



EXPLANATORY NOTES

Domestic Abuse Act 2021

Chapter 17

£12.65

DOMESTIC ABUSE ACT 2021

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Domestic Abuse Act 2021 which received Royal Assent on 29 April 2021 (c. 17).

- These Explanatory Notes have been provided by the Home Office, Ministry of Justice and Ministry of Housing, Communities and Local Government in order to assist the reader in understanding of the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 In December 2019, the Government was elected with a manifesto commitment to “support all victims of domestic abuse and pass the Domestic Abuse Bill” which had previously been introduced in the [2017-19 Parliament](#).
- 2 The purpose of the Act is to raise awareness and understanding of domestic abuse and its impact on victims, to further improve the effectiveness of the justice system in providing protection for victims of domestic abuse and bringing perpetrators to justice, and to strengthen the support for victims of abuse and their children provided by other statutory agencies.
- 3 The Act is in seven Parts.
- 4 Part 1 provides for a statutory definition of domestic abuse which underpins other provisions in the Act.
- 5 Part 2 creates the office of Domestic Abuse Commissioner, sets out the functions and powers of the Commissioner and imposes a duty on specified public authorities to co-operate with the Commissioner.
- 6 Part 3 provides for a new civil preventative order regime - the Domestic Abuse Protection Notice (“DAPN”) and Domestic Abuse Protection Order (“DAPO”).
- 7 Part 4 places new duties on tier one local authorities in England in respect of the provision of accommodation-based support to domestic abuse victims and their children in refuges and other safe accommodation.
- 8 Part 5 confers on victims of domestic abuse automatic eligibility for special measures in the criminal, family and civil courts; prohibits perpetrators of certain offences from cross-examining their victims in person in the family and in civil courts in England and Wales (and vice versa) and gives family and civil courts the power, in certain circumstances, to appoint a legal representative to conduct the cross-examination on behalf of the prohibited person; and clarifies the circumstances where a barring order under section 91(14) of the Children Act 1989 is available.
- 9 Part 6 extends the offence of controlling or coercive behaviour in an intimate or family relationship to cover post separation abuse; extends the offence of disclosing private sexual photographs and films to cover threats to disclose; provides for a new offence of strangulation or suffocation; makes clear that a victim cannot consent to the infliction of serious harm for the purposes of obtaining sexual gratification; and extends the extraterritorial jurisdiction of the criminal courts in England and Wales, Scotland and Northern Ireland to further violent and sexual offences.
- 10 Part 7 makes miscellaneous and general provision. In particular, this Part enables domestic abuse offenders to be subject to polygraph testing as a condition of their licence following their release from custody; places the guidance supporting the Domestic Violence Disclosure Scheme on a statutory footing; gives eligible victims who are homeless as a result of fleeing domestic abuse, priority need for accommodation secured by the local authority; ensures that persons with secure or assured lifetime tenancies are granted a secure lifetime tenancy where the new tenancy is being granted by a local authority for reasons connected to domestic abuse; prohibits certain health professionals from charging for the preparation and provision of medical evidence of domestic abuse; places a duty on the Secretary of State to publish a strategy for the prosecution and management of domestic abuse offenders; places a duty on the Secretary of State to conduct a review into data sharing arrangements between specified public authorities for immigration purposes; confers a power on the Secretary of State to issue

a code of practice relating to the processing of domestic abuse data for immigration purposes; places a duty on the Secretary of State to issue a report on the extent to which those using Child Contact Centres are protected from the risk of domestic abuse; and confers a power on the Secretary of State to issue statutory guidance to practitioners in England and Wales about tackling domestic abuse.

Policy background

- 11 Domestic abuse remains one of the most prevalent crimes in England and Wales. An estimated 2.3 million adults aged 16 to 74 experienced domestic abuse in the year ending March 2020, around two-thirds of whom were women.¹ The police recorded 1,288,018 domestic abuse-related incidents and crimes in the same period (excluding Greater Manchester Police (GMP)) and, of these, 59% were recorded as domestic abuse-related crimes; domestic abuse-related crimes recorded by the police accounted for 35% of violence against the person offences.² Of the 362 domestic homicides recorded by the police between March 2018 and March 2020, 276 of the victims were female (victims aged 16 and over).³
- 12 Domestic abuse is not limited to physical violence. It can include repeated patterns of abusive behaviour to maintain power and control in a relationship. The current non-statutory cross-government definition of domestic violence and abuse recognises this and defines domestic abuse as:

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

psychological;

physical;

sexual;

financial;

emotional.

Controlling behaviour

Controlling behaviour is a range of acts designed to make a person subordinate

¹ [Domestic abuse in England and Wales overview: November 2019](#) [Domestic abuse in England and Wales overview: November 2020](#) – Office of National Statistics.

² [Domestic abuse prevalence and trends, England and Wales: year ending March 2019](#) [Domestic abuse prevalence and trends, England and Wales: year ending March 2020](#) – Office of National Statistics.

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

and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour

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

- 13 From 8 March to 31 May 2018 the then Government ran a [public consultation](#) on the Government’s approach to tackling domestic abuse. The aim of the proposals in the consultation was to prevent domestic abuse by challenging the acceptability of abuse and addressing the underlying attitudes and norms that perpetuate it. The consultation asked questions under four main themes with the central aim of prevention running through each:
- **Promote awareness** – to put domestic abuse at the top of everyone’s agenda, and raise public and professionals’ awareness;
 - **Protect and support** – to enhance the safety of victims and the support that they receive;
 - **Pursue and deter** – to provide an effective response to perpetrators from initial agency response through to conviction and management of offenders, including rehabilitation;
 - **Improve performance** – to drive consistency and better performance in response to domestic abuse across all local areas, agencies and sectors.
- 14 The consultation sought views on a number of legislative and non-legislative measures under each of these themes. The legislative measures, now incorporated in this Act, included:
- introducing a new statutory definition of domestic abuse (Part 1);
 - establishing a Domestic Abuse Commissioner in law (Part 2);
 - creating a new domestic abuse protection notice and domestic abuse protection order (Part 3);
 - creating a legislative assumption that domestic abuse victims are to be treated as eligible for special measures in criminal proceedings (section 62);
 - prohibiting perpetrators of domestic abuse cross-examining their victims in family proceedings in England and Wales (section 65);
 - extending the extraterritorial jurisdiction of the criminal courts in England and Wales to cover further violent and sexual offences (section 72 and Part 1 of Schedule 3);
 - putting the guidance underpinning the Domestic Violence Disclosure Scheme on a statutory footing (section 77).
- 15 Some 3,150 responses were received to the consultation. In its response, published on 21 January 2019 alongside a draft Bill, the Government committed to legislate to introduce these measures.

- 16 The draft Bill was subject to pre-legislative scrutiny by a Joint Committee of both Houses of Parliament, chaired by the Rt. Hon. Maria Miller MP. The Joint Committee published its [report](#) on 14 June 2019. The Government [response](#) to the Joint Committee’s report (CP 137) was published alongside the introduction of the [Bill](#) in the House of Commons on 16 July 2019. The Bill was given an unopposed Second Reading on 2 October 2019, carried over from the 2017-19 session and re-introduced on 15 October 2019, but fell with the dissolution of Parliament ahead of the December 2019 election. The Bill as introduced in the House of Commons on 3 March 2020 was broadly the same as the Bill originally introduced in July 2019, but with the addition of the measures in Part 4 in respect of the provision of accommodation-based support by local authorities in England and the omission of the Northern Ireland domestic abuse offence (what was Part 2 of the Bill introduced in July 2019) which was taken forward in the now Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021. Alongside the re-introduction of the Bill, the Government published a further response to the Joint Committee’s report (CP 214).

Civil protection orders

- 17 Sections 24 to 33 of the Crime and Security Act 2010 provide for domestic violence protection notices (“DVPNs”) and domestic violence protection orders (“DVPOs”). They were implemented across England and Wales from 8 March 2014 following a one year [pilot](#) in the West Mercia, Wiltshire and Greater Manchester police force areas.
- 18 A DVPN is an emergency non-molestation and eviction notice which can be issued by the police, when attending to a domestic violence incident, to a perpetrator. Because the DVPN is a police-issued notice, it is effective from the time of issue, thereby giving the victim the immediate support, they require in such a situation. Within 48 hours of the DVPN being served on the perpetrator, an application by the police to a magistrates’ court for a DVPO must be heard. A DVPO can prevent the perpetrator from returning to a residence and from having contact with the victim for up to 28 days. This allows the victim a degree of breathing space to consider their options with the help of a support agency. Both the DVPN and DVPO contain a condition prohibiting the perpetrator from molesting the victim. The Home Office has issued [guidance](#) to police forces on the operation of DVPNs and DVPOs.
- 19 In addition to the DVPN and DVPO other civil orders, including restraining orders (as provided for by section 5 of the Protection from Harassment Act 1997), non-molestation orders (Part IV of the Family Law Act 1996) and occupation orders (Part IV of the Family Law Act 1996), can be made in varying circumstances. These orders differ in terms of who can apply for them, the courts in which the orders may be made, the conditions that may be attached to an order and the consequences of breach. This can lead to confusion for victims and practitioners in domestic abuse cases and problems with enforcement.
- 20 The Government consultation proposed the creation of a new DAPN, which could be given by the police, and a DAPO, which could be made by the courts in a wide range of domestic abuse-related circumstances (not just in cases involving violence or the threat of violence). Part 3 of the Act provides for the DAPN, modelled closely on the existing DVPN, and for the DAPO which will have the following key features:
- available in a variety of courts on application by the police, the victim, persons specified in regulations or any other person with the leave of the court;
 - available to protect a person from domestic abuse, or the risk of domestic abuse, carried out by another person to whom they are personally connected;

- enables the imposition of any requirements (including, prohibitions, restrictions and positive requirements) on the perpetrator that are necessary to protect the victim; and
- breach of a DAPO will be a criminal offence, punishable by up to five years' imprisonment or a fine or both (or as a civil contempt of court, in the alternative).

