 91(14) of the Children Act 1989; to provide for an offence of threatening to disclose private sexual photographs and films with intent to cause distress; to provide for an offence of strangulation or suffocation; to make provision about circumstances in which consent to the infliction of harm is not a defence in proceedings for certain violent offences; to make provision about certain violent or sexual offences, and offences involving other abusive behaviour, committed outside the United Kingdom; and for connected purposes. [29th April 2021]

BE 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 “domestic abuse” for the purposes of this Act.
- (2) Behaviour of 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 to each other, and
  - (b) the behaviour is abusive.

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- (3) Behaviour is “abusive” if it consists of any of the following—
- (a) physical or sexual abuse;
  - (b) violent or threatening behaviour;
  - (c) controlling or coercive behaviour;
  - (d) economic abuse (see subsection (4));
  - (e) psychological, emotional or other abuse;
- and it does not matter whether the behaviour consists of a single incident or a course of conduct.
- (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.
- (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.
- (7) For the meaning of “personally connected”, see section 2.

## **2 Definition of “personally connected”**

- (1) For the purposes of this Act, two people are “personally connected” to each other 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;
  - (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;
  - (f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child (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—
- (a) the person is a parent of the child, or
  - (b) the person has parental responsibility for the child.
- (3) In this section—
- “child” means a person under the age of 18 years;
  - “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 (see section 3 of that Act);
  - “relative” has the meaning given by section 63(1) of the Family Law Act 1996.

### **3 Children as victims of domestic abuse**

- (1) This section applies where behaviour of a person (“A”) towards another person (“B”) is domestic abuse.
- (2) Any reference in this Act to a victim of domestic abuse includes a reference to a child who—
  - (a) sees or hears, or experiences the effects of, the abuse, and
  - (b) is related to A or B.
- (3) A child is related to a person for the purposes of subsection (2) if—
  - (a) the person is a parent of, or has parental responsibility for, the child, or
  - (b) the child and the person are relatives.
- (4) In this section—
  - “child” means a person under the age of 18 years;
  - “parental responsibility” has the same meaning as in the Children Act 1989 (see section 3 of that Act);
  - “relative” has the meaning given by section 63(1) of the Family Law Act 1996.

## **PART 2**

### **THE DOMESTIC ABUSE COMMISSIONER**

#### *Domestic Abuse Commissioner*

### **4 Appointment of Commissioner**

- (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 and conditions 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.

### **5 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.
- (3) The Secretary of State may pay, or make provision for paying, to or in respect of the Commissioner—
  - (a) remuneration;
  - (b) allowances;
  - (c) sums by way of or in respect of pensions.

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## 6 Staff etc

- (1) The Secretary of State must provide the Commissioner with—
  - (a) such staff, and
  - (b) such accommodation, equipment and other facilities,as 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.
- (3) The Secretary of State must consult the Commissioner before providing any accommodation, equipment or other facilities.

### *Functions of Commissioner*

## 7 General functions of Commissioner

- (1) The Commissioner must encourage good practice in—
  - (a) the prevention of domestic abuse;
  - (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;
    - (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—
  - (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;
  - (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.
- (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.
- (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 18.
- (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 Senedd Cymru if it were contained in an Act of Senedd Cymru, 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 Senedd Commission.
- (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.

## **8 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.
- (4) The Secretary of State may direct the Commissioner to omit material from any report under this section 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.
- (5) The Secretary of State must consult the Commissioner before making any direction under subsection (4).
- (6) The Commissioner must arrange for a copy of any report published under this section to be laid before Parliament.

## **9 Advice and assistance**

- (1) The Commissioner may provide the Secretary of State with any advice or assistance that the Secretary of State may request.
- (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).

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- (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.
- (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.
- (7) The Secretary of State must consult the Commissioner before making any direction under subsection (6).

## **10 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.

### *Framework document*

## **11 Framework document**

- (1) The Secretary of State must issue a document (a “framework document”) that deals with matters relating to the Commissioner.
- (2) The matters that may be dealt with by a framework document include (among other things)—
  - (a) matters relating to governance, funding and staffing;
  - (b) matters relating to the exercise of functions of the Commissioner;
  - (c) matters relating to scrutiny of the Commissioner’s activities by Parliament or by Senedd Cymru.
- (3) The Commissioner must have regard to the framework document when exercising any of the Commissioner’s functions.
- (4) The Secretary of State must have regard to the framework document when exercising any functions in relation to the Commissioner.
- (5) The Secretary of State—
  - (a) must keep the framework document under review, and
  - (b) may issue a revised framework document.
- (6) The Secretary of State—
  - (a) must consult the Commissioner in preparing or revising a framework document, and
  - (b) may not issue a framework document without the agreement of the Commissioner.
- (7) The Secretary of State must consult the Welsh Ministers before issuing—
  - (a) the first framework document under this section, or

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- (b) any other framework document which is, in the opinion of the Secretary of State, significantly different from the framework document it replaces.
- (8) The Secretary of State must—
- (a) arrange for any framework document issued under this section to be published in the manner which the Secretary of State considers appropriate,
  - (b) send a copy of the framework document to the Welsh Ministers, and
  - (c) lay a copy of the framework document before Parliament.
- (9) The Welsh Ministers must lay before Senedd Cymru a copy of any framework document sent to them under subsection (8)(b).

### *Advisory Board*

## **12 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.
- (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 is to hold and vacate office in accordance with the terms and conditions of the member’s appointment.
- (4) The members of the Board must include—
- (a) at least one person appearing to the Commissioner to represent the interests of victims of domestic abuse;
  - (b) at least one person appearing to the Commissioner to represent the interests of charities and other voluntary organisations that work with victims of domestic abuse in England;
  - (c) at least one person appearing to the Commissioner to represent the interests of persons who provide, or have functions relating to, health care services in England;
  - (d) at least one person appearing to the Commissioner to represent the interests of persons who provide, or have functions relating to, social care services in England;
  - (e) at least one person appearing to the Commissioner to represent the interests of persons with functions relating to policing or criminal justice;
  - (f) at least one person 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.
- (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).

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### *Strategic plans and annual reports*

#### **13 Strategic plans**

- (1) The Commissioner must, as soon as reasonably practicable after the Commissioner's appointment, prepare and publish a strategic plan.
- (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;
  - (b) state any matters on which the Commissioner proposes to report under section 8 during that period;
  - (c) state any other activities the Commissioner proposes to undertake during that period in the exercise of the Commissioner's functions.
- (4) The Commissioner must, before the end of the period to which a strategic plan relates ("the current period")—
  - (a) prepare a strategic plan for a period immediately following the current period, and
  - (b) publish that plan.
- (5) At any time during the period to which a strategic plan relates, the Commissioner—
  - (a) may revise the strategic plan, and
  - (b) must publish any revised plan.
- (6) In preparing or revising a strategic plan, the Commissioner must consult—
  - (a) the Secretary of State,
  - (b) the Advisory Board established under section 12, and
  - (c) such other persons as the Commissioner considers appropriate.
- (7) The Commissioner must arrange for a copy of any plan (or revised plan) published under this section to be laid before Parliament.

#### **14 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—
  - (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 8 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.
- (3) The Commissioner must arrange for a copy of every annual report under this section to be laid before Parliament (but see subsection (4)).



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- (4) The Secretary of State may direct the Commissioner to omit material from any report under this section before it is laid before Parliament 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.
- (5) The Secretary of State must consult the Commissioner before making any direction under subsection (4).
- (6) 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, and
  - (b) each successive period of 12 months.

*Duties of public authorities in relation to Commissioner*

**15 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.
- (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—
  - (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;
  - (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;
  - (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);
  - (p) the Care Quality Commission;
  - (q) Monitor.
- (4) The Secretary of State may by regulations amend this section so as to—

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- (a) add a public authority as a specified public authority for the purposes of this section;
  - (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.
- (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;
  - “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 in its capacity as a local authority, or
    - (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,
    - (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
    - (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.

## **16 Duty to respond to Commissioner’s recommendations**

- (1) This section applies where the Commissioner publishes a report under section 8 containing recommendations in relation to—
- (a) any public authority that is a specified public authority for the purposes of section 15;
  - (b) any government department in the charge of a Minister.
- (2) The relevant person must prepare comments on the report.
- (3) In this section “the relevant person” means—
- (a) the public authority, or
  - (b) the Minister in charge of the government department,
- as the case may be.

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- (4) The comments must include, in respect of each recommendation made in the report, an explanation of—
  - (a) the action which the relevant person has taken, or proposes to take, in response to the recommendation, or
  - (b) why the relevant person has not taken, or does not propose to take, any action in response.
- (5) The relevant person must arrange for the comments to be published in such manner as the person considers appropriate.
- (6) The comments must be published before the end of the period of 56 days beginning with the day on which the report is published.
- (7) The relevant person must send a copy of anything published under subsection (5) to—
  - (a) the Commissioner, and
  - (b) where the relevant person is a specified public authority for the purposes of section 15, the Secretary of State.

## **17 Duty to send conclusions of domestic homicide review to Commissioner**

- (1) Section 9 of the Domestic Violence, Crime and Victims Act 2004 (establishment and conduct of domestic homicide reviews) is amended as follows.
- (2) After subsection (3A) insert—
  - “(3B) A person or body within subsection (4)(a) that establishes a domestic homicide review (whether or not held pursuant to a direction under subsection (2)) must send a copy of any report setting out the conclusions of the review to the Domestic Abuse Commissioner.
  - (3C) The copy must be sent as soon as reasonably practicable after the report is completed.”

### *Disclosure of information*

## **18 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.
- (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).
- (4) But nothing in this Part requires or authorises any of the following—
  - (a) the disclosure of any patient information (see subsection (5));

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- (b) the making of a disclosure which, although made in the exercise of a function under this Part, would contravene 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—
- (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
  - (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*

**19 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.

**20 Duty to report on domestic abuse services in England**

- (1) The Commissioner must, before the end of the relevant period, prepare and publish a report under section 8 on—
  - (a) the need for domestic abuse services in England, and
  - (b) the provision of such services.
- (2) But subsection (1) does not require the Commissioner to report on the need for, or provision of, services provided to people who reside in relevant accommodation (within the meaning of section 57(2)).
- (3) In subsection (1)—
  - “domestic abuse services” means any advice, advocacy or counselling services provided, in relation to domestic abuse, to victims of domestic abuse or their children;
  - “the relevant period” means the period of 12 months beginning with the day on which this section comes into force (but see subsection (4)).
- (4) The Secretary of State, with the agreement of the Commissioner, may by regulations extend the relevant period for a further period of up to 6 months.
- (5) The power conferred by subsection (4) may be exercised only once.

## **21 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.”
- (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.”
- (3) In section 37 of the Government of Wales Act 2006 (power of the Senedd to call witnesses etc), after subsection (6A) insert—  
“(6B) Subsection (1) applies in relation to things done by the Domestic Abuse Commissioner by virtue of section 7(4)(b) or (c) of the Domestic Abuse Act 2021 (functions exercisable in relation to devolved Welsh authorities etc) as it applies in relation to the exercise by the Welsh Ministers of their functions.”

## **PART 3**

### **POWERS FOR DEALING WITH DOMESTIC ABUSE**

#### *Domestic abuse protection notices*

## **22 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.  
  
(Section 23 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.
- (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.
- (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;  
“relevant police force” means—

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- (a) a force maintained by a local policing body;
- (b) the British Transport Police Force;
- (c) the Ministry of Defence Police.

## **23 Provision that may be made by notices**

- (1) A domestic abuse protection notice may provide that the person to whom the notice is given (“P”)—
- (a) may not contact the person for whose protection the notice is given;
  - (b) may not come within a specified distance of any premises in England or Wales in which that person lives.

“Specified” means specified in the notice.

- (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—
- (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.

## **24 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 and P are personally connected);
  - (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 the person for whose protection the notice would be given, the opinion of any relevant occupant as to the giving of the notice.
- (2) In subsection (1)(d) “relevant occupant” means a person other than P or the person for whose protection the notice would be given—
- (a) who lives in the premises, and
  - (b) who is personally connected to—
    - (i) the person for whose protection the notice would be given, or
    - (ii) if P also lives in the premises, P.
- (3) The officer must take reasonable steps to discover the opinions mentioned in subsection (1).
- (4) It is not necessary for the person for whose protection a domestic abuse protection notice is given to consent to the giving of the notice.

