



Domestic Abuse Act 2021

2021 CHAPTER 17

PART 3

POWERS FOR DEALING WITH DOMESTIC ABUSE

PROSPECTIVE

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;

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- (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.

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—

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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.
- (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

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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.
- (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.

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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—
 - (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

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- (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”.

- (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.

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- (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.

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- (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.

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

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(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 [^{F1}the general limit in a magistrates’ court] (or 6 months, if the offence was committed before [^{F2}2 May 2022]), 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) 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).

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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.

Textual Amendments

- F1** Words in s. 39(5)(a)(i) substituted (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates’ Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(1), [Sch. Pt. 1](#)
- F2** Words in s. 39(5)(a)(i) substituted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), 5(1), [Sch. Pt. 1](#)

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.
- (7) Schedule 1 contains further provision about remand under this section.

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- (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.

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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 [^{F3}the general limit in a magistrates' court] (or 6 months, if the offence was committed before the [^{F42}May 2022]), 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.

Textual Amendments

- F3** Words in s. 43(3)(a)(i) substituted (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates' Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(1), [Sch. Pt. 1](#)
- F4** Words in s. 43(3)(a)(i) substituted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), 5(1), [Sch. Pt. 1](#)

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;

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- (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.
- (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).

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- (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)).
- (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

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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.

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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;
 - (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.

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- (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).

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