Local authority accommodation-based support

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

Special measures in criminal proceedings

- 22 Many witnesses experience stress and fear during the investigation of a crime and when attending court and giving evidence. Stress can affect the quality of communication with, and by, witnesses of all ages. Some witnesses may have particular difficulties attending court and giving evidence due to their age, personal circumstances, fear of intimidation or because of their particular needs. In such circumstances, where witnesses are considered to be vulnerable or intimidated, "special measures" can improve the quality of their experience by helping them to give their "best evidence".
- 23 The Youth Justice and Criminal Evidence Act 1999 ("YJCEA 1999") introduced a range of measures that can be used to facilitate the giving of evidence by vulnerable and intimidated witnesses in criminal proceedings in England and Wales. The measures are collectively known as "special measures".
- 24 Special measures are a series of provisions that help vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. Special measures under sections 23 to 30 of the YJCEA 1999 are available to prosecution and defence witnesses, but not to the accused and are subject to the discretion of the court.
- 25 Vulnerable and intimidated witnesses are eligible for the special measures in sections 23 to 28 of the YJCEA 1999. The use of intermediaries or communication aids under sections 29 and 30 of the YJCEA 1999 is only available for vulnerable witnesses; that is witnesses who need assistance on grounds of age or incapacity.
- 26 Intimidated witnesses are eligible for special measures by reason of section 17 of the YJCEA 1999. Generally, in order for a witness to be eligible under that section, the court must be satisfied that the quality of the witness's evidence is likely to be diminished due to the witness's fear or distress in relation to testifying in the case. Complainants in sexual offences and modern slavery offences are, by section 17(4), automatically assumed to fall into this category unless they wish to opt out. Witnesses to certain offences involving guns and knives are also assumed to automatically fall into this category unless they wish to opt out (section

17(5)). Currently, complainants in domestic abuse-related offences may be eligible for special measures under section 17 if the court is satisfied the quality of their evidence is likely to be diminished by their fear or distress about testifying, but they do not automatically fall into this category. Section 62 puts victims of domestic abuse-related offences in England and Wales in the same position as victims of sexual offences and modern slavery offences and witnesses in relation to certain offences involving guns and knives.

- 27 Being eligible for special measures does not mean that the court will automatically grant them. The court has to satisfy itself that the special measure or combination of special measures is likely to improve the quality of the witness's evidence before granting an application (section 19(2) of the YJCEA 1999). In making this assessment, the court must consider all the circumstances of the case, including in particular any views expressed by the witness and whether the measure or measures in question might tend to inhibit the witness's evidence being effectively tested by a party to the proceedings (section 19(3)).
- 28 The victim of a domestic abuse-related offence will be eligible for special measures as an intimidated witness and, with the agreement of the court, this could include one or a combination:
- Screens (available for vulnerable and intimidated witnesses): screens may be made available to shield the witness from seeing the accused (section 23 of the YJCEA 1999).
 - Live link (available for vulnerable and intimidated witnesses): a live link enables the witness to give evidence during the trial from outside the court through a televised link to the courtroom. The witness may be accommodated either within the court building or in a suitable location outside the court (section 24 of the YJCEA 1999).
 - Evidence given in private (available for some vulnerable and intimidated witnesses): exclusion from the court of members of the public and the press (except for one named person to represent the press) in cases involving sexual offences, modern slavery offences or intimidation by someone other than the accused (section 25 of the YJCEA 1999).
 - Removal of wigs and gowns by judges and barristers (available for vulnerable and intimidated witnesses at the Crown Court) (section 26 of the YJCEA 1999).
 - Video-recorded interview (available for vulnerable and intimidated witnesses): a video recorded interview with the witness may be admitted by the court as the witness's evidence-in-chief (section 27 of the YJCEA 1999).
 - Pre-recorded cross-examination (available for vulnerable and intimidated witnesses, although currently only partially commenced): cross-examination (and re-examination) of the witness may be pre-recorded in advance of the trial, and the recording then played during the trial in place of live evidence (section 28 of the YJCEA 1999).

Special measures in family proceedings

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

- 30 Provision for special measures is instead made in Part 3A of the [Family Procedure Rules 2010](#), supported by [Practice Direction 3AA](#) (Vulnerable Persons: Participation in Proceedings and Giving Evidence).
- 31 Part 3A places the court under a duty to consider whether a party's participation in family proceedings is likely to be diminished by reason of their vulnerability, and whether the quality of evidence of a party or witness in such proceedings is likely to be diminished by such vulnerability. If so, the court must consider whether it is necessary to make one or more participation directions (which might include a direction that the party or witness should have the assistance of a particular measure). There is no definition of 'vulnerability', though when considering the vulnerability of a party or witness, the court must, by virtue of Rule 3A.3(1), have particular regard to a wide range of matters listed in Rule 3A.7. This list includes any concerns arising in relation to abuse.
- 32 In May 2019 the Ministry of Justice established a panel of experts to review how the family courts deal with the risk of harm to children and parents in private law children cases involving domestic abuse and other serious offences. The panel held a call for evidence between July and September 2019, receiving over 1,200 submissions from those with experience of the family courts. The final [report](#) was published in June 2020.
- 33 The submissions to the call for evidence highlighted that there are longstanding and significant issues with how the family justice system manages risk of harm to victims of abuse and their children in private law children proceedings. Respondents detailed how the family courts in these cases can be retraumatising and a tool of abuse for perpetrators. Many respondents told the panel how the family courts can minimise allegations of domestic abuse, and that victims felt disbelieved. They felt there were inadequate protections, including access to special measures, in the family courts to protect victims from harm.
- 34 The final report recommended the following in relation to special measures:
- “The provisions in the Domestic Abuse Bill concerning special measures in criminal courts for victims of domestic abuse should be extended to family courts. The provisions should apply to all cases in which domestic abuse is alleged.”
- 35 Due to the technicalities and nuances of each jurisdiction, and as there is an existing legislative framework contained in secondary legislation, the Government does not consider it appropriate simply to replicate the special measures provisions contained in criminal legislation (namely Chapter I of Part II of the Youth Justice and Criminal Evidence Act 1999). However, section 63 aligns the approach to eligibility for special measures in the family court to that taken in the criminal courts and ensures that victims of domestic abuse will be automatically eligible for access to special measures in family proceedings.

Cross-examination in family proceedings

- 36 Courts hearing family proceedings do not have an express power to prevent a perpetrator or an alleged perpetrator of abuse from cross-examining their victim or alleged victim in person, nor do they have the power to order that an advocate be appointed (and funded) to carry out the cross-examination on behalf of the perpetrator or alleged perpetrator.
- 37 The fact that it is possible at present for perpetrators (alleged or otherwise) to cross-examine their victims in person in family proceedings has attracted criticism, including from the All-Party Parliamentary Group on Domestic Violence. It is widely accepted that such cross-examination can cause the victim significant distress and, as the President of the Family Division has said, "can sometimes amount, and on occasion quite deliberately, to a continuation of the abuse". Section 65 prohibits cross-examination in person in certain

circumstances in family proceedings in England and Wales and gives the courts a discretion to prohibit cross-examination in certain other circumstances. Section 65 also makes provision for the court, in certain circumstances and where it is considered necessary in the interests of justice, to appoint a legal representative to carry out the cross-examination on behalf of the prohibited party. The section also allows the Lord Chancellor to publish guidance on the role of such a representative, and to make regulations concerning the payment of legal representatives in these circumstances.

Cross-examination and special measures in civil proceedings

- 38 In the civil courts, there are no specific provisions in the Civil Procedure Rules (“CPR”) dealing with vulnerable parties or witnesses. The Court has an overriding objective to deal with cases fairly and to manage cases actively, but there no specific rule or practice direction on the issue of vulnerability.
- 39 [CPR 32.1](#) gives to the Court a broad power to control how evidence is put before it, including limiting the extent of any cross-examination.
- 40 Additionally, judges have an inherent power to order the provision of special measures when it is considered necessary. This includes, but is not limited to, giving evidence via video link, from behind a screen, by deposition, use of other technology, or through an intermediary or an interpreter.
- 41 In April 2018, the Independent Inquiry into Child Sexual Abuse published its Interim Report and recommendations. Recommendation 9 stated:

“That the MoJ provides primary legislation and works to ensure that the Civil Procedure Rules are amended so that victims and survivors of CSA in civil court cases, where they are claiming compensation in relation the abuse they suffered, are afforded the same protections as vulnerable witnesses in criminal court cases.”
- 42 Following that, the Ministry of Justice commissioned the Civil Justice Council (“CJC”) - which is an advisory body chaired by the Master of the Rolls and is responsible for overseeing and co-ordinating the modernisation of the civil justice system - to consider the issues raised by this recommendation and to compile a report, the scope of which was not limited to victims and survivors of child sex abuse but rather considered all vulnerable witnesses and parties within civil proceedings.
- 43 After a public consultation and views from experts, the CJC published their [report](#) “Vulnerable Witnesses and parties within civil proceedings – current position and recommendations for change”, in February 2020. The Report conceded there was no single or coherent set of rules in the CPR dealing with vulnerability in the same way as in the Family Procedure Rules and made a number of recommendations.
- 44 One of those recommendations was in relation to the prohibition of cross-examination by a self-represented party. The report recommended that provision should be extended to cover civil proceedings too, thereby ensuring parity with the criminal and family jurisdictions. The CJC did, however, caution that the ban or prohibition should not be absolute. Rather, the court should retain a discretion not to apply the prohibition, given the civil and family jurisdictions are very different as regards the types of cases; with the civil jurisdiction having a much wider range of cases before it. Section 66 gives effect to the CJC’s recommendation.
- 45 The CJC report did not go as far as recommending that special measures should also be enshrined in primary legislation. Rather, it felt that it was best left to the flexibility of court rules, since judges in civil proceedings already have inherent powers to order the provision of special measures when it is considered necessary.

- 46 While the Government has accepted most of the CJC’s recommendations, it has decided to legislate for a special measures provision in civil proceedings in this Act (see section 64).
- 47 This will bring the civil courts in line (as far as appropriate) with the criminal and family courts, thereby providing protection for vulnerable witnesses and victims in each jurisdiction, and a better and supported experience of access to justice in the civil courts.

The Istanbul Convention – extraterritorial jurisdiction

48 The “[Istanbul Convention](#)” is the Council of Europe Convention on preventing and combating violence against women and domestic violence. Article 1 sets out the purpose of the Convention as follows:

- protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;
- contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;
- design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;
- promote international co-operation with a view to eliminating violence against women and domestic violence;
- provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.

49 The United Kingdom (“UK”) Government signed the Convention on 8 June 2012 but has not yet ratified it. In most respects, the measures already in place in the UK comply with or go further than the Convention requires. A key element of the Convention is making sure that ratifying states can use their national law to prosecute offences required by the Convention when they are committed by their nationals or residents overseas. The legal term for powers to allow prosecution in the UK of offences committed by UK nationals or residents overseas is “extraterritorial jurisdiction”. Taking such powers requires primary legislation.

50 The courts in England and Wales already have extraterritorial jurisdiction for some of the offences required by the Convention (for example, female genital mutilation (by virtue of section 4 of the Female Genital Mutilation Act 2003) and forced marriage (by virtue of section 121 of the Anti-social Behaviour, Crime and Policing Act 2014)). However, the courts do not have extraterritorial jurisdiction for other offences required by the Convention (under Articles 33 to 39), and accordingly section 72 and Part 1 of Schedule 3 extend extraterritorial jurisdiction to the relevant offences to satisfy the requirements of the Convention. These included certain sexual offences and offences against the person.