## **25 Further requirements in relation to notices**

- (1) A domestic abuse protection notice must be in writing.
- (2) A domestic abuse protection notice given to a person (“P”) must state—

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- (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 28 will be heard by a magistrates' court within 48 hours of the time of giving the notice (disregarding any days mentioned in section 29(3)) and a notice of the hearing will be given to P,
  - (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.
- (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—
- (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 23(2) prohibiting P from entering premises, or requiring P to leave premises, and
  - (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—
- “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.

## **26 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—
- (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 28(3)).
- (3) In subsection (2) “the appropriate magistrates' court” means the magistrates' court which is to hear the application mentioned in subsection (2)(b).
- (4) In calculating when the period of 24 hours mentioned in subsection (2)(a) ends, the following days are to be disregarded—

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- (a) any 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.
- (5) If the person is brought before the court as mentioned in subsection (2)(a), the court may remand the person.
- (For power to remand a person brought before the court as mentioned in subsection (2)(b), see section 29(8).)
- (6) In the application of section 128(6) of the Magistrates’ Courts Act 1980 to remand under subsection (5) above, the reference to the “other party” is to be read as a reference to the senior police officer who gave the notice.
- (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.
- (8) Sections 57A(2) and 57C of the Crime and Disorder Act 1998 (use of live link at preliminary hearings where accused is at police station) apply in relation to hearings arising by virtue of subsection (2)(a) as they apply in relation to preliminary hearings in a magistrates’ court (within the meaning of section 57A(3) of that Act), but as if—
- (a) any reference in section 57C of that Act to being in police detention in connection with an offence were a reference to being held in custody under subsection (2) above, and
  - (b) subsections (4), (10) and (11) of that section were omitted.
- (9) In section 17(1) of the Police and Criminal Evidence Act 1984 (entry for purpose of arrest etc), after paragraph (c) insert—
- “(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 22 of the Domestic Abuse Act 2021;”.

### *Domestic abuse protection orders*

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

- (1) In this Part a “domestic abuse protection order” is 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
  - (b) requires P to do things described in the order.
- (2) A domestic abuse protection order may be made—
- (a) on application (see section 28), or
  - (b) in the course of certain proceedings (see section 31).
- (3) Section 32 sets out the conditions for making a domestic abuse protection order.



## **28 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.
- (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;
  - (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 22, the chief officer of police in relation to that force must apply for a domestic abuse protection order against P.  

(For further provision about such applications, see section 29.)
- (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—
    - (i) the chief officer of police of the force maintained for any 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;
    - (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.
- (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 31 in those proceedings without an application being made,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—
  - (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, except where the person has given oral or written evidence at the hearing.

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## **29 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 22, a chief officer of police is required by section 28(3) to apply for a domestic abuse protection order against P.
- (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—
  - (a) any 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.
- (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 25(4).
- (6) But if the notice has not been given because P did not give an address under section 25(4), the court may hear the application if satisfied that the chief officer of police has made reasonable efforts to give P the notice.
- (7) If the court adjourns the hearing of the application, the domestic abuse protection notice continues in effect until the application has been determined or withdrawn.
- (8) If—
  - (a) P is brought before the court at the hearing of the application as a result of P’s arrest by virtue of section 26(1) (arrest for breach of domestic abuse protection notice), and
  - (b) the court adjourns the hearing,the court may remand P.

## **30 Remand under section 29(8) of person arrested for breach of notice**

- (1) This section applies where—
  - (a) as a result of a person being given a domestic abuse protection notice under section 22, a chief officer of police has applied for a domestic abuse protection order against the person, and
  - (b) the magistrates’ court remands the person under section 29(8).
- (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 chief officer of police who applied for the order.
- (3) If the court has reason to suspect that a medical report will be required, the power to remand the person may be exercised for the purpose of enabling a medical examination to take place and a report to be made.
- (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.
- (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).
- (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.

### **31 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.

#### *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.

#### *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) 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 a conviction for an offence, the Crown Court may make a domestic abuse protection order against the person.

#### *Civil proceedings*

- (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.

### **32 Conditions for making an order**

- (1) The court may make a domestic abuse protection order under section 28 or 31 against a person (“P”) if conditions A and B are met.

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- (2) Condition A is that the court is satisfied on the balance of probabilities that P has been abusive towards a person aged 16 or over to whom P is personally connected.
- (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
  - (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.

### **33 Matters to be considered before making an order**

- (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 and P are personally connected);
  - (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 the person for whose protection the order would be made, any opinion of a relevant occupant—
    - (i) which relates to the making of the order, and
    - (ii) of which the court is made aware.
- (2) In subsection (1)(c) “relevant occupant” means a person other than P or the person for whose protection the order would be made—
  - (a) who lives in the premises, and
  - (b) who is personally connected to—
    - (i) the person for whose protection the order would be made, or
    - (ii) if P also lives in the premises, P.
- (3) It is not necessary for the person for whose protection a domestic abuse protection order is made to consent to the making of the order.

### **34 Making of orders without notice**

- (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 28 on an application made in accordance with subsection (3) of that section (see instead section 29(4) to (6)).
- (3) In deciding whether to exercise its powers under subsection (1), the court must have regard to all the circumstances, including—

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- (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,
  - (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
  - (c) whether there is reason to believe that—
    - (i) P is aware of the proceedings but is deliberately evading service, and
    - (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
  - (b) at a hearing of which notice has been given to all the parties in accordance with rules of court.

### **35 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.
- “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.
- (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 the order is made (“P”)—
- (a) may not contact the person for whose protection it is made;
  - (b) may not come within a specified distance of any premises in England or Wales in which that person lives;
  - (c) may not come within a specified distance of any other specified premises, or any other premises of a specified description, in England or Wales.

“Specified” means specified in the order.

- (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—
- (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.
- (6) A domestic abuse protection order may require P to submit to electronic monitoring in England and Wales 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”.

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- (7) Sections 36 and 37 contain further provision about the requirements that may be imposed by a domestic abuse protection order.

### **36 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—
- (a) conflict with the person’s religious beliefs;
  - (b) interference with the person’s work or with the person’s attendance at 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.
- (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).
- (4) Subsections (2) and (3) do not apply in relation to electronic monitoring requirements (see instead section 37(3) to (6)).
- (5) It is the duty of a person specified under subsection (2)—
- (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—
    - (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—
- (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,
  - (b) if it appears to that person that P resides in more than one police area, whichever one of the relevant chief officers of police the person thinks it most appropriate to inform, or
  - (c) if it appears to the person specified under subsection (2) that P does not reside in any police area, the chief officer of police of the force maintained for the police area in which the court that made the order is situated.
- (7) A person (“P”) who is subject to a requirement imposed by a domestic abuse protection order—
- (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;
  - (b) if P changes home address, must notify the person specified under subsection (2) of the new home address;

- (c) if P ceases to have any home address, must notify the person specified under subsection (2) of that fact.

These obligations have effect as requirements of the order.

### **37 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.
- (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—
  - (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—
  - (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
    - (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.

- (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.
- (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
    - (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.

These obligations have effect as requirements of the order.

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### **38 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).

- (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 previous order ceasing to have effect.

- (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.

- (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 44.
- (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.

### **39 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.

- (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 behaviour engaged in at a time when the person was aware of the existence of the order.

(See also section 45(8) and (9), 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 behaviour, that behaviour 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 behaviour which has been punished as a contempt of court.
- (5) A person guilty of an offence under this section is liable—
- (a) on summary conviction—
    - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020), or
    - (ii) to a fine,
- or both;



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- (b) on conviction on indictment, to imprisonment for a term 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 under section 80 of the Sentencing Code (conditional discharge).
- (7) If a person is convicted of an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence under this section, it is not open to the service court that convicted the person to make, in respect of the offence, an order under section 185 of that Act (conditional discharge).

In this subsection “service court” means the Court Martial or the Service Civilian Court.

- (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.

#### **40 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,
  - (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.
- (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 28, the person who applied for the order (if different);
  - (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.
- (6) If—
  - (a) P is brought before a relevant court as a result of a warrant issued under this section, and
  - (b) the court does not immediately dispose of the matter,the court may remand P.

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- (7) Schedule 1 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;
  - (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.

#### **41 Notification requirements**

- (1) Subsections (2) to (6) apply where a person is subject to a domestic abuse protection order.
- (2) The person must, within the period of three days beginning with the day on which the order is made, notify the police of the information in subsection (3).
- (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 three days beginning with the day on which the person first uses that name, notify the police of that name.
- (5) If the person changes home address, the person must, before the end of the period of three days beginning with the day on which that happens, notify the police of the new home address.
- (6) If the person ceases to have any home address, the person must, before the end of the period of three days beginning with the day on which that happens, notify the police of that fact.
- (7) 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.
- (8) The requirements imposed by subsections (2) to (6) do not apply where—
  - (a) the person is subject to another domestic abuse protection order (and accordingly those requirements already apply), or
  - (b) the person is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 or section 9 of the Stalking Protection Act 2019.
- (9) If on any day the person ceases to be subject to any notification requirements as mentioned in subsection (8)(a) or (b), the requirements imposed by subsections (2) to (6) 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.
- (10) For provision about how to give a notification under subsection (2), (4), (5) or (6), see section 42.

## **42 Further provision about notification under section 41**

- (1) A person gives a notification under section 41(2), (4), (5) or (6) by—
  - (a) attending at a police station in the appropriate police area, and
  - (b) giving an oral notification to—
    - (i) a police officer, or
    - (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;
  - (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 41(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.
- (4) A notification given in accordance with this section must be acknowledged—
  - (a) in writing, and
  - (b) in the form directed by the Secretary of State.
- (5) When a person (“P”) gives a notification under section 41, 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—
  - (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.

## **43 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 41, or
  - (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 42(5) commits an offence.
- (3) A person guilty of an offence under subsection (1) or (2) 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 paragraph 24(2) of Schedule 22 to the Sentencing Act 2020), or
    - (ii) to a fine,or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or both.

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- (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 41.
- (5) The person continues to commit the offence throughout any period during which the failure continues.
- (6) But the person may not be prosecuted more than once in respect of the same failure.

#### **44 Variation and discharge of orders**

- (1) A court may vary or discharge a domestic abuse protection order made by that or any other court.

This is subject to section 45.

- (2) A court may vary or discharge a domestic abuse protection 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 31.
- (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 28, the person who applied for the order;
  - (d) the chief officer of police of the force maintained for any 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—
  - (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.
- (5) For the purposes of subsection (4)(a) each of the following is a “relevant chief officer of police”—
  - (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 any 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 33 (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.

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*Status: This is the original version (as it was originally enacted).*

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- (7) Section 34 (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,
  - (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.
- 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.
- (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.
- (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
  - (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 it was made from domestic abuse, or the risk of domestic abuse, carried out by P.

#### **45 Variation and discharge: supplementary**

- (1) Any application to vary or discharge a domestic abuse protection order under section 44 must be made to the court that made the order.
- 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.
- (3) Where—
- (a) the order was made under section 31 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,
- 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)).

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*Status: This is the original version (as it was originally enacted).*

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- (4) Where the person mentioned in subsection (3)(b) was convicted by a youth court, 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 acting in the local justice area in which the youth court acts.
- (5) Except as provided for by subsection (3), a domestic abuse protection order made by the Crown Court may be varied or discharged under section 44 only by the Crown Court.
- (6) A domestic abuse protection order made by the High Court may be varied or discharged under section 44 only by the High Court.
- (7) An order that has been varied under section 44 remains an order of the court that first made it for the purposes of any further application under that section.
- (8) Subsection (9) applies in a case where—
  - (a) an order made against a person is varied under section 44 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.
- (9) The person commits an offence under section 39 only if—
  - (a) the behaviour constituting the offence was engaged in at a time when the person was aware of the making of the variation, and
  - (b) the behaviour would not have constituted an offence under that section in the absence of the variation.