51 Similarly, the courts in Scotland also already have extraterritorial jurisdiction for some of the offences required by the Convention (for example, female genital mutilation (by virtue of section 4 of the Prohibition of Female Genital Mutilation (Scotland) Act 2005), domestic abuse (by virtue of section 3 of the Domestic Abuse (Scotland) Act 2018) and forced marriage (by virtue of section 122 of the Anti-social Behaviour, Crime and Policing Act 2014)). However, the Scottish courts do not have extraterritorial jurisdiction for other offences required by the Convention (under Articles 33 to 39), and accordingly Part 2 of Schedule 3 to the Act contains provisions to give domestic effect to the extraterritorial requirements of the Convention in Scotland. These include certain sexual offences and the offences of stalking and assault.

- 52 In Northern Ireland, the courts also have extraterritorial jurisdiction for some of the offences required by the Convention (for example, female genital mutilation (by virtue of section 4 of the Female Genital Mutilation Act 2003) and forced marriage (by virtue of section 16 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015)). However, the Northern Irish courts do not have extraterritorial jurisdiction for other offences required by the Convention (under Articles 33 to 39). Accordingly, section 73 and Part 3 of Schedule 3 to the Act contain provisions to give domestic effect to most of the extraterritorial requirements of the Convention in Northern Ireland. These include a number of sexual and violent offences.
- 53 The Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017 requires the Government to lay an annual report before Parliament on progress toward ratification of the Convention. The fourth such [report](#) was laid before Parliament on 22 October 2020.

Polygraph testing

- 54 Sections 28 to 30 of the Offender Management Act 2007 (“the 2007 Act”) make provision for polygraph testing of certain sex offenders as a condition of their licence following their release from custody. Any offender released from custody with such a condition would be required to undertake polygraph tests as part of their duty to comply with their licence conditions. The polygraph is a device that measures certain physiological responses such as heart rate, breathing rate, blood pressure and skin resistance, changes in which are thought to indicate whether the subject is lying. A “polygraph condition” requires the offender, on release, to take part in regular “polygraph sessions”, as instructed by their offender manager. The imposition of the condition allows compliance with other licence conditions to be monitored and gives information about an offender’s behaviour that will improve the effectiveness of how an offender is managed during the licence period. Section 30 of the 2007 Act makes it clear that the results of a polygraph examination cannot be used in proceedings against the released person for an offence. Polygraph testing of the most serious sexual offenders has operated across the whole of England and Wales since January 2014. Section 76 extends these provisions of the 2007 Act to cover domestic abuse offenders.

The Domestic Violence Disclosure Scheme

- 55 The Domestic Violence Disclosure Scheme, often referred to as “Clare’s Law”, was implemented across all police forces in England and Wales in March 2014.
- 56 The scheme has two elements: the “right to ask” and the “right to know”. Under the scheme an individual or relevant third party can ask police to check whether a current or ex-partner has a violent past. This is the “right to ask”. If records show that an individual may be at risk of domestic abuse from a partner or ex-partner, the police will consider disclosing the information.
- 57 The “right to know” enables the police to make a disclosure if they receive indirect information regarding the current or ex-partner that may impact the safety of the individual, such as information arising from a criminal investigation, through statutory or third sector agency involvement, or from another source of police intelligence.
- 58 A disclosure can be made lawfully by the police under the scheme if the disclosure is based on the police’s common law powers to disclose information where it is necessary to prevent crime and if the disclosure also complies with data protection legislation, the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) and the Human Rights Act 1998. It must be reasonable and proportionate for the police to make the disclosure based on a credible risk of violence or harm.

- 59 For the year ending March 2020 there were 8,591 (based on data from 41 police forces) and 11,556 (based on data from 42 police forces) applications under the right to know and right to ask respectively. For these, there were 4,479 and 4,236 disclosures respectively ([Office of National Statistics](#)).
- 60 Non-statutory guidance for the police on the operation of the scheme was first published by the Home Office in July 2012 and, following an [assessment report](#) of the pilot scheme in November 2013, was updated in December 2016. The purpose of the guidance is to support the delivery of the scheme and assist front line officers and those who work in the area of public protection with the practical application of the scheme. The updated [guidance](#) took into account the findings of an [assessment](#) by the Home Office of the first year's operation of the scheme.
- 61 Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services domestic abuse thematic reports, published in [2015](#) and [2017](#), concluded that "opportunities were being missed [through the scheme] to provide better support and protection for victims". Both reports identified inconsistencies surrounding the use of the scheme by police forces and noted the low volume of disclosures. The 2017 report concluded that "it is important that both members of the public and officers are aware of the scheme's purpose and the application process". The Government aims to drive greater use and consistent application of the scheme by putting the guidance underpinning the scheme on a statutory footing and placing a duty on the police to have regard to the guidance (see section 77).

Secure tenancies

- 62 Under the Housing Act 1985 ("the 1985 Act"), local authority landlords may grant their tenants either secure periodic tenancies, or secure flexible tenancies. Secure periodic tenancies have no fixed end date and can only be brought to an end by the landlord obtaining a possession order on one of the grounds for possession set out in Schedule 2 to the 1985 Act, which are mainly fault grounds. Flexible tenancies, which were introduced by the Localism Act 2011, are tenancies granted for a fixed term of no less than two years. Currently it is for the landlord to decide which type of tenancy to grant and in which circumstances they grant flexible tenancies.
- 63 Schedule 7 to the Housing and Planning Act 2016 ("the 2016 Act") amends the 1985 Act to prevent the creation in future of secure periodic tenancies (referred to in the 2016 Act as "old-style secure tenancies"), except in limited circumstances. It also removes the power to grant new tenancies and instead requires that new-style fixed term tenancies should generally be granted. The 2016 Act includes a power for the Secretary of State to prescribe in regulations the circumstances in which a local authority may still grant an old-style secure tenancy.
- 64 The Secure Tenancies (Victims of Domestic Abuse) Act 2018 ("the 2018 Act") amended Schedule 7 to the 2016 Act to deliver on a 2017 Manifesto commitment to ensure "that victims who have lifetime tenancies and flee violence are able to secure a new lifetime tenancy automatically".
- 65 The Government has since decided not to implement the 2016 Act provisions at this time, which means that the grant of fixed term tenancies will remain at a local authority's discretion and the 2018 Act will also not be brought into force at this time.
- 66 The Government's Social Housing Green Paper, [A new deal for social housing](#) (Cm 9671), published on 14 August 2018, includes a commitment (at paragraph 188) to legislate to put in place similar protections for victims of domestic abuse where local authorities offer fixed term tenancies at their discretion in order to deliver on the 2017 Manifesto commitment. Section 79 gives effect to that commitment.

Legal background

67 The legislation relating to domestic abuse in England and Wales is set out in a number of statutes. Generally, such legislation is not bespoke to domestic abuse; instead the general criminal, civil and family law is applied to domestic abuse cases. For example, apart from the offence of controlling or coercive behaviour in an intimate or family relationship (section 76 of the Serious Crime Act 2015 (“the 2015 Act”), acts of domestic abuse are prosecuted under general provisions of the criminal law, such as those provided for in the Offences Against the Person Act 1861.

68 This Act amends or repeals the following legislation:

- Part 4 of the Housing Act 1985 which makes provision for secure tenancies and the rights of secure tenants;
- Section 91 of the Children Act 1989 which makes provision for the effect and duration of orders made under that Act;
- Section 11 of the Criminal Procedure (Scotland) Act 1995 which provides extraterritorial jurisdiction for certain offences committed outside Scotland;
- Part 7 of the Housing Act 1996 which makes provision for tackling homelessness in England;
- Protection from Harassment Act 1997 which, amongst other things, includes the offences of putting people in fear of violence (section 4) and stalking involving fear of violence or serious alarm or distress (section 4A);
- Chapter 1 of Part 2 of the YJCEA 1999 which provides for the application of special measures for vulnerable and intimidated witnesses in criminal proceedings in England and Wales;
- Chapter 1 of Part 12 of the Criminal Justice Act 2003 which makes general provisions about sentencing;
- Section 72 of the Sexual Offences Act 2003 which provides extraterritorial jurisdiction for the offences listed in Schedule 2 to that Act;
- Section 28 of the Offender Management Act 2007 which provides for polygraph testing of certain sex offenders as a condition of their licence;
- Sections 24 to 33 of the Crime and Security Act 2010 which provide for DVPNs and DVPOs;
- Section 9 of the Domestic Violence, Crime and Victims Act 2004 Act which provides for the police, local and health authorities and probation providers to undertake Domestic Homicide Reviews;
- Section 76 of the Serious Crime Act 2015 which provides for the offence of controlling or coercive behaviour in an intimate or familial relationship;
- Section 33 of the Criminal Justice and Courts Act 2015 which contains provisions on disclosing a private sexual photograph or film with intent to cause distress to an individual who appears in the photograph or film.

Territorial extent and application

- 69 Section 89 sets out the territorial extent of the Act, that is the jurisdictions which the Act forms part of the law of. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect.
- 70 The provisions in the Act for the most part extend and apply to England and Wales only. Sections 57 to 61 (local authority support), section 78 (homelessness: victims of domestic abuse), section 79 (secure tenancies granted to victims of domestic abuse) and section 83 (contact centres) extend to England and Wales and apply to England only. The provisions in Part 2 of Schedule 2 extend and apply to Scotland only, while those in section 73 and Part 3 of Schedule 3 extend and apply to Northern Ireland only. Sections 81 and 82 (data processing for immigration purposes) extend and apply to England and Wales, Scotland and Northern Ireland.
- 71 See the table at Annex B for a summary of the position regarding territorial extent and application in the UK.