## **46 Appeals**

- (1) A person listed in subsection (2) may appeal against any decision of a court on an application for a domestic abuse protection order under section 28 (to the extent that it would not otherwise be so appealable).
- (2) The persons referred to in subsection (1) are—
  - (a) the person for whose protection the order was sought,
  - (b) the person who applied for the order (if different), and
  - (c) where the court made a domestic abuse protection order under section 28, the person against whom it was made.
- (3) A person against whom a domestic abuse protection order is made under subsection (3), (5) or (6) of section 31 may appeal against the making of the order (to the extent it would not otherwise be so appealable) as if it were a sentence passed on the person for the offence referred to in that subsection (assuming, in a case within section 31(5) or (6), that the person had been convicted of the offence).
- (4) A person against whom a domestic abuse protection order is made may appeal against a variation of the order under section 44 that is made in a case within subsection (3), (5) or (6) of section 31 (to the extent it would not otherwise be so appealable) as if the varied order were a sentence passed on the person for the offence referred to in that subsection (assuming, in a case within section 31(5) or (6), that the person had been convicted of the offence).

- (5) A person listed in subsection (6) may appeal against any decision of a court under section 44 in relation to a domestic abuse protection order (to the extent it would not otherwise be so appealable, whether under subsection (4) or otherwise).
- (6) The persons referred to in subsection (5) 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 28, the person who applied for the order;
  - (d) the chief officer of police of the force maintained for any 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.
- (7) An appeal arising by virtue of subsection (1) or (5)—
- (a) in the case of a decision made by a magistrates’ court, is to be made to the Crown Court;
  - (b) in the case of a decision made by the Crown Court, is to be made to the Court of Appeal.
- For the powers of the Crown Court or Court of Appeal on such an appeal, see section 47(4).
- (8) If, in the case of an appeal arising by virtue of subsection (1) or (5) in respect of a decision made by the High Court, the family court or the county court, the person making the appeal was not a party to the proceedings in that court, the person is to be treated for the purposes of that appeal as if the person had been a party to those proceedings.
- (9) For further provision about appeals, see (in particular)—
- (a) section 31K of the Matrimonial and Family Proceedings Act 1984 (appeals from the family court),
  - (b) section 16(1) of the Senior Courts Act 1981 (appeals from the High Court),
  - (c) section 77 of the County Courts Act 1984 (appeals from the county court),
  - (d) section 108(3) of the Magistrates’ Courts Act 1980 (appeals against orders made on conviction in a magistrates’ court),
  - (e) section 50(1) of the Criminal Appeal Act 1968 (appeals against orders made on conviction in the Crown Court), and
  - (f) rules of court.

#### **47 Further provision about appeals**

- (1) Before determining any appeal relating to a domestic abuse protection order (whether or not an appeal under section 46), the court must hear from any relevant chief officer of police who wishes to be heard.
- (2) For the purposes of subsection (1) each of the following is a “relevant chief officer of police”—
- (a) where the order was made on an application by a chief officer of police, that chief officer;

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- (b) the chief officer of police of the force maintained for any police area in which the person (“P”) against whom the order was made, or (in the case of an appeal against the decision of a court not to make an order under section 28) against whom it was sought, 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.
- (3) Subsection (4) applies to—
- (a) an appeal made to the Crown Court by virtue of section 46(7)(a);
  - (b) an appeal made to the Court of Appeal by virtue of section 46(7)(b).
- (4) On an appeal to which this subsection applies, the court may, on a review of the decision appealed against—
- (a) confirm, vary or revoke any part of the decision;
  - (b) refer the matter back to the court that made the decision with a direction to reconsider and make a new decision in accordance with its ruling;
  - (c) make any order which the court that made the decision appealed against could have made;
  - (d) make any incidental or consequential orders that appear to it to be just.
- (5) For the purposes of section 45 (variation and discharge: supplementary)—
- (a) a domestic abuse protection order that has been confirmed or varied on an appeal (whether under subsection (4)(a) or otherwise) remains an order of the court that first made it, and
  - (b) a domestic abuse protection order made by a court on an appeal (whether under subsection (4)(c) or otherwise) is to be treated as an order made by the court whose decision was appealed against.

#### **48 Nature of certain proceedings under this Part**

- (1) Proceedings before a court arising by virtue of section 31(3), (5) or (6), and proceedings before a court arising by virtue of section 44(2)(b) in any case within section 31(3), (5) or (6), are civil proceedings (like proceedings before a magistrates’ court under section 28 or 44(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.
- (3) The court may adjourn any proceedings arising by virtue of section 31(3), (5) or (6), or any proceedings arising by virtue of section 44(2)(b) in any case within section 31(3), (5) or (6), even after sentencing or acquitting the person concerned or allowing the person’s appeal.
- (4) A domestic abuse protection order may be made or varied in addition to an order discharging the person conditionally or absolutely in spite of anything in sections 79, 80 and 82 of the Sentencing Code (which relate to orders discharging a person conditionally or absolutely and their effect).



## **49 Special measures for witnesses**

- (1) Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (special measures directions in case of vulnerable and intimidated witnesses) applies to relevant proceedings under this Part as it applies to criminal proceedings, but with—
  - (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—
  - (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—
  - (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—
  - (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—
  - (a) proceedings under section 28, 31(2) or (7), 40 or 44(2)(a);
  - (b) proceedings arising by virtue of section 31(3), (5) or (6);
  - (c) proceedings arising by virtue of section 44(2)(b) in any case within section 31(3), (5) or (6);
  - (d) proceedings on an appeal relating to a domestic abuse protection order (whether or not an appeal under section 46).

*Notices and orders: supplementary*

## **50 Guidance**

- (1) The Secretary of State must issue guidance relating to the exercise by relevant persons of functions under or by virtue of this Part.
- (2) In this section “relevant person” means—
  - (a) a constable;
  - (b) a person specified in regulations under subsection (2)(c) of section 28 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.
- (4) The Secretary of State may from time to time revise any guidance issued under this section.

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- (5) Before issuing or revising 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.
- (6) Subsection (5) 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—
  - (a) any guidance issued under this section, and
  - (b) any revisions of that guidance.

#### **51 Data from electronic monitoring: code of practice**

- (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.

#### **52 Powers to make other orders in proceedings under this Part**

- (1) 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 2021, where the proceedings are in the family court or the Family Division of the High Court.”
- (2) In Part 4 of the Family Law Act 1996 (family homes and domestic violence), in section 63(2) (definition of “family proceedings”), after paragraph (j) insert—
  - “(k) Part 3 of the Domestic Abuse Act 2021, where the proceedings are in the family court or the Family Division of the High Court.”

#### **53 Proceedings not to be subject to conditional fee agreements**

In section 58A of the Courts and Legal Services Act 1990 (conditional fee agreements: supplementary), in subsection (2), after paragraph (fd) (but before the “and” following it) insert—

- “(fe) proceedings under Part 3 of the Domestic Abuse Act 2021 (proceedings for domestic abuse protection order), where the proceedings are in the family court or the Family Division of the High Court;”.

#### **54 Consequential amendments of the Sentencing Code**

- (1) The Sentencing Code is amended as follows.
- (2) In section 80 (order for conditional discharge), in subsection (3), at the end insert—
  - “(f) section 39(6) of the Domestic Abuse Act 2021 (breach of domestic abuse protection order).”

- (3) In Chapter 6 of Part 11 (other behaviour orders), before section 379 (but after the heading “Other orders”) insert—

**“378A Domestic abuse protection orders**

See Part 3 of the Domestic Abuse Act 2021 (and in particular section 31(3) of that Act) for the power of a court to make a domestic abuse protection order when dealing with an offender for an offence.”

**55 Repeal of provisions about domestic violence protection notices and orders**

- (1) In the Crime and Security Act 2010, omit sections 24 to 33 (which make provision for domestic violence protection notices and domestic violence protection orders).
- (2) In consequence of the repeal made by subsection (1), omit the following provisions—
- (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).

**56 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;
    - (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 22(2);
  - “domestic abuse protection order” has the meaning given by section 27(1);
  - “electronic monitoring requirement” has the meaning given by section 35(6);
  - “family proceedings” means—
    - (a) proceedings in the family court (other than proceedings under or by virtue of 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—
    - (a) the address of the person’s sole or main residence in the United Kingdom, or
    - (b) if the person has no such residence—
      - (i) the address or location of a place in the United Kingdom where the person can regularly be found;
      - (ii) if there is more than one such place, the address or location of whichever one of those places the person selects;
  - “relevant police force” has the meaning given by section 22(8);
  - “requirement”, in relation to a domestic abuse protection order, is to be read in accordance with section 35(1);
  - “senior police officer” has the meaning given by section 22(8).

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- (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) Any reference to changing home address includes a reference to a case where—
  - (a) a person acquires a home address at any time, and
  - (b) immediately before that time, the person did not have a home address.
- (4) See also—
  - (a) section 1 (definition of “domestic abuse”);
  - (b) section 2 (definition of “personally connected”).

## PART 4

### LOCAL AUTHORITY SUPPORT

#### 57 Support provided by local authorities to victims of domestic abuse

- (1) Each relevant local authority in England must—
  - (a) assess, or make arrangements for the assessment of, the need for accommodation-based support in its area,
  - (b) prepare and publish a strategy for the provision of such support in its area, and
  - (c) monitor and evaluate the effectiveness of the strategy.
- (2) For the purposes of subsection (1)—
  - “accommodation-based support” means support, in relation to domestic abuse, provided to victims of domestic abuse, or their children, who reside in relevant accommodation;
  - “relevant accommodation” means accommodation of a description specified by the Secretary of State in regulations.
- (3) A relevant local authority that publishes a strategy under this section must, in carrying out its functions, give effect to the strategy.
- (4) Before publishing a strategy under this section, a relevant local authority must consult—
  - (a) the domestic abuse local partnership board appointed by the relevant local authority under section 58,
  - (b) any local authority for an area within the relevant local authority’s area, and
  - (c) such other persons as the relevant local authority considers appropriate.
- (5) A relevant local authority that publishes a strategy under this section—
  - (a) must keep the strategy under review,
  - (b) must keep under review any effect of the strategy on the provision of other local authority support in its area,
  - (c) may alter or replace the strategy, and
  - (d) must publish any altered or replacement strategy.
- (6) In this section “other local authority support”, in relation to a local authority, means support, in relation to domestic abuse, that—

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- (a) is provided to victims of domestic abuse or their children, and
  - (b) is provided or funded by the local authority,
- other than accommodation-based support (within the meaning of subsection (2)).
- (7) A relevant local authority may request any local authority for an area within the relevant local authority's area to co-operate with it in any way that the relevant local authority considers necessary for the purposes of its functions under this section.
  - (8) A local authority must, so far as reasonably practicable, comply with a request made to it under subsection (7).
  - (9) The Secretary of State may by regulations make provision about the preparation and publication of strategies under this section.
  - (10) The power to make regulations under subsection (9) may, in particular, be exercised to make provision about—
    - (a) the procedure to be followed by a relevant local authority in preparing a strategy;
    - (b) matters to which a relevant local authority must have regard in preparing a strategy;
    - (c) how a relevant local authority must publish a strategy;
    - (d) the date by which a relevant local authority must first publish a strategy;
    - (e) the frequency with which a relevant local authority must review its strategy or any effect of the strategy on the provision of other local authority support in its area.
  - (11) Before making regulations under this section, the Secretary of State must consult—
    - (a) the Domestic Abuse Commissioner,
    - (b) relevant local authorities, and
    - (c) such other persons as the Secretary of State considers appropriate.

## **58 Domestic abuse local partnership boards**

- (1) A relevant local authority in England must appoint a domestic abuse local partnership board for the purposes of providing advice to the authority about—
  - (a) the exercise of the authority's functions under section 57, and
  - (b) the provision of other local authority support in the authority's area.
- (2) The members of the domestic abuse local partnership board must include—
  - (a) a representative of the relevant local authority;
  - (b) at least one person appearing to the authority to represent the interests of local authorities for areas within its area;
  - (c) at least one person appearing to the authority to represent the interests of victims of domestic abuse;
  - (d) at least one person appearing to the authority to represent the interests of children of domestic abuse victims;
  - (e) at least one person appearing to the authority to represent the interests of charities and other voluntary organisations that work with victims of domestic abuse in its area;

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- (f) at least one person appearing to the authority to represent the interests of persons who provide, or have functions relating to, health care services in its area;
- (g) at least one person appearing to the authority to represent the interests of persons with functions relating to policing or criminal justice in its area.