Commentary on provisions of Act

Part 1: Definition of “domestic abuse”

Section 1: Definition of “domestic abuse”

- 72 This section defines the term “domestic abuse”. The definition applies for the purposes of the Act, but it is expected to be adopted more generally, for example by public authorities and frontline practitioners. The definition of domestic abuse is in two parts. The first part deals with the relationship between the abuser and the abused. The second part defines what constitutes abusive behaviour. There are two criteria governing the relationship between the abuser and the abused. The first criterion provides that both the person who is carrying out the behaviour and the person to whom the behaviour is directed towards must be aged over 16. Abusive behaviour directed at a person under 16 would be dealt with as child abuse rather than domestic abuse. The second criterion provides that both persons must be personally connected (as defined in section 2).
- 73 Subsections (2)(b) and (3) sets out the types of behaviours that would constitute domestic abuse, if the two relationship criteria above are met. The five behaviours listed are not mutually exclusive. Behaviours that constitute “physical or sexual abuse” and “violent or threatening behaviour” are self-explanatory and likely to be readily understood by the majority of members of public and agencies responding to domestic abuse, but other terms may be less well understood and require further explanation. The reference to “behaviour” covers both a single incident and a course of conduct.
- 74 Subsection (3)(c) refers to “controlling or coercive behaviour”.
- 75 **Controlling behaviour is:** a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
- 76 **Coercive behaviour is:** a continuing act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten their victim.
- 77 Subsection (3)(d) refers to “economic abuse”, the definition of which in subsection (4) provides that behaviours which constitute such abuse must have a substantial and adverse effect on a victim’s ability to acquire, use or maintain money or other property, or to obtain goods or services. The purpose of including the qualification “substantial and adverse effect” is to ensure that isolated incidents, such as damaging someone’s car, or not disclosing financial information, are not inadvertently captured. “Property” would cover items such a mobile phone or a car and also include pets or other animals (for example agricultural livestock). “Goods and services” would cover, for example, utilities such as heating, or items such as food and clothing.
- 78 Subsection (5) provides that a person may indirectly abuse another person through a third party, such as a child or another member of the same household. For example, the abuser may direct behaviour towards a child in the household, in order to facilitate or perpetuate the abuse of her or his partner.

Section 2: Definition of “personally connected”

- 79 This section defines the term “personally connected” for the purposes of the relationship criteria in section 1(2)(a).

80 Subsection (1) sets out the different types of relationships which would qualify the abuser and the abused as being “personally connected”. Subsection (1)(g) provides that two people are personally connected if they are “relatives”. Subsection (3) defines a “relative” by reference to the definition in section 63(1) of the Family Law Act 1996, namely:

- a. the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse, former spouse, civil partner or former civil partner, or;
- b. the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person’s spouse, former spouse, civil partner or former civil partner;

and includes, in relation to a person who is cohabiting or has cohabited with another person, any person who would fall within paragraph (a) or (b) if the parties were married to each other or were civil partners of each other.

Section 3: Children as victims of domestic abuse

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

Part 2: The Domestic Abuse Commissioner

Sections 4 to 6: Domestic Abuse Commissioner

82 Section 4 provides for the establishment of the Domestic Abuse Commissioner, who will be an independent statutory office holder appointed by the Secretary of State (in practice, the Home Secretary). Section 5 makes provisions for the funding of the Commissioner and of the Commissioner’s office, including the payment of remuneration and allowances. Section 6 provides for the staffing of the Commissioner’s office. Such staff will be civil servants seconded to the office of the Commissioner (whether existing civil servants or civil servants specifically recruited for the purpose). Staff working for the Commissioner will be employed by the Home Office and so appointments must comply with civil service terms, conditions and recruitment practices. Individual appointments will be subject to approval by the Commissioner.

Section 7: General function of Commissioner

83 Subsection (1) sets out the general functions of the Commissioner, which will be to encourage good practice in the prevention of domestic abuse; the prevention, detection, investigation and prosecution of domestic abuse-related offences; the identification of perpetrators, victims and children affected by domestic abuse; and the provision of protection and support for victims. The reference to identifying the children affected by domestic abuse is in recognition of the adverse impact of domestic abuse on children. The Commissioner will play an important role in raising awareness of this and promoting good practice in identifying and supporting children affected by domestic abuse.

- 84 Subsection (2) sets out a non-exhaustive list of activities that the Commissioner may carry out in order to fulfil their general functions. Such activities include assessing and monitoring the provision of services to people affected by domestic abuse. In this context the “provision of services” will cover the provision of specialist services for victims and their children, such as refuges or other specialist support services; mainstream provision of statutory services, such as healthcare, which play a role in identifying victims, children and perpetrators and referring them onto more specialist services; and specialist provision for perpetrators, such as perpetrator behaviour change programmes. In carrying out such activities, the Commissioner is expected to cooperate and consult with specialist third sector organisations, public authorities, and other relevant Commissioners such as the Commissioner for Victims and Witnesses and the Children’s Commissioner for England.
- 85 The remit of the Domestic Abuse Commissioner will extend to England and Wales, however, certain of the Commissioner’s functions and powers will apply to England only recognising that the matters within the Commissioner’s remit relate to a mix of reserved and devolved matters in Wales. Moreover, in Wales there are two National Advisers for Violence against Women, Domestic Abuse and Sexual Violence appointed by the Welsh Ministers under section 20 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015. Accordingly, subsections (3) to (6) limit the application of the Commissioner’s functions in Wales. In England, the Commissioner’s responsibilities will cover all services provided by statutory agencies, and in Wales, will cover services provided by statutory agencies which are reserved, principally criminal, civil and family justice agencies such as Police and Crime Commissioners, police forces, the Crown Prosecution Service and the courts. The Commissioner may not assess or monitor services provided by devolved agencies in Wales, such as those responsible for social care or education, or make recommendations to a Welsh authority discharging devolved functions. Nonetheless, subsection (4) enables the Commissioner to consult with and cooperate with devolved Welsh bodies, such as the National Advisers for Violence Against Women, Gender-Based Violence, Domestic Abuse and Sexual Violence.

Section 8: Reports

- 86 Subsection (1) provides the Commissioner with the power to issue reports to the Secretary of State on any matter relating to domestic abuse. The subject matter of such reports is a matter for the Commissioner, but it is expected to be informed by the work programme set out in the Commissioner’s strategic plan (see section 13). Such thematic reports are distinct from the duty to publish an annual report under section 14. All such reports are to be published by the Commissioner (subsection (2)) who must also arrange for them to be laid before Parliament (subsection (6)).
- 87 Subsection (3) requires the Commissioner to send a draft of any report to the Home Secretary prior to its publication. The Home Secretary may, after consultation with the Commissioner, require the Commissioner to omit any material that could risk someone’s safety (in the UK or internationally), or which might prejudice any investigation or prosecution of an offence (subsections (4) and (5)). Subject to this, the content of such reports is a matter for the Commissioner.

Section 9: Advice and assistance

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

- 89 Subsection (2) enables any other person to request advice or assistance from the Commissioner on how they respond to domestic abuse. While it is open to anyone to request such advice, in practice the Commissioner is likely to focus on those agencies where the provision of advice will have the greatest impact, for example, police forces, Police and Crime Commissioners, local authorities and NHS bodies.
- 90 Subsection (3) allows the Commissioner to recoup the costs of such work; the power to charge will mean that the provision of advice or assistance in response to such a request is not at the expense of the Commissioner's wider national role.
- 91 Subsection (4) requires the Commissioner to publish any advice given to any person under subsection (2), subject to omitting any material which the Secretary of State thinks could risk someone's safety (in the UK or internationally), or which might prejudice any investigation or prosecution of an offence (subsections (5) to (7)).

Section 10: Incidental powers

- 92 This section confers incidental powers on the Commissioner to do anything that they consider would support them in carrying out their functions as set out in sections 7 to 9, with the exception of borrowing money.

Section 11: Framework document

- 93 This section makes provision in respect of a framework document. The framework document will in effect be a joint statement of how the Home Secretary and Domestic Abuse Commissioner propose to work together.
- 94 Subsection (2) provides that the framework document will deal with, amongst other things, matters relating to governance (including scrutiny by Parliament and Senedd Cymru (the renamed National Assembly for Wales effective from 6 May 2020)), and the funding and staffing of the Commissioner's office; and matters relating to the exercise of functions of the Commissioner (including, for example, working in partnership with the National Advisers appointed under the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015). It is intended that the framework document will, in addition, set out the process by which the Home Secretary exercises the powers in sections 8(4), 9(6) and 14(4) to direct the Commissioner to remove certain prejudicial information from their reports or advice, including clear time limits for the required consultation with the Commissioner so as not to delay publication.
- 95 Subsections (3) provides that the Commissioner must have regard to the framework document in exercising functions under Part 2. Similarly, subsection (4) provides that the Home Secretary must have regard to the framework document when exercising any functions in relation to the Commissioner.
- 96 The Home Secretary must consult and obtain the approval of the Commissioner before issuing any framework document (subsection (6)). Subsection (7) requires the Secretary of State to consult Welsh Ministers in preparing the first framework document or any subsequent revision which is, in the Home Secretary's view, significant.
- 97 The Secretary of State is required to lay the framework document (and any subsequent revisions) before Parliament and arrange for it to be published in the manner which the Home Secretary considers appropriate (subsection (8)). The Welsh Ministers are required to lay a copy of the report before Senedd Cymru (subsection (9)).

Section 12: Advisory Board

- 98 Subsection (1) requires the Commissioner to establish an Advisory Board, which will provide the Commissioner with advice on the exercise of the Commissioner's functions. Amongst other things, it is expected that such advice would extend to the approach to be taken by the Commissioner in developing their strategic plans (see Section 13).
- 99 The Advisory Board is to have a membership of at least six and not more than ten persons (subsection (2)). Subsection (4) requires the Commissioner to appoint members of the Advisory Board who represent a range of different sectors who have responsibilities for responding to domestic abuse. The requirement to include a representative from the social care sector includes children's as well as adult social care. They will also be required to have an academic to provide evidence and academic rigour to discussions, as well as someone to represent the interests of victims of domestic abuse. An individual could represent the interests of more than one group (for example, they could represent the interests of victims of domestic abuse, while also representing the interests of specialist charities). In addition to this Board, the framework document is expected to provide for the Commissioner to establish a Victims and Survivors Advisory Group, to ensure that they engage directly with victims and survivors in their work.

Section 13: Strategic plans

- 100 This section requires the Commissioner to prepare a strategic plan to provide Parliament, Ministers and the public with information about their priorities, future work programme, and which issues they intend to report on. It is for the Commissioner to determine the content and duration of each strategic plan subject to meeting the minimum requirements specified in subsections (2) and (3). In preparing any plan, the Commissioner is required to consult the Home Secretary, the Advisory Board and any other persons the Commissioner thinks fit (subsection (6)). The Commissioner must arrange to lay the plan before Parliament (subsection (7)). It is open to the Commissioner to revise the plan mid-term, for example to reflect a change of priorities, subject to consultation (subsection (5)).

Section 14: Annual reports

- 101 This section requires the Commissioner to produce an annual report as soon as possible after the end of each financial year and submit this to the Secretary of State who may, following consultation with the Commissioner, direct that the report omits any material which might jeopardise the safety of any person (in the UK or internationally) or prejudice the investigation of an offence. The Commissioner is required to arrange for the report to be laid before Parliament.

Section 15: Duty to co-operate with Commissioner

- 102 Subsection (1) enables the Commissioner to request a specific public authority (as listed in subsection (3), read with the definitions in subsection (7)) to co-operate with them, and subsection (2) requires that body to comply with such a request where it is reasonably practicable to do so. The duty to co-operate could include, for example, responding to requests for information from the Commissioner in pursuance of their general function of assessing and monitoring the provision of services to victims of domestic abuse. The list of specified public authorities does not include the Secretary of State on the basis that the Secretary of State would in any event be expected to cooperate with the Commissioner without the need for an express statutory duty to do so.
- 103 The framework document is expected to require the Commissioner to approach national NHS bodies, namely NHS England (which is legally the National Health Service Commissioning Board) and NHS Improvement (of which the NHS Trust Development Authority and Monitor

are constituent parts), with the same request whenever the Commissioner approach local NHS bodies as defined in subsection (7). This will mean that national NHS strategic bodies are aware of and support requests made to local NHS bodies.

104 Subsections (4) to (6) enable the Secretary of State, by regulations (subject to the negative parliamentary procedure), to add to the list of specified public authorities, remove a public authority so added, or amend the description of a public authority already listed in subsection (3). The Secretary of State is required to consult the Commissioner before making such regulations.

Section 16: Duty to respond to Commissioner's recommendations

105 This section requires a public authority listed in section 15 and a Minister in charge of a ministerial government department to respond to any recommendations directed to that authority which is made in a report published by the Commission under section 8. The response must address each recommendation and specifically state what action the authority or Minister has or will take to address the recommendation or give reasons why they do not propose to act on the recommendation.

106 A public authority's or Minister's response to any recommendations must be published within 56 calendar days of the date of publication of the Commissioner's report in such a manner as the public authority or Minister, as the case may be, considers to be appropriate (subsections (5) and (6)); they are also required to send the response to the Commissioner and, in the case of public authorities, to the Secretary of State (subsection (7)).

Section 17: Duty to send conclusions of domestic homicide review to Commissioner

107 Section 9 of the Domestic Violence, Crime and Victims Act 2004 provides for the police, local and health authorities and probation providers to undertake Domestic Homicide Reviews so that lessons can be learnt from them to prevent future deaths. The guidance issued under section 9 requires a final copy of the report to be shared with the Home Office.

108 Section 17 amends section 9 of the Domestic Violence, Crime and Victims Act 2004 Act to require that all completed Domestic Homicide Review reports are sent to the Domestic Abuse Commissioner.

Section 18: Disclosure of information

109 This section provides for a two-way information sharing gateway. Subsection (1) enables the Commissioner to disclose information to another person or organisation where the information was received by the Commissioner in connection with the Commissioner's functions and if such disclosure would support the discharge by the Commissioner of any of the Commissioner's functions. Conversely, any person or organisation may disclose information to the Commissioner for the purposes of supporting the Commissioner in the carrying out of the Commissioner's functions.

110 These disclosure powers are subject to the restrictions set out in subsections (4) to (6), namely that they do not override patient confidentiality, data protection legislation or prohibitions on disclosure in the Investigatory Powers Act 2016. Subject to that, a disclosure of information under this section is not precluded by any other duty of confidentiality, or restriction on the disclosure of information (howsoever imposed) (subsection (3)).

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

Section 19: Restriction on exercise of functions in individual cases

112 This section prevents the Commissioner from intervening in individual cases, as their role is not as an individual advocate or to respond to cases but to provide strategic oversight of the national response to domestic abuse and hold public authorities to account. However, subsection (2) makes clear that the Commissioner can still consider individual cases in the course of their work in order to understand the national picture, but should not intervene in such cases.

Section 20: Duty to report on domestic abuse services in England

113 This section would require the Domestic Abuse Commissioner to prepare and publish a report on the need for certain domestic abuse services in England (as defined in subsection (3)) and the provision of such services. The report must be published no later than 12 months after this section comes into force (subsections (4) and (5) enable this deadline to be extended on one occasion only by up to six months).

Section 21: Amendments relating to the Commissioner

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

Part 3: Powers for dealing with domestic abuse

Section 22: Power to give a domestic abuse protection notice

115 This section creates a power for a police officer to issue a Domestic Abuse Protection Notice ("DAPN") and sets out the conditions and considerations that must be met in order for the police to issue a DAPN. The purpose of a DAPN is to secure the immediate protection of a victim of domestic abuse from future domestic abuse carried out by a suspected perpetrator. A DAPN prohibits the perpetrator from abusing the victim and, where they cohabit, may require the perpetrator to leave those premises. It may also prohibit the perpetrator from coming within a specified distance of the premises where the victim lives.

116 As a form of civil preventative measure, the issue of a DAPN and Domestic Abuse Protection Order ("DAPO") does not constitute a finding of guilt, but for convenience and to aid understanding of the purpose of these notices and orders, this commentary on Part 3 refers to the person against whom a notice is given or an order is made as the "perpetrator" and the person whom the notice or order is designed to protect as the "victim".

117 The issue of a DAPN triggers a police-led application for a DAPO in a magistrates' court. This is an order which can include prohibitions and requirements necessary to protect the victim from future domestic abuse or the risk of domestic abuse and assist in preventing the perpetrator from carrying out further domestic abuse. Sections 27 to 49 deal with DAPOs.

118 Subsection (1) creates the power for a senior police officer (that is, an inspector or above) to issue a DAPN. The power is available to the 43 territorial forces in England and Wales, the British Transport Police and Ministry of Defence Police.

- 119 Subsection (2) sets out that a notice will be used to protect the victim from domestic abuse committed against them by the perpetrator.
- 120 Subsections (3) and (4) set out the test for issuing a DAPN. A DAPN may be issued where the police officer has reasonable grounds for believing that, firstly, the perpetrator has been abusive towards a person aged 16 or over to whom the perpetrator is personally connected (such abuse may have occurred outside England and Wales (subsection (5)), and that, secondly, the issue of a notice is necessary in order to secure the protection of the victim from domestic abuse or the risk of domestic abuse. “Domestic abuse” is defined in section 1 and “personally connected” in section 2.
- 121 Subsection (6) sets out that the notice may not be given to a person who is under the age of 18.
- 122 Subsection (7) provides that a requirement imposed by a DAPN will have effect throughout the UK. So, for example, if a DAPN required the perpetrator not to make contact in any way with the victim, the perpetrator would breach the DAPN by sending a text message or e-mail while they were in Scotland. Such breach would constitute an offence in England and Wales.

Section 23: Provision that may be made by notices

- 123 This section sets out an exhaustive list of the type of provision that a DAPN may contain. Such provision may include a prohibition on the perpetrator contacting the victim (including via social media or e-mail, which would also apply to contacting the victim at their place of work, even if the perpetrator and victim work in the same place) or prohibit the perpetrator from coming within a certain distance (as specified in the DAPN) of the premises lived in by the victim for the duration of the DAPN. Where the perpetrator lives with the victim, provision may be made to prohibit the perpetrator from evicting or excluding the victim from the premises in question; prohibit the perpetrator from entering the premises; or require the perpetrator to leave the premises. It does not matter for these purposes whether the premises are owned or rented in the name of the perpetrator or the victim.

Section 24: Matters to be considered before giving a notice

- 124 This section sets out particular matters that the police officer must take into consideration before issuing a DAPN. The police officer must consider the welfare of any child whose interests the officer considers relevant. The police officer must take reasonable steps to find out the opinion of the victim as to whether the DAPN should be issued. Consideration must also be given to any representation the perpetrator makes in relation to the issuing of the DAPN. Where the DAPN is to include conditions in relation to the occupation of premises lived in by the victim, reasonable steps must also be taken to find out the opinion of any other person who lives in the premises and is personally connected to the perpetrator (if the perpetrator also lives in the premises) or the victim.
- 125 While the police officer must take reasonable steps to discover the victim’s opinion, and must take this into consideration, the issue of the notice is not dependent upon the victim’s consent (subsection (4)), as the police officer may nevertheless have reason to believe that the victim requires protection from the perpetrator and the issue of the notice is necessary to secure that protection.

Section 25: Further requirements in relation to notices

- 126 Subsection (2) sets out the details that must be specified in a DAPN, which include the grounds for issuing the DAPN; the fact that a power of arrest attaches to the DAPN; the fact that the police will make an application for a DAPO which will be heard in a magistrates’ court within a 48 hour period (excluding Sundays and bank holidays); the fact that the DAPN will continue to be in effect until the DAPO application is determined; and the provisions that may be included in a subsequent DAPO.

- 127 A DAPN must be in writing and served on a perpetrator personally by a constable (subsections (1) and (3)).
- 128 Subsection (4) requires the constable serving a DAPN to ask the perpetrator to supply an address in order to enable the perpetrator to be given notice of the hearing for the DAPO application.
- 129 Subsections (5) to (7) provide that where a DAPN is served on a member of the armed forces (in practice, this is likely to be by the Ministry of Defence Police), and the notice prohibits the perpetrator from entering, or requiring them to leave, service accommodation, the senior officer giving the notice must make reasonable efforts to inform the perpetrator's commanding officer that the DAPN has been issued. The definition of service accommodation in the Armed Forces Act 2006 includes any building or part of a building which is occupied for the purposes of any of Her Majesty's forces but is provided for the exclusive use of a person subject to service law, or of such a person and members of his or her family, as living accommodation.

Section 26: Breach of notice

- 130 Should the subject of a DAPN breach the conditions of the notice, then a constable may arrest the person without warrant.
- 131 Subsection (2) requires that if the perpetrator is arrested, he or she must be held in custody and brought before a magistrates' court that will hear the application for the DAPO. The perpetrator must be brought before this court at the latest within a period of 24 hours (excluding Sundays and bank holidays – see subsection (4)) beginning with the time of arrest (subsection (2)(a)). If the DAPO hearing has already been arranged to take place within that 24-hour period, then the perpetrator is to be brought before the court for that hearing (subsection (2)(b)).
- 132 If the court adjourns the DAPO hearing, by virtue of section 29(8) the court may remand the person either in custody or on bail (subsection (5)). When remanding the perpetrator on bail, the court may impose requirements which appear to the court as necessary to ensure that the person does not interfere with witnesses or otherwise obstruct the course of justice (subsection (7)).
- 133 Subsection (8) enables a person who has been arrested for breach of a DAPN to be brought before a magistrates' court (under subsection (2)(a)) via a live link from the place they are being held in custody.
- 134 Subsection (9) amends section 17 of the Police and Criminal Evidence Act 1984 to give the police a power of entry to effect an arrest for breaching a DAPN if there are reasonable grounds for believing that there has been a breach.

Section 27: Meaning of “domestic abuse protection order”

- 135 This section describes a DAPO for the purposes of Part 3, namely an order containing prohibitions or requirements for the purpose of preventing the perpetrator from being abusive towards his or her victim (who must be aged 16 or over and personally connected to the perpetrator (see section 2 of the Act)).