(3) 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);

“other local authority support” has the same meaning as in section 57.

## **59 Annual reports**

- (1) As soon as reasonably practicable after the end of each financial year, a relevant local authority in England must submit to the Secretary of State an annual report in relation to the exercise of the authority’s functions under this Part during the year.
- (2) The Secretary of State may by regulations make provision about—
  - (a) the form of the report, and
  - (b) the content of the report.
- (3) In this section “financial year” means—
  - (a) the period beginning with the day on which this section comes into force and ending with the following 31 March, and
  - (b) each successive period of 12 months.

## **60 Guidance**

- (1) The Secretary of State must issue guidance relating to the exercise by local authorities in England of functions under this Part.
- (2) Local authorities in England must have regard to the guidance when exercising a function to which the guidance relates.
- (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—
  - (a) the Domestic Abuse Commissioner,
  - (b) local authorities, 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.
- (6) The Secretary of State must publish—
  - (a) any guidance issued under this section, and
  - (b) any revisions of that guidance.

## **61 Interpretation of Part 4**

In this Part—

“local authority” means—

- (a) a relevant local authority;
- (b) a district council for an area for which there is a county council;
- (c) a London borough council;
- (d) the Common Council of the City of London in its capacity as a local authority;

“relevant local authority” means—

- (a) a county council;
- (b) a district council for an area for which there is no county council;
- (c) the Greater London Authority;
- (d) the Council of the Isles of Scilly.

## **PART 5**

### PROTECTION FOR VICTIMS, WITNESSES, ETC IN LEGAL PROCEEDINGS

#### *Special measures*

## **62 Special measures in criminal proceedings for offences 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.
- (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—

    - (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 2021 (see section 1 of that Act).”
- (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)”.

## **63 Special measures in family proceedings: victims of domestic abuse**

- (1) This section applies where rules of court provide that the court may make a special measures direction in relation to a person (“P”) who is a party or witness in family proceedings.

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- (2) Rules of court must provide that where P is, or is at risk of being, a victim of domestic abuse carried out by a person listed in subsection (3), it is to be assumed that the following matters are likely to be diminished by reason of vulnerability—
- (a) the quality of P’s evidence;
  - (b) where P is a party to the proceedings, P’s participation in the proceedings.
- (3) The persons referred to in subsection (2) are—
- (a) a party to the proceedings;
  - (b) a relative of a party to the proceedings (other than P);
  - (c) a witness in the proceedings.
- (4) Rules of court may provide for an exception to the provision made by virtue of subsection (2) where P does not wish to be deemed to be eligible for the making of a special measures direction by virtue of that subsection.
- (5) In this section—
- “family proceedings” has the meaning given by section 75(3) of the Courts Act 2003;
- “relative” has the meaning given by section 63(1) of the Family Law Act 1996;
- “special measures” means such measures as may be specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings;
- “special measures direction” means a direction by the court granting special measures.

#### **64 Special measures in civil proceedings: victims of domestic abuse etc**

- (1) Rules of court must make provision enabling the court to make a special measures direction in relation to a person who is a party or witness in civil proceedings where that person—
- (a) is, or is at risk of being, a victim of domestic abuse;
  - (b) is the victim, or alleged victim, of a specified offence.
- (2) Rules made by virtue of subsection (1) must, in particular, provide for the court to consider—
- (a) whether—
    - (i) the quality of the person’s evidence, or
    - (ii) where the person is a party to the proceedings, the person’s participation in the proceedings,
 is likely to be diminished by reason of vulnerability, and
  - (b) if so, whether it is necessary to make one or more special measures directions.
- (3) For the purposes of this section—
- (a) a person is the victim of a specified offence if another person has been convicted of, or given a caution for, the offence;
  - (b) a person is the alleged victim of a specified offence if another person has been charged with the offence.
- (4) In this section—
- “civil proceedings” means—



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- (a) proceedings in the county court,
- (b) proceedings in the High Court, other than—
  - (i) 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, and
  - (ii) proceedings in the exercise of its jurisdiction under the Extradition Act 2003, and

(c) proceedings in the civil division of the Court of Appeal;

“special measures” means such measures as may be specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings;

“special measures direction” means a direction by the court granting special measures;

“specified offence” means an offence which is specified, or of a description specified, in regulations made by the Lord Chancellor.

#### *Prohibition of cross-examination in person*

### **65 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**

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

In this Part—

“family proceedings” means—

- (a) proceedings in the family court,
- (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, and
- (c) proceedings in the civil division of the Court of Appeal arising out of proceedings within paragraph (a) or (b);

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

#### **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.

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- (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.
- (3) Subsections (1) and (2) do not apply to a conviction or caution that is spent for the purposes of the Rehabilitation of Offenders Act 1974, unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3) or (4) of that Act.
- (4) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction, caution or charge when the cross-examination took place.
- (5) In this section—

“caution” means—

- (a) in the case of England and Wales—
  - (i) a conditional caution given under section 22 of the Criminal Justice Act 2003,
  - (ii) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998, or
  - (iii) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, the person has admitted;
- (b) in the case of Scotland, anything corresponding to a caution falling within paragraph (a) (however described) which is given to a person in respect of an offence under the law of Scotland;
- (c) in the case of Northern Ireland—
  - (i) a conditional caution given under section 71 of the Justice Act (Northern Ireland) 2011, or
  - (ii) any other caution given to a person in Northern Ireland in respect of an offence which, at the time the caution is given, the person has admitted;

“conviction” means—

- (a) a conviction by or before a court in England and Wales, Scotland or Northern Ireland;
- (b) a conviction in service disciplinary proceedings (in England and Wales, Scotland, Northern Ireland, or elsewhere), including—
  - (i) in the case of proceedings in respect of a service offence, anything that under section 376(1) and (2) of the Armed Forces Act 2006 (which relates to summary hearings and the Summary Appeal Court) is to be treated as a conviction for the purposes of that Act, and
  - (ii) in the case of any other service disciplinary proceedings, a finding of guilt in those proceedings;
- (c) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged;

and “convicted” is to be read accordingly;

“service disciplinary proceedings” means—

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- (a) any proceedings (whether or not before a court) in respect of a service offence (except proceedings before a civilian court within the meaning of the Armed Forces Act 2006);
  - (b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence);
  - (c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976;  
“service offence” means—
    - (a) a service offence within the meaning of the Armed Forces Act 2006, or
    - (b) an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059);“specified offence” means an offence which is specified, or of a description specified, in regulations made by the Lord Chancellor.
- (6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this section to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally—
- (a) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000;
  - (b) section 82 of the Sentencing Code;
  - (c) section 187 of the Armed Forces Act 2006 or any corresponding earlier enactment.
- (7) For the purposes of this section “offence” includes an offence under a law that is no longer in force.

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

- (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.
- (3) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place.
- (4) In this section “protective injunction” means an order, injunction or interdict specified, or of a description specified, in regulations made by the Lord Chancellor.
- (5) For the purposes of this section, a protective injunction is an “on-notice” protective injunction if—
  - (a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked, or could have asked, for the injunction to be set aside or varied, or

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

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

### **31U 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—
  - (a) none of sections 31R to 31T operates to prevent the party from cross-examining the witness, and
  - (b) it appears to the court that—
    - (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—
  - (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—
  - (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.

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*Status: This is the original version (as it was originally enacted).*

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- (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 to, among other things—
  - (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;
  - (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 in any other proceedings;
  - (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 in any other proceedings;
  - (f) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness;
  - (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.
- (6) Any reference in this section to the quality of a witness's evidence is 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—
  - (a) address the questions put to the witness, and
  - (b) can be understood, both individually and collectively.

### **31V Directions under section 31U: supplementary**

- (1) A direction under section 31U 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 31U before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—
  - (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 31U on an application made by a party to the proceedings only if there has been a material change of circumstances since—
  - (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.

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- (4) The court must state its reasons for—
- (a) giving a direction under section 31U;
  - (b) refusing an application for a direction under section 31U;
  - (c) revoking a direction under section 31U;
  - (d) refusing an application for the revocation of a direction under section 31U.

### **31W 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 any of sections 31R to 31U.
- (2) The court must consider whether (ignoring this section) there is a satisfactory alternative means—
- (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—
- (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.
- (4) Subsection (5) applies if, by the end of the period specified under subsection (3) (b), either—
- (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.
- (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.
- (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 a reference to continuing to conduct cross-examination;
  - (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.

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

- (1) The Lord Chancellor may by regulations make provision for the payment out of central funds of sums in respect of—
  - (a) fees or costs properly incurred by a qualified legal representative appointed under section 31W(6), 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 sums payable under subsection (1) to be determined by the Lord Chancellor or such other person as the regulations may specify.
- (3) The regulations may provide for sums payable under subsection (1)—
  - (a) to be such amounts as are specified in the regulations;
  - (b) to be calculated in accordance with—
    - (i) a rate or scale specified in the regulations, or
    - (ii) other provision made by or under the regulations.

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

- (1) The Lord Chancellor may issue guidance in connection with the role which a qualified legal representative appointed under section 31W(6) in connection with any family proceedings is to play in the proceedings, including (among other things) guidance about the effect of section 31W(7).
- (2) A qualified legal representative appointed under section 31W(6) must have regard to any guidance issued under this section.
- (3) The Lord Chancellor may from time to time revise any guidance issued under this section.
- (4) The Lord Chancellor must publish—
  - (a) any guidance issued under this section, and
  - (b) any revisions of that guidance.

### **31Z 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
  - (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.”

## **66 Prohibition of cross-examination in person in civil proceedings**

In the Courts Act 2003, after Part 7 insert—

## “PART 7A

### CIVIL PROCEEDINGS: PROHIBITION OF CROSS-EXAMINATION IN PERSON

#### **85E Prohibition of cross-examination in person: introductory**

In this Part—

“civil proceedings” means—

- (a) proceedings in the county court,
- (b) proceedings in the High Court, other than—
  - (i) 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, and
  - (ii) proceedings in the exercise of its jurisdiction under the Extradition Act 2003, and
- (c) proceedings in the civil division of the Court of Appeal arising out of civil proceedings within paragraph (a) or (b);

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

#### **85F Prohibition of cross-examination in person: victims of offences**

- (1) In civil proceedings, no party to the proceedings who has been convicted of, or given a caution for, a specified offence may cross-examine in person a witness who is the victim of that offence.
- (2) In civil proceedings, no party to the proceedings who is the victim of a specified offence may cross-examine in person a witness who has been convicted of, or given a caution for, that offence.
- (3) Subsections (1) and (2) do not apply to a conviction or caution that is spent for the purposes of the Rehabilitation of Offenders Act 1974, unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3) or (4) of that Act.
- (4) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction or caution when the cross-examination took place.
- (5) In this section—
  - “caution” means—
    - (a) in the case of England and Wales—
      - (i) a conditional caution given under section 22 of the Criminal Justice Act 2003,
      - (ii) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998, or
      - (iii) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, the person has admitted;



- (b) in the case of Scotland, anything corresponding to a caution falling within paragraph (a) (however described) which is given to a person in respect of an offence under the law of Scotland;
- (c) in the case of Northern Ireland—
  - (i) a conditional caution given under section 71 of the Justice Act (Northern Ireland) 2011, or
  - (ii) any other caution given to a person in Northern Ireland in respect of an offence which, at the time the caution is given, the person has admitted;

“conviction” means—

- (a) a conviction by or before a court in England and Wales, Scotland or Northern Ireland;
- (b) a conviction in service disciplinary proceedings (in England and Wales, Scotland, Northern Ireland, or elsewhere), including—
  - (i) in the case of proceedings in respect of a service offence, anything that under section 376(1) and (2) of the Armed Forces Act 2006 (which relates to summary hearings and the Summary Appeal Court) is to be treated as a conviction for the purposes of that Act, and
  - (ii) in the case of any other service disciplinary proceedings, a finding of guilt in those proceedings;
- (c) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged;

and “convicted” is to be read accordingly;

“service disciplinary proceedings” means—

- (a) any proceedings (whether or not before a court) in respect of a service offence (except proceedings before a civilian court within the meaning of the Armed Forces Act 2006);
- (b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence);
- (c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976;

“service offence” means—

- (a) a service offence within the meaning of the Armed Forces Act 2006, or
- (b) an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059);

“specified offence” means an offence which is specified, or of a description specified, in regulations made by the Lord Chancellor.