Section 28: Domestic abuse protection orders on application

- 136 A DAPO may be obtained through a variety of routes. First, a DAPO may be granted by a court on application by certain categories of person (subsection (2)). Second, where a DAPN has been given to a perpetrator by a member of a police force, there is a duty on the relevant chief officer of police of that force to apply to a magistrates' court for a DAPO (subsection (3) and section 29). Third, a DAPO may be made by a family court, criminal court or (in prescribed circumstances) county court during any ongoing proceedings (section 31).

137 In the case of a DAPO made on application, subsection (2) provides that an application may be made by: (a) the person for whose protection the order is sought (namely the victim); (b) the appropriate chief officer of police (as defined in subsection (4)); (c) a person specified in regulations (subject to the negative procedure) made by the Secretary of State; or (d) any other person with the leave of the court. Regulations under subsection (2)(c) may, for example, specify, local authorities, probation service providers, independent domestic abuse advisers and specialist non-statutory support services (for example, refuge workers).

138 Subsections (5) to (7) specify the appropriate court to which an application for a DAPO is to be made. Where an application is made by the police, whether following the issue of a DAPN or as a standalone matter, the application will be to a magistrates' court. Where both the perpetrator and the victim are parties to family or civil proceedings, and it would be open to the court to make a DAPO in those proceedings (see section 31), the victim may apply to the family or county court as the case may be. In all other cases, for example where the applicant is the victim (not involved in existing proceedings) or a specified third party such as a local authority, an application is to be made to the family court.

139 Subsection (8)(a) provides that a magistrates' court may adjourn the hearing of an application for a DAPO. Subsection (8)(b) modifies the application of section 97 of the Magistrates' Court Act 1980. That section requires a magistrate to issue a summons to a witness to give evidence where the magistrate is satisfied that the person is likely to be able to give material evidence or produce any document or thing likely to be material evidence for the purpose of any proceedings before the court and the magistrate is satisfied that it is in the interests of justice to issue the summons. Under subsection (8)(b), section 97 is disapplied in respect of a hearing of an application for a DAPO such that the victim cannot be compelled to attend the hearing or answer questions unless the victim has given oral or written evidence at the hearing.

Section 29: Applications where domestic abuse protection notice has been given

140 This section covers the steps to be taken by the police to apply for a DAPO following issue of a DAPN. This follows on from the requirement set out in section 28(3) for a chief officer of police to apply to a magistrates' court for DAPO once a DAPN has been issued.

141 Subsections (2) and (3) require that the application for a DAPO must be heard in a magistrates' court within 48 hours (excluding Sundays and bank holidays) of the DAPN being issued.

142 Subsections (4) to (6) cover the steps to be taken to give the perpetrator notice of the DAPO hearing. Under subsection (4), notice of the hearing must be given to the perpetrator. If the perpetrator gave an address for the purposes of service at the point of issue of the DAPN, then the notice is deemed given if it is left at that address. Where no address has been given by the perpetrator, then under subsection (6) the court may still hear the application if satisfied that reasonable efforts have been made to give the perpetrator notice of the hearing.

143 Where a court adjourns the hearing of an application for a DAPO, the DAPN is to continue to have effect until the application for a DAPO is determined by the court or is withdrawn (subsection (7)). Where the perpetrator has been arrested for breach of a DAPN and is brought before a court, subsection (8) enables the court to remand the perpetrator whether in custody or on bail and the provisions in section 28 apply.

Section 30: Remand under section 29(8) of person arrested for breach of notice

- 144 This section makes provision for the remand, whether on bail or in custody, of a perpetrator arrested for breach of a DAPN and brought before the court at the hearing of the application for a DAPO. A magistrates' court's powers for dealing with the perpetrator in such circumstances derive from the provisions in the Magistrates' Courts Act 1980 (sections 128 to 131 of which deal with remand). Subsection (2) modifies the application of section 128(6) of the Magistrates' Courts Act 1980 for these purposes. Subject to certain exceptions, section 128(6) prohibits a magistrates' court from remanding a person for more than eight days. One such exception is where a person is remanded on bail, in such a case the person can be remanded for longer than eight days where he or she and the other party consents. In this context, the other party for these purposes is the senior police officer who issued the DAPN.
- 145 Subsections (3) to (5) give the court the power to remand the perpetrator for the purposes of allowing a medical report to be made. In such a case, the adjournment may not be for more than three weeks at a time if the perpetrator is remanded in custody and not for more than four weeks at a time if the perpetrator is remanded on bail.
- 146 Subsection (6) gives the court the same power as it has in respect of an accused person to make an order under section 35 of the Mental Health Act 1983 if it suspects that the perpetrator is suffering from a mental disorder. Section 35 of that Act enables a court to remand an individual to a hospital specified by the court for a report on his or her mental condition. Such a remand may not be for more than 28 days at a time or for more than 12 weeks in total.
- 147 Under subsection (7), when remanding a person on bail, the court may impose requirements which appear to the court as necessary to ensure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

Section 31: Domestic abuse protection orders otherwise than on application

- 148 This section enables a family court, criminal court or (in prescribed circumstances) county court to make a DAPO during ongoing proceedings where, in the course of such proceedings, the court becomes aware of the need to protect a person from domestic abuse. In the case of criminal proceedings in a magistrates' court or the Crown Court, it is open to the court to make a DAPO on the conviction or acquittal of the accused.
- 149 There are a wide range of civil proceedings which may be considered by the county courts, including for example, property and housing disputes. Given the wide range of proceedings and the probability that, in the majority of civil proceedings, allegations of domestic abuse may not be raised, subsection (7) restricts the type of civil proceedings in relation to which the county court could make a DAPO to those that are prescribed in regulations made by the Secretary of State (subject to the negative procedure). The Government's intention is to specify only those types of proceedings where domestic abuse is most likely to be alleged or revealed in evidence.

Section 32: Conditions for making an order

- 150 This section sets out the conditions for making a DAPO. Two conditions must be met, namely that the court is satisfied, on the balance of probabilities (that is, the civil standard of proof), that the perpetrator has been abusive towards the person (aged 16 or over) to be protected by the DAPO (the victim) and that the court considers that the making of a DAPO is necessary and proportionate to protect the victim from domestic abuse or the risk of domestic abuse carried out by the perpetrator (subsections (2) and (3)). An order may therefore be made where domestic abuse has already occurred, and the victim needs protecting from continuing abuse or the threat of abuse or where such abuse occurred outside England and Wales (subsection (4)).

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

Section 33: Matters to be considered before making an order

152 This section specifies particular matters a court must consider prior to making a DAPO. These are: the welfare of any child whose interests the court considers relevant to the DAPO; the opinion of the victim; and, where the DAPO is to include conditions in relation to the occupation of premises lived in by the victim, the opinion of any other person who lives in the premises and is personally connected to the victim or the perpetrator (if the perpetrator also lives in the premises).

153 It is not necessary that the victim consents to the order. Subsection (3) specifies that a court may make a DAPO regardless of whether or not the victim consents.

Section 34: Making of orders without notice

154 Before making a DAPO a court would normally give notice to the perpetrator to inform them of the proceedings and of the hearing at which the application for a DAPO will be considered. However, this section allows a court to make a DAPO without notice where it would be just and convenient to do so. The section does not apply in the case where a perpetrator has been given a DAPN as section 28 makes separate provision for the making of a DAPO without notice in such cases (subsection (3)). Without notice applications would, in practice, only be made in exceptional or urgent circumstances and the applicant would need to produce evidence to the court as to why a without notice hearing was necessary.

155 It may, for example, be appropriate to make a DAPO without giving notice of the application or hearing to the perpetrator where there is reason to believe that the perpetrator may seek to cause significant harm to the victim, or intimidate the victim such that she or he would withdraw the application, or may deliberately seek to evade service of notice of the proceedings. If an order is made without notice, the perpetrator must be given an opportunity, as soon as just and convenient, to make representations about the order at a return hearing on notice (subsection (4)).

Section 35: Provision that may be made by orders

156 This section sets out the types of conditions that may be imposed by a DAPO.

157 Subsections (1) and (2) provide that a DAPO may include any requirements, both prohibitions and restrictions, that the court thinks are necessary to protect the victim from the various forms of domestic abuse set out in the definition of domestic abuse in section 1 or the risk of such abuse. This could include, for example, specific requirements to protect the victim from physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour, or psychological, emotional or economic abuse.

158 Subsection (3) provides that whilst subsections (4) to (6) contain examples of the type of provision that may be made by a DAPO, they are not to be taken as exhaustive. The examples covered by subsections (4) to (6) include prohibitions relating to occupation of premises, contact with the victim and electronic monitoring. A court may decide that other requirements, such as requiring the perpetrator to attend a behavioural change programme or drug or alcohol treatment programme, may be necessary to protect the victim from domestic abuse.

159 Subsection (4) specifies that a DAPO may prohibit the perpetrator from contacting the victim (this relates to all forms of contact, including online contact) or prohibit the perpetrator from coming within a specified distance (as specified in the DAPO) of the premises lived in by the victim. A DAPO may also prohibit the perpetrator from coming within a specified distance of

any other premises specified by the court, or any other premises of a specified description. This will include, for example, any place where the victim may commonly be found, such as the victim's place of work, place of worship, or their children's school.

- 160 Subsection (5) specifies that where the perpetrator and the victim share living premises, the DAPO may: prohibit the perpetrator from evicting or excluding the victim from the premises; prohibit the perpetrator from entering the premises; or require the perpetrator to leave the premises. Such provision may be made irrespective of who owns or rents the premises.
- 161 Subsection (6) provides that a DAPO may include a requirement for the perpetrator to submit to electronic monitoring in order to monitor the perpetrator's compliance with other requirements imposed by the order. This may include, for example, electronic monitoring of the perpetrator's whereabouts to monitor his or her compliance with restrictions on their proximity to the victim's home or to the victim themselves. This may also include the electronic monitoring of alcohol consumption, in order to monitor compliance with a requirement not to consume alcohol.

Section 36: Further provision about requirements that may be imposed by orders

- 162 The requirements attached to a DAPO must not, so far as practicable, conflict with the perpetrator's religious beliefs, interfere with the perpetrator's work or attendance at an educational establishment (so, for example, a prohibition on the perpetrator entering a defined area should not normally cover his or her place of work), or conflict with another court order (subsection (1)). If it is not practicable to avoid the conflict, given the necessity to protect the victim, then the court may still impose the requirement.
- 163 Where a DAPO imposes requirements on the perpetrator, it must specify the person (an individual or an organisation) who is responsible for supervising compliance (subsection (2)). Such individuals or organisations could, for example, include the local authority or a recognised provider of substance misuse recovery services. The court must receive evidence on the suitability and enforceability of a requirement from this person (subsection (3)). The person responsible for supervising compliance with the requirements is subject to certain duties as specified in subsection (5), including a duty to notify the police if the perpetrator has complied with the requirements or failed to do so. In the first instance, it may be appropriate depending on the nature of the requirement to make an application to vary or discharge the DAPO and in the latter instance the perpetrator could be charged with an offence of breach of the order (see Section 39 below). The perpetrator is under a duty to keep in touch with the person responsible for supervising compliance with the requirement (subsection (7)).