- (6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this section to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally—
  - (a) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000;
  - (b) section 82 of the Sentencing Code;

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(c) section 187 of the Armed Forces Act 2006 or any corresponding earlier enactment.

(7) For the purposes of this section “offence” includes an offence under a law that is no longer in force.

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

(1) In civil proceedings, no party to the proceedings against whom an on-notice protective injunction is in force may cross-examine in person a witness who is protected by the injunction.

(2) In civil proceedings, no party to the proceedings who is protected by an on-notice protective injunction may cross-examine in person a witness against whom the injunction is in force.

(3) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place.

(4) In this section “protective injunction” means an order, injunction or interdict specified, or of a description specified, in regulations made by the Lord Chancellor.

(5) For the purposes of this section, a protective injunction is an “on-notice” protective injunction if—

(a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked, or could have asked, for the injunction to be set aside or varied, or

(b) the protective injunction was made at a hearing of which the court is satisfied that both the person who applied for it and the person against whom it is in force had notice.

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

(1) In civil proceedings, where specified evidence is adduced that a person who is a witness has been the victim of domestic abuse carried out by a party to the proceedings, that party to the proceedings may not cross-examine the witness in person.

(2) In civil proceedings, where specified evidence is adduced that a person who is a party to the proceedings has been the victim of domestic abuse carried out by a witness, that party may not cross-examine the witness in person.

(3) In this section—

“domestic abuse” has the meaning given by section 1 of the Domestic Abuse Act 2021;

“specified evidence” means evidence specified, or of a description specified, in regulations made by the Lord Chancellor.

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*Status: This is the original version (as it was originally enacted).*

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- (4) Regulations under subsection (3) may provide that any evidence which satisfies the court that domestic abuse, or domestic abuse of a specified description, has occurred is specified evidence for the purposes of this section.

#### **85I Direction for prohibition of cross-examination in person: other cases**

- (1) In civil 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—
- (a) none of sections 85F to 85H operates to prevent the party from cross-examining the witness, and
  - (b) it appears to the court that—
    - (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—
- (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—
- (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.
- (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 to, among other things—
- (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;
  - (c) the nature of the questions likely to be asked, having regard to the issues in the proceedings;
  - (d) any charge of which the court is aware in respect of a specified offence alleged to have been committed by the party in relation to the witness;
  - (e) any charge of which the court is aware in respect of a specified offence alleged to have been committed by the witness in relation to the party;
  - (f) 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 in any other proceedings;

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- (g) 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 in any other proceedings;
  - (h) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness;
  - (i) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party;
  - (j) any relationship (of whatever nature) between the witness and the party.
- (6) In subsection (5)(d) and (e) “specified offence” means an offence that is a specified offence for the purposes of section 85F.
- (7) Any reference in this section to the quality of a witness’s evidence is to its quality in terms of completeness, coherence and accuracy.
- (8) For this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which—
- (a) address the questions put to the witness, and
  - (b) can be understood, both individually and collectively.

#### **85J Directions under section 85I: supplementary**

- (1) A direction under section 85I 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 85I before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either—
- (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 85I on an application made by a party to the proceedings only if there has been a material change of circumstances since—
- (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—
- (a) giving a direction under section 85I;
  - (b) refusing an application for a direction under section 85I;
  - (c) revoking a direction under section 85I;
  - (d) refusing an application for the revocation of a direction under section 85I.

#### **85K Alternatives to cross-examination in person**

- (1) This section applies where a party to civil proceedings is prevented from cross-examining a witness in person by virtue of any of sections 85F to 85I.
- (2) The court must consider whether (ignoring this section) there is a satisfactory alternative means—

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*Status: This is the original version (as it was originally enacted).*

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- (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—
- (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.
- (4) Subsection (5) applies if, by the end of the period specified under subsection (3) (b), either—
- (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.
- (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.
- (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 a reference to continuing to conduct cross-examination;
  - (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 civil proceedings.

#### **85L Costs of legal representatives appointed under section 85K(6)**

- (1) The Lord Chancellor may by regulations make provision for the payment out of central funds of sums in respect of—
- (a) fees or costs properly incurred by a qualified legal representative appointed under section 85K(6), 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 sums payable under subsection (1) to be determined by the Lord Chancellor or such other person as the regulations may specify.
- (3) The regulations may provide for sums payable under subsection (1)—

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- (a) to be such amounts as are specified in the regulations;
- (b) to be calculated in accordance with—
  - (i) a rate or scale specified in the regulations, or
  - (ii) other provision made by or under the regulations.

#### **85M Guidance for legal representatives appointed under section 85K(6)**

- (1) The Lord Chancellor may issue guidance in connection with the role which a qualified legal representative appointed under section 85K(6) in connection with any civil proceedings is to play in the proceedings, including (among other things) guidance about the effect of section 85K(7).
- (2) A qualified legal representative appointed under section 85K(6) must have regard to any guidance issued under this section.
- (3) The Lord Chancellor may from time to time revise any guidance issued under this section.
- (4) The Lord Chancellor must publish—
  - (a) any guidance issued under this section, and
  - (b) any revisions of that guidance.

#### **85N Regulations under Part 7A**

Regulations under this Part may make different provision for different purposes.”

*Orders under section 91(14) of the Children Act 1989*

#### **67 Orders under section 91(14) of the Children Act 1989**

- (1) The Children Act 1989 is amended as follows.
- (2) In section 91 (effect and duration of orders etc.), at the end of subsection (14) insert—
 

“For further provision about orders under this subsection, see section 91A (section 91(14) orders: further provision).”
- (3) After section 91 insert—

##### **“91A Section 91(14) orders: further provision**

- (1) This section makes further provision about orders under section 91(14) (referred to in this section as “section 91(14) orders”).
- (2) The circumstances in which the court may make a section 91(14) order include, among others, where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91(14) order would put—
  - (a) the child concerned, or
  - (b) another individual (“the relevant individual”),
 at risk of harm.

- (3) In the case of a child or other individual who has reached the age of eighteen, the reference in subsection (2) to “harm” is to be read as a reference to ill-treatment or the impairment of physical or mental health.
- (4) Where a person who is named in a section 91(14) order applies for leave to make an application of a specified kind, the court must, in determining whether to grant leave, consider whether there has been a material change of circumstances since the order was made.
- (5) A section 91(14) order may be made by the court—
  - (a) on an application made—
    - (i) by the relevant individual;
    - (ii) by or on behalf of the child concerned;
    - (iii) by any other person who is a party to the application being disposed of by the court;
  - (b) of its own motion.
- (6) In this section, “the child concerned” means the child referred to in section 91(14).”

## PART 6

### OFFENCES INVOLVING ABUSIVE OR VIOLENT BEHAVIOUR

#### *Controlling or coercive behaviour*

#### **68 Controlling or coercive behaviour in an intimate or family relationship**

- (1) Section 76 of the Serious Crime Act 2015 (offence of controlling or coercive behaviour in an intimate or family relationship) is amended as follows.
- (2) In subsection (1)(b), after “personally connected” insert “(see subsection (6))”.
- (3) Omit subsection (2).
- (4) For subsection (6) substitute—
  - “(6) A and B 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;
    - (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;
    - (f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child (see subsection (6A));
    - (g) they are relatives.

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(6A) For the purposes of subsection (6)(f) a person has a parental relationship in relation to a child if—

- (a) the person is a parent of the child, or
- (b) the person has parental responsibility for the child.”

(5) In subsection (7), for “subsection (6)” substitute “subsections (6) and (6A)”.

*Disclosure of private sexual photographs and films*

**69 Threats to disclose private sexual photographs and films with intent to cause distress**

(1) Section 33 of the Criminal Justice and Courts Act 2015 (disclosing private sexual photographs and films with intent to cause distress) is amended as follows.

(2) In the heading, after “Disclosing” insert “, or threatening to disclose,”.

(3) For subsection (1) substitute—

“(1) A person commits an offence if—

- (a) the person discloses, or threatens to disclose, a private sexual photograph or film in which another individual (“the relevant individual”) appears,
- (b) by so doing, the person intends to cause distress to that individual, and
- (c) the disclosure is, or would be, made without the consent of that individual.”

(4) In subsection (2)—

- (a) after “disclose” insert “, or threaten to disclose,”;
- (b) for “the individual mentioned in subsection (1)(a) and (b)” substitute “the relevant individual”.

(5) After subsection (2) insert—

“(2A) Where a person is charged with an offence under this section of threatening to disclose a private sexual photograph or film, it is not necessary for the prosecution to prove—

- (a) that the photograph or film referred to in the threat exists, or
- (b) if it does exist, that it is in fact a private sexual photograph or film.”

(6) In subsection (4)(a), after “disclosure” insert “, or threat to disclose,”.

(7) In subsection (5)—

- (a) in paragraph (a), for “the individual mentioned in subsection (1)(a) and (b)” substitute “the relevant individual”;
- (b) in paragraph (b), for “the individual mentioned in subsection (1)(a) and (b)” substitute “the relevant individual”.

(8) For subsection (8) substitute—

“(8) A person charged with an offence under this section is not to be taken to have intended to cause distress by disclosing, or threatening to disclose,



a photograph or film merely because that was a natural and probable consequence of the disclosure or threat.”

- (9) In section 35 of that Act (meaning of “private” and “sexual”), in subsection (5)(c), for “the person mentioned in section 33(1)(a) and (b)” substitute “the relevant individual (within the meaning of section 33)”.
- (10) In Schedule 8 to that Act (disclosing private sexual photographs or films: providers of information society services)—
- (a) in the heading, after “Disclosing” insert “, or threatening to disclose,”;
  - (b) in paragraph 5 (exception for hosting)—
    - (i) in sub-paragraph (1), after “sub-paragraph (2)” insert “, (2A)”;
    - (ii) in sub-paragraph (2), in the words before paragraph (a), after “if” insert “, in the case of information which consists of or includes a private sexual photograph or film,”;
    - (iii) after sub-paragraph (2) insert—

“(2A) This sub-paragraph is satisfied if, in the case of information which consists of or includes a threat to disclose a private sexual photograph or film, the service provider had no actual knowledge when the information was provided—

- (a) that it consisted of or included a threat to disclose a private sexual photograph or film in which another individual appears,
- (b) that the threat was made with the intention of causing distress to that individual, or
- (c) that the disclosure would be made without the consent of that individual.”

### *Offences against the person*

## **70 Strangulation or suffocation**

- (1) In Part 5 of the Serious Crime Act 2015 (protection of children and others), after section 75 insert—

### *“Strangulation or suffocation*

#### **75A Strangulation or suffocation**

- (1) A person (“A”) commits an offence if—
- (a) A intentionally strangles another person (“B”), or
  - (b) A does any other act to B that—
    - (i) affects B’s ability to breathe, and
    - (ii) constitutes battery of B.
- (2) It is a defence to an offence under this section for A to show that B consented to the strangulation or other act.
- (3) But subsection (2) does not apply if—

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- (a) B suffers serious harm as a result of the strangulation or other act, and
  - (b) A either—
    - (i) intended to cause B serious harm, or
    - (ii) was reckless as to whether B would suffer serious harm.
- (4) A is to be taken to have shown the fact mentioned in subsection (2) if—
- (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- (5) A person guilty of an offence under this section is liable—
- (a) on summary conviction—
    - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020), or
    - (ii) to a fine,
 or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or both.
- (6) In this section “serious harm” means—
- (a) grievous bodily harm, within the meaning of section 18 of the Offences Against the Person Act 1861,
  - (b) wounding, within the meaning of that section, or
  - (c) actual bodily harm, within the meaning of section 47 of that Act.