Section 37: Further provision about electronic monitoring requirements

- 164 This section sets out the conditions that must be satisfied to enable an electronic monitoring requirement to be attached to a DAPO.
- 165 An electronic monitoring requirement may be imposed to support the monitoring of an individual's compliance with other requirements of the order (for example, the operation of an exclusion zone around the victim's home). Electronic monitoring is undertaken using an electronic tag usually fitted to the subject's ankle.
- 166 An electronic monitoring requirement cannot be imposed on a perpetrator in his or her absence, this is because the perpetrator must be present in court whilst the application to consider electronic monitoring is decided upon, to provide the court with the perpetrator's address for the purpose of the fitting and installation of the electronic monitoring equipment and in order to allow the court to make the enquiry required by subsection (3) (subsection (2)).

- 167 Subsection (4) obliges the court to ensure that electronic monitoring arrangements are available in the relevant local area (as defined in subsection (5)) before imposing an electronic monitoring requirement. In practice, the court would be notified of the availability of such arrangements by the Ministry of Justice.
- 168 Subsection (6) provides that a DAPO which includes an electronic monitoring requirement must specify the person who is responsible for the monitoring (“the responsible person”).
- 169 Subsection (7) provides that the responsible person must be of a description specified in regulations made by the Secretary of State (such regulations are not subject to any parliamentary procedure).
- 170 Subsection (8) sets out the requirements for installation and maintenance of the electronic monitoring apparatus, including the requirements for the perpetrator to submit to monitoring apparatus being fitted or installed, inspected or repaired. This subsection also prohibits the perpetrator from interfering with the monitoring apparatus and requires the perpetrator to take steps to keep the apparatus in working order, including keeping the equipment charged as directed. Failure to adhere to these requirements would constitute a breach of the DAPO (as to which see section 39).

Section 38: Duration and geographical application of orders

- 171 Subsections (1) and (2) provide that a DAPO has effect from the day it is made, unless the perpetrator is already subject to an existing DAPO in which case the new order may take effect when the existing order ceases to have effect.
- 172 Subsection (3) allows a court to make an order for a period specified in the order, until an event specified in the order or until a further order is made. Particular provisions of an order may apply for a more limited period than the order itself (subsection (4)) and, in the case of an electronic monitoring requirement, may not apply for more than 12 months (subsection (5)). Where a DAPO or a requirement of a DAPO is time limited, the duration of the order or requirement (including an electronic monitoring requirement), as the case may be, may be extended on the variation of the DAPO under section 44.
- 173 Subsection (7) provides that a requirement imposed by a DAPO will have effect throughout the UK. So, for example, if a DAPO required the perpetrator not to make contact in any way with the victim, the perpetrator would breach the DAPO by sending a text message or e-mail while they were in Scotland. Such breach would constitute an offence in England and Wales.

Section 39: Breach of order

- 174 This section provides that it is an offence to breach any requirement of a DAPO without reasonable excuse (subsection (1)). In the case of a DAPO made against a perpetrator who was not given notice of the proceedings, the offence only operates from the time he or she was made aware of the existence of the order (subsection (2)).
- 175 The maximum penalty for breach on conviction in a magistrates’ court (“summary conviction”) is imprisonment for a term not exceeding six months, or a fine, or both. The maximum penalty for breach on conviction in a Crown Court (“conviction on indictment”) is imprisonment for a maximum term of five years, or a fine, or both (subsection (5)).
- 176 Subsection (6) provides that a conditional discharge is not an option open to the court in respect of the offence. Subsection (7) makes similar provision where a service court convicts someone of the section 39 offence. A conditional discharge means that if the offender commits another offence within a specified period, they can be sentenced for the first offence at the same time as the new offence.

177 As an alternative to prosecution for the offence under subsection (1), breach of a DAPO may be dealt with as a civil contempt of court (the maximum penalty for which is two years' imprisonment or a fine or both except in a magistrates' court where the maximum penalty is two months' imprisonment or a fine). Subsection (3) and (4) set out that where any breach has been punished as a contempt of court, it may not also be punished as an offence under this section, and vice-versa. This is to ensure that the subject of a DAPO is not punished twice for the same failure to comply with the requirements of the order.

Section 40: Arrest for breach of order

178 As breach of a DAPO is a criminal offence, the perpetrator may be arrested, without warrant, by a constable exercising powers under section 24 of the Police and Criminal Evidence Act 1984 (see subsection (9)).

179 Where a complainant (for example, the victim) wants a breach to be dealt with as a civil matter, that is as a contempt of court, this section provides for a power of arrest in such cases. A person may apply to the court to issue an arrest warrant if the applicant thinks that the perpetrator has breached the DAPO. Once the perpetrator has been arrested and brought before the court, the court may either deal with the contempt of court there and then or remand the perpetrator, whether in custody or on bail, for the case to be dealt with at a later date.

Schedule 1: Further provision about remand under section 40

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

181 Paragraph 5 gives the court the power to remand the perpetrator for the purposes of allowing a medical examination to take place and a report to be made. In such a case, the adjournment may not be for more than three weeks at a time if the perpetrator is remanded in custody and not for more than four weeks at a time if the perpetrator is remanded on bail.

182 Paragraph 5(5) gives the court the same power as it has in respect of an accused person to make an order under section 35 of the Mental Health Act 1983 if it suspects that the perpetrator is suffering from a mental disorder. Section 35 of that Act enables a court to remand an individual to a hospital specified by the court for a report on his mental condition. Such a remand may not be for more than 28 days at a time or for more than 12 weeks in total.

183 Under paragraph 8, when remanding a person on bail, the court may impose requirements which appear to the court as necessary to ensure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

Section 41: Notification requirements

184 This section requires the perpetrator to notify the police of their name, including any aliases, and home address within three days beginning with the date of the making of the DAPO. Any change of name or home address, or any adoption of a new name, must also be notified to the police within three days of the event. Such information will assist the police in monitoring compliance with the DAPO and in managing the risk posed by the perpetrator.

185 The perpetrator's "home address" for these purposes is defined in section 56(1) as meaning either the person's sole or main residence in the UK or, where they have no such residence, the address or location in the UK where they can regularly be found. If a person can regularly be found at two or more locations (for example at a family home at the weekend and at a flat near their work during the week) they would need to select one of these places and provide details of its address. Equally, if a person is homeless, they would need to provide details of one location where they can regularly be found. Subsection (6) requires a person to notify the

police if they cease to have a home address as defined in section 56(1) (for example, if they leave the UK to live abroad). Section 56(3) provides that references to changing home address include cases where a person acquires a home address in the UK after a period in which they did not have such an address (for example, if they have returned to the UK after a period living abroad).

186 Subsection (7) enables the Secretary of State, by regulations (subject to the affirmative procedure), to specify further notification requirements which a court may impose, on a case-by-case basis, when making or varying a DAPO. Where additional notification requirements are imposed by a court, the perpetrator must supply the required information to the police.

187 Certain sex offenders and persons subject to a stalking protection order are already subject to notification requirements by virtue of provisions in the Sexual Offences Act 2003 and the Stalking Protection Act 2019, accordingly where the subject of a DAPO is already liable to one or other of these notification requirements (or already the subject of another DAPO), the provisions in this section do not apply to avoid unnecessary duplication (subsection (8)). However, if the notification requirements under one or other of these enactments or another DAPO cease to apply to the subject of a DAPO then the requirements of this section will instead apply. In such a case, the perpetrator would need to notify the police of his or her name(s) and home address within three days of the notification requirements under the Sexual Offences Act, Stalking Protection Act or other DAPO, as the case may be, ceasing to apply (subsection (9)).

Section 42: Further provision about notification under section 41

188 This section sets out where and how the subject of a DAPO must notify the police depending on where their home address is located, how notification must be acknowledged, and the police powers to verify the perpetrator's identity when they attend at a police station to notify.

189 Subsections (1) and (2) set out that if the defendant's home address is in England or Wales, then they must attend at a police station in their local police area to notify. Where the perpetrator's home address is outside of England or Wales, then they must attend at a police station in the local police area in which the court which made the DAPO in respect of them is located. This will be a police station in England or Wales. A scenario in which this provision may apply is if the perpetrator moves to Scotland or Northern Ireland.

190 Where the perpetrator is notifying the police of a change of address as required by Section 41(5), the notification must be made at a police station within the police area where the perpetrator now resides.

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

192 Subsection (5) and (6) enables the police to take the fingerprints and/or a photograph of the perpetrator to verify his or her identity when the perpetrator attends a police station under the provisions of this section.

Section 43: Offences relating to notification

193 This section provides that it is a criminal offence to fail to comply with the notification requirements without reasonable excuse or knowingly to provide the police with false information. It will be for a court to decide what constitutes a reasonable excuse in a particular case.

194 This is an either way offence, meaning that it can be heard in either a magistrates' court or the Crown Court depending on the seriousness of the offence. The penalty for breach on conviction by a magistrates' court ("summary conviction") is imprisonment for a term not

exceeding six months, or a fine, or both (subsection (3)(a)). The penalty for breach on conviction by a Crown Court (“conviction on indictment”) is imprisonment for a maximum term of five years, or a fine, or both (subsection (3)(b)).

Section 44: Variation and discharge of orders

- 195 This section sets out how a DAPO may be varied or discharged, who may apply for such variation or discharge and to which court an application should be made. A variation could include simply extending the duration of an order which has been made for a specified period.
- 196 Subsection (2) provides that a court may vary or discharge an order either on application by a person listed in subsection (3) or by the court of its own volition (if it would have been open to the court to make a DAPO in the circumstances provided for in section 31). The court must hear from specified interested parties before making a decision to vary or discharge an order (subsections (4) and (5)). The court must hear from any relevant chief officer of police who wishes to be heard (subsection (4)(a)) and in cases where the victim is applying to have the order discharged or made less onerous, the court must also hear from the victim (subsection (4)(b)). This is in order to help the court assess whether the victim is being coerced or intimidated.
- 197 The court in determining an application under this section, or determining of its own volition to vary or discharge a DAPO, may make such an order as it considers appropriate (subsection (8)), but before making a decision to vary a DAPO (by removing a requirement imposed by it or by making such requirement less onerous) or discharge a DAPO, the court must consider and be satisfied that doing so would not compromise the safety of the victim from abuse by the perpetrator (subsections (11) and (13)).