#### **75B Offences under section 75A committed outside the United Kingdom**

- (1) If—
- (a) a person does an act in a country outside the United Kingdom,
  - (b) the act, if done in England and Wales, would constitute an offence under section 75A, and
  - (c) the person is a United Kingdom national or is habitually resident in England and Wales,
- 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—
    - (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.”

- (2) Schedule 2 contains consequential amendments.

## **71 Consent to serious harm for sexual gratification not a defence**

- (1) This section applies for the purposes of determining whether a person (“D”) who inflicts serious harm on another person (“V”) is guilty of a relevant offence.
- (2) It is not a defence that V consented to the infliction of the serious harm for the purposes of obtaining sexual gratification (but see subsection (4)).
- (3) In this section—
  - “relevant offence” means an offence under section 18, 20 or 47 of the Offences Against the Person Act 1861 (“the 1861 Act”);
  - “serious harm” means—
    - (a) grievous bodily harm, within the meaning of section 18 of the 1861 Act,
    - (b) wounding, within the meaning of that section, or
    - (c) actual bodily harm, within the meaning of section 47 of the 1861 Act.
- (4) Subsection (2) does not apply in the case of an offence under section 20 or 47 of the 1861 Act where—
  - (a) the serious harm consists of, or is a result of, the infection of V with a sexually transmitted infection in the course of sexual activity, and
  - (b) V consented to the sexual activity in the knowledge or belief that D had the sexually transmitted infection.
- (5) For the purposes of this section it does not matter whether the harm was inflicted for the purposes of obtaining sexual gratification for D, V or some other person.
- (6) Nothing in this section affects any enactment or rule of law relating to other circumstances in which a person’s consent to the infliction of serious harm may, or may not, be a defence to a relevant offence.

### *Offences committed outside the UK*

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

- (1) If—
  - (a) a person who is a United Kingdom national or is habitually resident in England and Wales 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
  - (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—
  - (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);
  - (e) an offence under section 1 of the Infant Life (Preservation) Act 1929 (child destruction).

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*Status: This is the original version (as it was originally enacted).*

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- (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—
  - (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).
- (7) In the Crown Court the question whether the condition is met is to be decided by the judge alone.
- (8) In this section—
  - “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,
    - (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.

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

- (1) If—
  - (a) a person who is a United Kingdom national or is habitually resident in Northern Ireland 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
  - (c) the act, if done in Northern Ireland, would constitute an offence to which this subsection applies,
 the person is guilty in Northern Ireland of that offence.
- (2) The offences to which subsection (1) applies are—
  - (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);
  - (e) an offence under section 25 of the Criminal Justice Act (Northern Ireland) 1945 (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 Northern Ireland.

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- (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—
  - (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).
- (7) In the Crown Court the question whether the condition is met is to be decided by the judge alone.
- (8) In this section—
  - “act” includes a failure to act;
  - “country” includes territory;
  - “rules of court” means—
    - (a) in relation to proceedings in a magistrates’ court, magistrates’ court rules;
    - (b) in relation to proceedings in the Crown Court, Crown Court rules;
  - “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.
- (9) The Interpretation Act (Northern Ireland) 1954 applies for the purposes of this section as it applies to an Act of the Northern Ireland Assembly.

#### **74 Amendments relating to offences committed outside the UK**

- (1) Part 1 of Schedule 3 contains amendments to provide for extra-territorial jurisdiction over certain other offences under the law of England and Wales.
- (2) Part 2 of Schedule 3 contains amendments to provide for extra-territorial jurisdiction over certain offences under the law of Scotland.
- (3) Part 3 of Schedule 3 contains amendments to provide for extra-territorial jurisdiction over certain other offences under the law of Northern Ireland.

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## PART 7

### MISCELLANEOUS AND GENERAL

#### *Prosecution and management of offenders*

#### **75 Strategy for prosecution and management of offenders**

- (1) The Secretary of State must, before the end of the period of 12 months beginning with the day on which this Act is passed, prepare and publish a document setting out a strategy for—
  - (a) detecting, investigating and prosecuting offences involving domestic abuse,
  - (b) assessing and managing the risks posed by individuals who commit offences involving domestic abuse, including (among others) risks associated with stalking, and
  - (c) reducing the risk that such individuals commit further offences involving domestic abuse.
- (2) The Secretary of State—
  - (a) must keep the strategy under review;
  - (b) may revise it.
- (3) If the Secretary of State revises the strategy, the Secretary of State must publish a document setting out the revised strategy.
- (4) In preparing or revising a strategy 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) Subsection (4) does not apply in relation to any revisions of the strategy if the Secretary of State considers the proposed revisions of the strategy are insubstantial.
- (6) In this section, the reference to “risks associated with stalking” is to be read in accordance with section 1(4) of the Stalking Protection Act 2019.

#### **76 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.
- (2) In subsection (2), for “a relevant sexual offence” substitute “an offence within subsection (3A)”.
- (3) In subsection (3)(a), for “for a term of twelve months or more” substitute “that is not for a term of less than twelve months”.
- (4) After subsection (3) insert—

“(3A) An offence is within this subsection if it is—

  - (a) a relevant offence involving domestic abuse (see subsections (3B) and (3C)), or

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(b) a relevant sexual offence (see subsection (4)).

(3B) In this section “relevant offence involving domestic abuse” means—

- (a) an offence listed in subsection (3C) which involved behaviour by the offender amounting to domestic abuse within the meaning of the Domestic Abuse Act 2021 (see section 1 of that Act);
- (b) an offence under section 39 of that Act (breach of domestic abuse protection order).

(3C) The offences are—

- (a) murder;
- (b) an offence under section 5 of the Protection from Harassment Act 1997 (breach of a restraining order);
- (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*

### **77 Guidance about the disclosure of information by police forces**

(1) The Secretary of State must 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.

(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—

- (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.

(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—

“chief officer of police” means—

- (a) in relation to the British Transport Police Force, the Chief Constable of that Force;

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- (b) in relation to any other police force, the chief officer of police of that force;
- “police force” means—
  - (a) a police force maintained by a local policing body, or
  - (b) the British Transport Police Force.

### *Homelessness*

## **78 Homelessness: victims of domestic abuse**

- (1) Part 7 of the Housing Act 1996 (homelessness: England) is amended as follows.
- (2) In section 177 (whether it is reasonable to continue to occupy accommodation)—
  - (a) in subsection (1), for “domestic violence or other violence” substitute “violence or domestic abuse”;
  - (b) for subsection (1A) substitute—
 

“(1A) For this purpose—

    - (a) “domestic abuse” has the meaning given by section 1 of the Domestic Abuse Act 2021;
    - (b) “violence” means—
      - (i) violence from another person; or
      - (ii) threats of violence from another person which are likely to be carried out.”
- (3) Omit section 178 (meaning of associated person).
- (4) In section 179 (duty of local housing authority in England to provide advisory services), in subsection (5)—
  - (a) for the definition of “domestic abuse” substitute—
 

““domestic abuse” has the meaning given by section 1 of the Domestic Abuse Act 2021.”;
  - (b) omit the definition of “financial abuse”.
- (5) In section 189 (priority need for accommodation)—
  - (a) in subsection (1), after paragraph (d) insert—
 

“(e) a person who is homeless as a result of that person being a victim of domestic abuse.”;
  - (b) after subsection (4) insert—
 

“(5) In this section “domestic abuse” has the meaning given by section 1 of the Domestic Abuse Act 2021.”
- (6) In section 198 (referral of case to another local housing authority)—
  - (a) in subsection (2), in paragraph (c), for “domestic violence” substitute “domestic abuse”;
  - (b) in subsection (2ZA), in paragraph (b), for “domestic violence” substitute “domestic abuse”;
  - (c) in subsection (2A), in paragraph (a), for “domestic violence” substitute “violence that is domestic abuse”;
  - (d) for subsection (3) substitute—



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- “(3) For the purposes of subsections (2), (2ZA) and (2A)—
- (a) “domestic abuse” has the meaning given by section 1 of the Domestic Abuse Act 2021;
  - (b) “violence” means—
    - (i) violence from another person; or
    - (ii) threats of violence from another person which are likely to be carried out.”
- (7) In section 218 (index of defined expressions: Part 7), in the table, omit the entry relating to section 178.
- (8) In article 6 of the Homelessness (Priority Need for Accommodation) (England) Order 2002 (S.I. 2002/2051) (vulnerability: fleeing violence or threats of violence)—
- (a) the existing text becomes paragraph (1);
  - (b) after that paragraph insert—
- “(2) For the purposes of this article—
- (a) “violence” does not include violence that is domestic abuse;
  - (b) “domestic abuse” has the meaning given by section 1 of the Domestic Abuse Act 2021.”
- (9) In consequence of the repeal made by subsection (3), omit the following provisions—
- (a) in Schedule 8 to the Civil Partnership Act 2004, paragraph 61;
  - (b) in Schedule 3 to the Adoption and Children Act 2002, paragraphs 89 to 92.

### *Secure tenancies*

## **79 Grant of secure tenancies in cases of domestic abuse**

- (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.
- (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
  - (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

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- (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
  - (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
    - (ii) the new tenancy is granted for reasons connected with that abuse.
- (4) In this section—
  - “abuse” means—
    - (a) physical or sexual abuse;
    - (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 2021);
    - (e) psychological, emotional or other abuse;
  - “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 2021);
  - “qualifying tenancy” means a tenancy of a dwelling-house in England which is—
    - (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.
- (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)—
  - (a) in subsection (2C)—
    - (i) for the definition of “abuse” substitute—
      - ““abuse” means—
        - (a) physical or sexual abuse;
        - (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 2021);
        - (e) psychological, emotional or other abuse;”;
    - (ii) for the definition of “domestic abuse” substitute—

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““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 2021);”;

(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).”

#### *Medical evidence of domestic abuse*

### **80 Prohibition on charging for the provision of medical evidence of domestic abuse**

- (1) No person may charge a fee or any other remuneration for the preparation or provision of relevant evidence relating to an assessment of an individual carried out by a relevant health professional in England or Wales under a qualifying medical services contract.
- (2) No person may charge a fee or any other remuneration for the preparation or provision of relevant evidence relating to an individual by a relevant health professional in England or Wales if the services provided by the relevant health professional are wholly or mainly services provided under a qualifying medical services contract.
- (3) In this section “relevant evidence”, in relation to an individual, means—
  - (a) evidence that the individual is, or is at risk of being, a victim of domestic abuse which is intended to support an application by the individual for civil legal services, or
  - (b) any other evidence that the individual is, or is at risk of being, a victim of domestic abuse which is of a description specified in regulations made by the Secretary of State.
- (4) In this section “relevant health professional” means—
  - (a) a medical practitioner licensed to practise by the General Medical Council;
  - (b) a health professional registered to practise in the United Kingdom by the Nursing and Midwifery Council;
  - (c) a paramedic registered to practise in the United Kingdom by the Health and Care Professions Council.
- (5) In this section “qualifying medical services contract” means—
  - (a) in relation to England—
    - (i) a general medical services contract made under section 84(2) of the National Health Service Act 2006;
    - (ii) any contractual arrangements made under section 83(2) of that Act;
    - (iii) an agreement made under section 92 of that Act;
  - (b) in relation to Wales—
    - (i) a general medical services contract made under section 42(2) of the National Health Service (Wales) Act 2006;
    - (ii) any contractual arrangements made under section 41(2)(b) of that Act;
    - (iii) an agreement made under section 50 of that Act.
- (6) The appropriate national authority may by regulations amend the definition of—

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- (a) “relevant health professional”;
  - (b) “qualifying medical services contract”.
- (7) In this section—
- “appropriate national authority” means—
    - (a) in relation to England, the Secretary of State;
    - (b) in relation to Wales, the Welsh Ministers;
  - “assessment” includes a consultation, whether in person or otherwise;
  - “civil legal services” has the meaning given by section 8 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- (8) Subsections (1) and (2) do not apply in relation to anything done by a relevant health professional before the coming into force of this section.

*Data processing for immigration purposes*

**81 Review of processing of victims’ personal data for immigration purposes**

- (1) The Secretary of State must, before the end of the relevant period—
- (a) review the processing of domestic abuse data carried out by specified public authorities for immigration purposes,
  - (b) prepare and publish a report setting out the findings of the review, and
  - (c) lay a copy of the report before Parliament.
- (2) In carrying out the review, the Secretary of State must have regard to the recommendations of the HMIC Report.
- (3) In subsection (1), the “relevant period” means the period beginning with the day on which this section comes into force and ending with 30 June 2021 (but see subsection (4)).
- (4) The Secretary of State may by regulations extend the relevant period by a further period of up to 6 months.
- (5) The power conferred by subsection (4) may be exercised only once.
- (6) In this section—
- “domestic abuse data” means personal data obtained for the purposes of, or in connection with, the provision of support in relation to domestic abuse to victims of domestic abuse or their children;
  - “the HMIC Report” means the report on Liberty and Southall Black Sisters’ super-complaint on policing and immigration status published by Her Majesty’s Chief Inspector of Constabulary on 17 December 2020;
  - “immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;
  - “immigration purposes” means the purposes of—
    - (a) the maintenance of effective immigration control, or
    - (b) the investigation or detection of activities that would undermine the maintenance of effective immigration control;
  - “personal data” has the meaning given by section 3(2) of the Data Protection Act 2018;

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- “processing” has the meaning given by section 3(4) of that Act;  
“specified public authority” means—
- (a) a chief officer of police of a police force maintained for a police area in England and Wales;
  - (b) the chief constable of the Police Service of Scotland;
  - (c) the Chief Constable of the Police Service of Northern Ireland;
  - (d) the Chief Constable of the British Transport Police Force;
  - (e) the Chief Constable of 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.

## 82 Code of practice

- (1) The Secretary of State may issue a code of practice relating to the processing of domestic abuse data for immigration purposes.
- (2) A code of practice issued under this section—
  - (a) must be kept under review;
  - (b) may be revised or replaced.
- (3) A person to whom a code of practice issued under this section applies must have regard to it in processing domestic abuse data for immigration purposes.
- (4) In preparing, revising or replacing a code, the Secretary of State must consult—
  - (a) the Domestic Abuse Commissioner,
  - (b) the Information Commissioner, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) Before issuing a code (or a revised code) under this section, the Secretary of State must lay the code before Parliament.
- (6) If, within the 40-day period, either House of Parliament resolves not to approve the code—
  - (a) the code is not to be issued, and
  - (b) the Secretary of State may prepare another code.
- (7) If no such resolution is passed within the 40-day period, the Secretary of State may issue the code.
- (8) In this section, the “40-day period” is the period of 40 days beginning with the day on which the code is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (9) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (10) In this section—

“domestic abuse data” has the same meaning as in section 81;  
“immigration purposes” has the same meaning as in section 81;  
“personal data” has the meaning given by section 3(2) of the Data Protection Act 2018;

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“processing” has the meaning given by section 3(4) of that Act.

#### *Contact centres*

### **83 Report on the use of contact centres in England**

- (1) The Secretary of State must, before the end of the relevant period, prepare and publish a report about the extent to which individuals, when they are using contact centres in England, are protected from the risk of domestic abuse or, in the case of children, other harm.
- (2) “The relevant period” means the period of 2 years beginning with the day on which this Act is passed.
- (3) In this section “contact centre” means a place that is used for the facilitation of contact between a child and an individual with whom the child is not, or will not be, living (including the handover of the child to that individual).

#### *Guidance*

### **84 Power of Secretary of State to issue guidance about domestic abuse, etc**

- (1) The Secretary of State may issue guidance about—
  - (a) the effect of any provision made by or under—
    - (i) Parts 1 to 5,
    - (ii) section 68 or 70,
    - (iii) section 72 or Part 1 of Schedule 3,
    - (iv) section 76, 77, 78 or 79, or
    - (v) section 80 so far as relating to England;
  - (b) other matters relating to domestic abuse—
    - (i) in England, and
    - (ii) so far as not relating to Welsh devolved matters, in Wales.
- (2) The Secretary of State must, in particular, issue guidance under this section about—
  - (a) the effect of sections 1 and 2, including guidance as to particular kinds of behaviour that amount to domestic abuse;
  - (b) the effect of domestic abuse on children.
- (3) Any guidance issued under this section must, so far as relevant, take account of the fact that the majority of victims of domestic abuse in England and Wales (excluding children treated as victims by virtue of section 3) are female.
- (4) A person exercising public functions to whom guidance issued under this section relates must have regard to it in the exercise of those functions.  
  
 But nothing in this section permits the Secretary of State to issue guidance to a court or tribunal.
- (5) The Secretary of State may from time to time revise any guidance issued under this section.

- (6) Before issuing or revising guidance under this section, the Secretary of State must consult—
  - (a) the Domestic Abuse Commissioner,
  - (b) the Welsh Ministers, so far as the guidance relates to a devolved Welsh authority, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (7) In subsection (6)(b) “devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006.
- (8) Subsection (6) 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.
- (9) The Secretary of State must publish—
  - (a) any guidance issued under this section, and
  - (b) any revisions of that guidance.
- (10) 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 Senedd Cymru if it were contained in an Act of Senedd Cymru, 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 Senedd Commission.

*Powers to make consequential or transitional provision, etc*

## **85 Power to make consequential amendments**

- (1) The Secretary of State may by regulations make provision that is consequential on any provision made by or under—
  - (a) Parts 1 to 5,
  - (b) section 68, 69, 70 or 71,
  - (c) section 72 or Part 1 of Schedule 3, or
  - (d) section 76, 77, 78, 79, 81 or 82.
- (2) The appropriate national authority may by regulations make provision that is consequential on any provision made by or under section 80.
- (3) In subsection (2) “the appropriate national authority” means—
  - (a) in relation to England, the Secretary of State;
  - (b) in relation to Wales, the Welsh Ministers.
- (4) The power of the Secretary of State to make regulations under this section may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an Act passed before, or in the same session of Parliament as, this Act.
- (5) The power of the Welsh Ministers to make regulations under this section may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any

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provision made by or under primary legislation passed or made before, or in the same session of Parliament as, this Act.

- (6) In subsection (5) “primary legislation” means—
- (a) an Act of Parliament;
  - (b) a Measure or Act of the National Assembly for Wales or an Act of Senedd Cymru.

## **86 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—
- (a) Parts 1 to 5,
  - (b) section 68, 69, 70 or 71,
  - (c) section 72 or 74(1) or Part 1 of Schedule 3, or
  - (d) any of sections 75 to 79 or 81 to 84.
- (2) The appropriate national authority may by regulations make such transitional or saving provision as the authority considers appropriate in connection with the coming into force of section 80.
- (3) In subsection (2) “the appropriate national authority” means—
- (a) in relation to England, the Secretary of State;
  - (b) in relation to Wales, the Welsh Ministers.
- (4) The Department of Justice in Northern Ireland may by regulations make such transitional or saving provision as the Department considers appropriate in connection with the coming into force of any provision of section 73 or 74(3) or Part 3 of Schedule 3.
- (5) Regulations under this section may (among other things) make any adaptations of provisions of this Act mentioned in subsection (1), (2) or (4) (as the case may be) brought into force that appear to be appropriate in consequence of other provisions of this Act not yet having come into force.

### *Final provisions*

## **87 Regulations**

- (1) Any power of the Secretary of State, the Lord Chancellor or the Welsh Ministers to make regulations under this Act is exercisable by statutory instrument.
- (2) Any power of the Department of Justice in Northern Ireland to make regulations under this Act is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (3) 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.



- (4) Subsection (3) does not apply to regulations under section 90 (see instead subsection (7) of that section).
- (5) A statutory instrument containing regulations made by the Secretary of State or Lord Chancellor 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 (6) or any other enactment to be laid in draft before, and approved by a resolution of, each House of Parliament, or
  - (b) contains only regulations under section 20(4), 37(7), 81(4), 86 or 90.
- (6) A statutory instrument that contains (with or without other provisions)—
- (a) regulations under section 41(7),
  - (b) regulations of the Secretary of State under section 80(6), or
  - (c) regulations of the Secretary of State under section 85 that amend or repeal any Act,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) A statutory instrument containing regulations made by the Welsh Ministers under this Act is subject to annulment in pursuance of a resolution made by Senedd Cymru, unless the instrument—
- (a) is required by subsection (8) or any other enactment to be laid before, and approved by a resolution of, Senedd Cymru, or
  - (b) contains only regulations under section 86.
- (8) A statutory instrument that contains (with or without other provisions)—
- (a) regulations of the Welsh Ministers under section 80(6), or
  - (b) regulations of the Welsh Ministers under section 85 that amend or repeal primary legislation (within the meaning of section 85(4)),
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.

## **88 Financial provision**

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred by a Minister of the Crown under or by virtue of this Act, and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

## **89 Extent**

- (1) Except as set out below, this Act extends to England and Wales only.
- (2) Any amendment or repeal made by Part 2 or 3 or Schedule 2 has the same extent within the United Kingdom as the provision amended or repealed.
- (3) Section 74(2) and Part 2 of Schedule 3 extend to Scotland only.
- (4) Sections 73 and 74(3) and Part 3 of Schedule 3 extend to Northern Ireland only.

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- (5) The following provisions extend to England and Wales, Scotland and Northern Ireland—
- (a) section 39(7),
  - (b) sections 81 and 82,
  - (c) sections 85 to 88,
  - (d) this section, and
  - (e) sections 90 and 91.
- (6) Section 39(7) and this subsection (and sections 85 to 87, 90 and 91, so far as relating to those provisions) extend to—
- (a) the Isle of Man, and
  - (b) the British overseas territories except Gibraltar;
- and the power under section 384(2) of the Armed Forces Act 2006 may be exercised so as to modify section 39(7) as it extends to the Isle of Man or a British overseas territory other than Gibraltar.
- (7) The power under section 384(1) of the Armed Forces Act 2006 may be exercised so as to extend section 39(7) of this Act to any of the Channel Islands (with or without modifications).

## **90 Commencement**

- (1) The following provisions of this Act come into force on the day on which this Act is passed—
- (a) section 71;
  - (b) section 75;
  - (c) section 81;
  - (d) section 83;
  - (e) sections 85 to 89, this section and section 91;
  - (f) any power to make regulations under or by virtue of this Act.
- (2) Sections 69, 72 and 74(1) and Part 1 of Schedule 3 come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) Section 74(2) and Part 2 of Schedule 3 come into force in accordance with provision contained in regulations made by the Scottish Ministers.
- (4) Sections 73 and 74(3) and Part 3 of Schedule 3 come into force in accordance with provision contained in an order made by the Department of Justice in Northern Ireland.
- (5) Section 80 comes into force on 1 October 2021.
- (6) The remaining provisions of this Act come into force in accordance with provision contained in regulations made by the Secretary of State.
- (7) Regulations or an order under this section may make different provision for different purposes or in relation to different areas.
- (8) Regulations under this section bringing any provision of Part 3 or section 76 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;

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- (b) make transitional or saving provision relating to that provision or section ceasing to be in force at the end of the specified period.
- (9) Regulations containing provision permitted by subsection (8)(a) may be amended by subsequent regulations under this section so as to continue any provision of Part 3 or section 76 in force for the specified purpose or in relation to the specified area for a further specified period.
- (10) The power of the Department of Justice in Northern Ireland to make an order under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (11) Any provision which the Department of Justice in Northern Ireland could make by regulations under section 86 may be made by the Department by an order under this section.

**91 Short title**

This Act may be cited as the Domestic Abuse Act 2021.

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## SCHEDULES

### SCHEDULE 1

Section 40

#### FURTHER PROVISION ABOUT REMAND UNDER SECTION 40

##### *Introductory*

- 1 This Schedule applies where a court has power to remand a person (“P”) under section 40.

##### *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
  - (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).
- (4) Where P is brought before the court after remand, the court may further remand P.
- 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.
- (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.
- 4 (1) The court may not remand P for a period exceeding eight 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 person who applied for the warrant under section 40 consent.

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 three 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 40 may be exercised for the purpose of enabling a medical examination to take place and a report to be made.
- (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.
- (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 40 is suffering from mental disorder within the meaning of the Mental Health Act 1983.
- (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*

- 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.
- (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.
- (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*

- 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*

- 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 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.

## SCHEDULE 2

Section 70

### STRANGULATION OR SUFFOCATION: CONSEQUENTIAL AMENDMENTS

#### *Police and Criminal Evidence Act 1984*

- 1 In section 65A of the Police and Criminal Evidence Act 1984 (qualifying offences for the purposes of Part 5 of that Act), in subsection (2), after paragraph (r) insert—
- “(ra) an offence under section 75A of the Serious Crime Act 2015 (strangulation or suffocation).”

#### *Housing Act 1985*

- 2 In Schedule 2A to the Housing Act 1985 (absolute ground for possession for anti-social behaviour: serious offences), after paragraph 14 insert—
- “14A An offence under section 75A of the Serious Crime Act 2015 (strangulation or suffocation).”

#### *Criminal Justice and Public Order Act 1994*

- 3 In Part 1 of Schedule 7A to the Criminal Justice and Public Order Act 1994 (offences in England and Wales for which cross-border powers of arrest available), for paragraph 24 substitute—
- “24 An offence under either of the following provisions of the Serious Crime Act 2015—
- (a) section 45 (participating in activities of organised crime group);
- (b) section 75A (strangulation or suffocation).”

#### *Crime and Disorder Act 1998*

- 4 (1) Section 29 of the Crime and Disorder Act 1998 (racially or religiously aggravated assaults) is amended as follows.
- (2) In subsection (1), after paragraph (b) (but before the “or” following it) insert—
- “(ba) an offence under section 75A of the Serious Crime Act 2015 (strangulation or suffocation);”.
- (3) In subsection (2), for “or (b)” substitute “, (b) or (ba)”.

#### *Youth Justice and Criminal Evidence Act 1999*

- 5 (1) Schedule 1A to the Youth Justice and Criminal Evidence Act 1999 (proceedings in which witnesses are automatically eligible for assistance on grounds of fear or distress about testifying) is amended as follows.
- (2) After paragraph 29 insert—

*“Serious Crime Act 2015*

- 29A An offence under section 75A of the Serious Crime Act 2015 (strangulation or suffocation) in a case where it is alleged that—
- (a) the accused was carrying a firearm or knife at any time during the commission of the offence, and
  - (b) a person other than the accused knew or believed at any time during the commission of the offence that the accused was carrying a firearm or knife.”

(3) In paragraph 30, after “paragraphs 1 to 8” insert “and 29A”.

*Sexual Offences Act 2003*

- 6 In Schedule 5 to the Sexual Offences Act 2003 (cases where sexual harm prevention orders may be made), after paragraph 63B insert—
- “63C An offence under section 75A of the Serious Crime Act 2015 (strangulation or suffocation).”

*Criminal Justice Act 2003*

- 7 In Part 1 of Schedule 15 to the Criminal Justice Act 2003 (violent offences specified for purposes of certain custodial sentences), before paragraph 63G insert—
- “63FA An offence under section 75A of the Serious Crime Act 2015 (strangulation or suffocation).”

*Domestic Violence, Crime and Victims Act 2004*

- 8 In section 6A of the Domestic Violence, Crime and Victims Act 2004 (evidence and procedure in cases of serious physical harm: England and Wales), in subsection (2), at the end insert—
- “(c) an offence under section 75A of the Serious Crime Act 2015 (strangulation or suffocation).”

*Children Act 2004*

- 9 In section 58 of the Children Act 2004 (reasonable punishment: England), in subsection (2), after paragraph (c) insert—
- “(d) an offence under section 75A of the Serious Crime Act 2015 (strangulation or suffocation).”

*Criminal Justice and Immigration Act 2008*

- 10 In section 98 of the Criminal Justice and Immigration Act 2008 (violent offender orders), in subsection (3), after paragraph (d) insert—
- “(da) an offence under section 75A of the Serious Crime Act 2015 (strangulation or suffocation);”.

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*Modern Slavery Act 2015*

- 11 In Schedule 4 to the Modern Slavery Act 2015 (offences to which defence for slavery or trafficking victims under section 45 of that Act does not apply), after paragraph 35 insert—

*“Serious Crime Act 2015*

- 35A An offence under section 75A of the Serious Crime Act 2015 (strangulation or suffocation).”

*Sentencing Act 2020*

- 12 (1) The Sentencing Act 2020 is amended as follows.
- (2) In section 67 (assaults on emergency workers), in subsection (3), after paragraph (a) insert—
- “(aa) an offence under section 75A of the Serious Crime Act 2015 (strangulation or suffocation);”.
- (3) In Part 1 of Schedule 18 (violent offences for which extended sentence of imprisonment available), after paragraph 25 insert—

*“Serious Crime Act 2015*

- 25A An offence under section 75A of the Serious Crime Act 2015 (strangulation or suffocation).”

SCHEDULE 3

Section 74

AMENDMENTS RELATING TO OFFENCES COMMITTED OUTSIDE THE UK

**PART 1**

ENGLAND AND WALES

*Protection from Harassment Act 1997*

- 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—
- (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 is habitually resident in England and Wales,
- the person is guilty in England and Wales of that offence.



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- (2) In this section—
- “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.”

### *Sexual Offences Act 2003*

- 2 (1) The Sexual Offences Act 2003 is amended as follows.
- (2) In section 72 (offences outside the United Kingdom)—
- (a) in subsections (1)(b) and (2)(c), for “section” substitute “subsection”;
  - (b) in subsection (3)(c), for “section” substitute “subsection”;
  - (c) in subsection (10), for “this section applies” substitute “subsections (1) to (3) apply”.
- (3) In Schedule 2 (sexual offences to which section 72 applies)—
- (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, subsections (1) and (2) of section 72 also apply to an offence under any of sections 1 to 4 where the victim of the offence was 18 or over at the time of the offence.”;
  - (d) in paragraph 3, after “paragraph 1” insert “or 1A”.

### *Serious Crime Act 2015*

- 3 In the Serious Crime Act 2015, after section 76 (controlling or coercive behaviour in an intimate or family relationship) insert—

#### **“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
  - (c) the person is a United Kingdom national or is habitually resident in England and Wales,
- 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—

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- (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.”

## PART 2

### SCOTLAND

#### *Criminal Procedure (Scotland) Act 1995*

- 4 (1) Section 11 of the Criminal Procedure (Scotland) Act 1995 (certain offences committed outside Scotland) is amended as follows.
- (2) In subsections (1) and (2), for “British citizen or British subject” substitute “relevant person”.
- (3) After subsection (2) insert—
- “(2A) Any relevant person who in a country outside the United Kingdom does any act which—
- (a) constitutes an offence under the law in force in that country, and
  - (b) if done in Scotland would constitute the crime of assault,
- is guilty of the same crime and subject to the same punishment as if the act had been done in Scotland.
- (2B) For the purposes of subsection (2A)(a), an act punishable under the law in force in the country is an offence under that law however it is described in that law.
- (2C) The condition specified in subsection (2A)(a) is to be taken as satisfied unless, not later than such time as may be prescribed by Act of Adjournal, the accused serves on the prosecutor a notice—
- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the accused’s opinion satisfied,
  - (b) setting out the grounds for the accused’s opinion, and
  - (c) requiring the prosecutor to prove that the condition is satisfied.
- (2D) But the court, if it thinks fit, may permit the accused to require the prosecutor to prove that the condition is satisfied without the prior service of a notice under subsection (2C).
- (2E) In proceedings on indictment, the question whether the condition is satisfied is to be determined by the judge alone.
- (2F) For the purposes of subsections (1) to (2B)—
- “country” includes territory;
  - “relevant person” means a person who is a United Kingdom national or is habitually resident in Scotland;
  - “United Kingdom national” means an individual who is—

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- (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.”

*Sexual Offences (Scotland) Act 2009 (asp 9)*

- 5 (1) The Sexual Offences (Scotland) Act 2009 is amended as follows.
- (2) After section 54C insert—

**“54D Offences committed outside the United Kingdom: adult victims**

- (1) If—
- (a) a person who is a UK national does an act in a country outside the United Kingdom, and
  - (b) the act, if done in Scotland, would constitute an offence to which this subsection applies,
- then the person commits that offence.
- (2) If—
- (a) a person who is habitually resident in Scotland 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
  - (c) the act, if done in Scotland, would constitute an offence to which this subsection applies,
- then the person commits that offence.
- (3) The offences to which subsections (1) and (2) apply 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.
- (4) For the purposes of subsection (2)(b), an act punishable under the law in force in the country is an offence under that law however it is described in that law.
- (5) The condition specified in subsection (2)(b) is to be taken as satisfied unless, not later than such time as may be prescribed by Act of Adjournal, the accused serves on the prosecutor a notice—
- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the accused’s opinion satisfied,
  - (b) setting out the grounds for the accused’s opinion, and
  - (c) requiring the prosecutor to prove that the condition is satisfied.
- (6) But the court, if it thinks fit, may permit the accused to require the prosecutor to prove that the condition is satisfied without the prior service of a notice under subsection (5).
- (7) In proceedings on indictment, the question whether the condition is satisfied is to be determined by the judge alone.

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- (8) A person may be prosecuted, tried and punished for an offence by virtue of this section—
- (a) in any sheriff court district in Scotland in which the person is apprehended or is in custody, or
  - (b) in such sheriff court district as the Lord Advocate may determine, as if the offence had been committed in that district; and the offence is, for all purposes incidental to or consequential on trial or punishment, to be deemed to have been committed in that district.
- (9) In this section—
- “country” includes territory;
- “sheriff court district” is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (interpretation);
- “UK 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.”
- (3) In the heading of section 55, at the end insert “: child victims”.
- (4) For the heading of section 56 substitute “Section 55: continuity of law”.

*Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)*

6 In the Criminal Justice and Licensing (Scotland) Act 2010, after section 39 insert—

**“39A Offence of stalking committed outside the United Kingdom**

- (1) If—
- (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 the offence of stalking if it occurred in Scotland, and
  - (c) the person is a United Kingdom national or is habitually resident in Scotland,
- then the person commits that offence.
- (2) If a person’s course of conduct consists entirely of conduct in a country outside the United Kingdom—
- (a) the person may be prosecuted, tried and punished for an offence of stalking by virtue of this section—
    - (i) in any sheriff court district in Scotland in which the person is apprehended or is in custody, or
    - (ii) in such sheriff court district as the Lord Advocate may determine,
 as if the offence had been committed entirely in that district, and

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- (b) the offence is, for all purposes incidental to or consequential on trial or punishment, to be deemed to have been committed entirely in that district.
- (3) In this section—
- “country” includes territory;
  - “sheriff court district” is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (interpretation);
  - “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.”

### PART 3

#### NORTHERN IRELAND

##### *Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9))*

- 7 In the Protection from Harassment (Northern Ireland) Order 1997, after Article 6 insert—

##### **Offences under Article 6 committed outside the United Kingdom**

- “6A (1) If—
- (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 Article 6 if it occurred in Northern Ireland, and
  - (c) the person is a United Kingdom national or is resident in Northern Ireland,
- the person is guilty in Northern Ireland of that offence.

- (2) In this Article—
- “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.”

##### *Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))*

- 8 In Article 76 of the Sexual Offences (Northern Ireland) Order 2008 (offences outside the United Kingdom)—
- (a) in paragraphs (1)(b) and (2)(c), for “Article” substitute “paragraph”;

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- (b) in paragraph (3)(c), for “Article” substitute “paragraph”;
- (c) in paragraph (10), for “this Article applies” substitute “paragraphs (1), (2) and (3) apply”;
- (d) after paragraph (10) insert—
  - “(10A) Paragraphs (1) and (2) also apply to an offence under any provision of Part 2 where the victim of the offence was 18 or over at the time of the offence.”;
- (e) in paragraphs (11) and (12), after “paragraph (10)” insert “or (10A)”.