Section 45: Variation and discharge: supplementary

- 198 This section sets out the relevant court at which proceedings in relation to the variation and discharge of a DAPO are to take place. Generally, such proceedings are to take place in the court where the original DAPO was made, but this is subject to certain exceptions, for example where a DAPO was made in a magistrates’ court, proceedings to vary or discharge the order may take place in any other magistrates’ court acting in the local justice area in which that court acts (subsection (2)). The reference to “the court” in subsection (1) is to a particular legal jurisdiction rather than a physical court building. The family court, the Crown Court and the county court each constitute a single jurisdiction so, for example, where a DAPO was made in the family court, proceedings in respect of the variation or discharge of an order can, if necessary, take place at any location where the family court sits.
- 199 Subsection (9) provides that where a DAPO is varied and the perpetrator is not given notice of the variation, the perpetrator can only breach the order in relation to non-compliance with any new requirement from the time when they are aware of the making of the variation.

Section 46: Appeals

- 200 This section sets out the circumstances in which an affected person may appeal against a decision of a court in respect of a DAPO.
- 201 Subsections (1) to (4) provide that the perpetrator, victim, or the person who made the application for a DAPO may appeal against a court’s decision to make or decline to make an order. Subsection (5) and (6) enable such persons, together with the police, to appeal against a court’s decision to vary or discharge an order, or a decision to decline to vary or discharge an order. Subsections (1) and (2) provide firstly that either the applicant or victim may appeal against any decision of a court following an application made under section 28 and, secondly,

that the perpetrator may appeal against the making of a DAPO made on application under that section. Subsections (3) and (4) provide that the perpetrator may appeal against the making or variation of a DAPO made or varied in a criminal court during ongoing proceedings as described in section 31; and in such a case, the making or variation of an order would be treated as a sentence for the purposes of the appeal. Subsection (5) provides that those named in subsection (6) may appeal against a decision of the court made under section 44 on an application to vary or discharge a DAPO. In all other cases, in particular appeals against decisions made by the family or civil courts, no express provision is made here as the existing rights of appeal against decisions made in those courts will apply.

202 Subsection (7) sets out the court to which an appeal is to be made. Appeals from a decision of a family or county court judge should be made in accordance with existing provision (see in particular the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2014 (SI 2014/602), as amended, and the Access to Justice Act 1999 (Destination of Appeals) Order 2016 (SI 2016/917) which are summarised in table format in the Family Procedure Rules 2010 (Practice Direction 30A) and Civil Procedure Rules 1998 (Practice Direction 52), respectively). For appeals from a criminal court, the destination of appeal is as follows:

- For a decision made by a magistrates' court – the Crown Court;
- For a decision made by the Crown Court – the Court of Appeal.

Section 47: Further provision about appeals

203 In any case where the relevant chief officer of police is not the appellant, subsections (1) and (2) provide that the court must afford them the opportunity to be heard before determining an appeal; the relevant chief officer of police would automatically have such a right to be heard in any case where they are the appellant (as would any other appellant).

204 Subsections (3) and (4) set out the powers of the Crown Court or Court of Appeal (Criminal Division) when hearing an appeal under section 46. Similar powers are conferred on the other appellate courts by existing procedure rules. Unless the court orders otherwise, an appeal will be a review of the lower court's decision rather than a rehearing.

205 The effect of subsection (5) is that where an appellate court confirms or varies a DAPO on appeal, or makes a DAPO on appeal, subsequent proceedings in relation to a further variation or discharge of the order should be issued in the lower court.

Section 48: Nature of certain proceedings under this Part

206 Subsection (1) provides that proceedings before a magistrates' court or the Crown Court in respect of the making of a DAPO on the conclusion of criminal proceedings, or in respect of the variation or discharge of a DAPO made in such circumstances, are civil proceedings.

207 Subsection (2) provides that, a magistrates' court or the Crown Court, may, in deciding whether to make a DAPO on the conclusion of criminal proceedings, consider evidence which was inadmissible in the criminal proceedings. This could include hearsay or bad character evidence.

208 Subsection (3) enables a magistrates' court or the Crown Court to adjourn proceedings, for example after passing sentence on a perpetrator, to enable further enquiries to be made before determining whether to make a DAPO.

209 Subsection (4) provides that where a perpetrator has been convicted of an offence but is conditionally or absolutely discharged, it is still open to the court to make or vary a DAPO in respect of that person. Where a conditional discharge is given, this means that if the offender commits another offence within a specified period, they can be sentenced for the first offence

at the same time as the new offence. Where an absolute discharge is given, this means that the court does not impose any punishment for the offence (for example, a fine, community sentence or imprisonment) but the offender receives a criminal record.

Section 49: Special measures for witnesses

210 This section applies, with appropriate modifications, the special measures provisions in Chapter 1 of Part 2 of the YJCEA 1999 to proceedings under Part 3 of the Act. This means that victims of domestic abuse would be eligible for special measures when giving evidence in relation to proceedings in respect of a DAPO.

Section 50: Guidance

211 This section places a duty on the Secretary of State to issue guidance to the police and other persons eligible to apply for a DAPO by virtue of being specified in regulations made under section 28(2)(c) (subsections (1) and (2)). Such persons are under a duty to have regard to the guidance when exercising functions under this Part (subsection (3)).

212 Amongst other things, the statutory guidance will provide information about how the various pathways for applications for a DAPO work and provide practical toolkits for professionals to use when making applications.

Section 51: Data from electronic monitoring: code of practice

213 This section requires the Secretary of State to issue a code of practice relating to the processing of data gathered in the course of electronic monitoring of individuals under electronic monitoring requirements imposed by DAPOs.

214 The processing of such data will be subject to the requirements of the General Data Protection Regulation and the Data Protection Act 2018. The code of practice issued under this section is intended to set out the appropriate tests and safeguards for the processing of such data, in order to assist with compliance of the data protection legislation. For example, it is envisaged that the code will set out the length of time for which data may be retained and the circumstances in which it may be permissible to share data with the police to assist with crime detection.

Section 52: Powers to make other orders in proceedings under this Part

215 Subsection (1) inserts a reference to Part 3 of the Act into section 8(4) of the Children Act 1989. By doing so, the Act amends the Children Act 1989 to provide that proceedings under Part 3 of the Domestic Abuse Act 2021 are “family proceedings” for the purposes of the Children Act 1989. The effect of this amendment is to enable a judge (sitting in the family court or Family Division of the High Court) hearing an application to make or vary a DAPO to make an interim care order, or exercise other powers available to the court under the Children Act 1989, in the same set of proceedings. This enhances the court’s ability to protect children who are exposed to domestic abuse at the point of dealing with such abuse, and without requiring the issue of separate applications and fresh proceedings (as would otherwise be the case). An interim care order means that the local authority would have the power to make decisions about where the child lives and the welfare of the child.

216 Subsection (2) inserts a reference to Part 3 of the Act into section 63(2) of the Family Law Act 1996. By doing so, the Act amends the definition of “family proceedings” for the purposes of Part 4 of the Family Law Act 1996 to include within the definition proceedings under Part 3 of the Domestic Abuse Act 2021. The effect of this amendment is to enable a judge (sitting in the family court or Family Division of the High Court) hearing an application to make or vary a DAPO to make an occupation or non-molestation order, or a forced marriage protection order in the same set of proceedings.

Section 53: Proceedings not to be subject to conditional fee agreements

217 This section amends section 58A of the Courts and Legal Services Act 1990 so as to add proceedings under Part 3 of the Act that take place in the family court or the Family Division of the High Court to the list of proceedings that cannot be the subject of an enforceable conditional fee agreement. Conditional fee agreements allow clients to agree with their lawyers that the lawyer will not receive all or part of his or her usual fees or expenses if the case is lost; but that, if it is won, the client will pay an uplift to the solicitor in addition to the usual fee.

Section 54: Consequential amendments of the Sentencing Code

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

Section 55: Repeal of provisions about domestic violence protection notices and orders

219 This section repeals provisions in the Crime and Security Act 2010 which made provision for the precursor domestic violence protection notices and orders. Notices and orders made under those provisions will continue to have effect notwithstanding the repeal.

Section 56: Interpretation of Part 3

220 This section defines terms used in Part 3.

Part 4: Local authority support

Section 57: Support provided by local authorities to victims of domestic abuse

221 Subsection (1) places a duty on each relevant local authority in England (that is tier one local authorities namely county councils, unitary district councils, the Greater London Authority and the Council of the Isles of Scilly – see section 61) to assess the need for “accommodation-based support” for victims and their children within its area (subsection (1)(a)), to prepare and publish a strategy for the delivery of the support within its area (subsection (1)(b)), and to monitor and evaluate the effectiveness of this strategy (subsection (1)(c)).

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

- Overall management of services within safe accommodation – including, the management of staff, payroll, financial management of services and maintaining relationships with the local authority (such functions will often be undertaken by a service manager);
- Support with the day-to-day running of the service, for example scheduling times for counselling sessions, group activities etc.;

- Advocacy support – development of personal safety plans, liaison with other services (for example, GPs and social workers, welfare benefit providers);
- Domestic abuse-prevention advice – support to assist victims to recognise the signs of abusive relationships, to help them remain safe (including online) and to prevent re-victimisation;
- Specialist support for victims with relevant protected characteristics and / or complex needs, for example, translators and interpreters, faith services, mental health advice and support, drug and alcohol advice and support, and immigration advice;
- Children’s support – including play therapy and child advocacy;
- Housing-related support – providing housing-related advice and support, for example, securing a permanent home and advice on how to live safely and independently; and
- Counselling and therapy for both adults and children.

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

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

224 Subsection (3) provides that a relevant local authority must, in carrying out its functions, give effect to the strategy.

225 Subsection (4) requires that prior to publication of a strategy the relevant local authority must consult the domestic abuse local partnership board established under section 58, local authorities within the relevant local authority’s area (that is tier two local authorities, namely non-unitary district councils or London Boroughs) and any other persons considered appropriate (for example, local providers of domestic abuse services).

226 Subsection (5) requires a relevant local authority to keep the strategy under review. The frequency of such reviews may be determined in regulations made by the Secretary of State (subsection (10)(e)). A relevant local authority may make any changes to or replace the strategy, and must publish any revised or replacement strategy. A relevant local authority must also keep under review any effect of that strategy on the provision of other local authority support for victims of domestic abuse or their children that is provided or funded by the authority (see the definition of “other local authority support” in subsection (6); in effect, the definition covers other local authority support provided in its area which is not accommodation based support).

- 227 Subsections (7) and (8) require tier two local authorities to co-operate with the relevant (tier one) local authority in any way that the tier one local authority considers necessary for the purpose of discharging its functions under this section, so far as is reasonably practicable, for example, through the provision of information.
- 228 Subsections (9) to (11) enable the Secretary of State, by regulations, to make provision about the preparation and publication of domestic abuse support strategies. Such regulations are intended to provide for a consistent approach to these strategies across England. Regulations may specify, amongst other things, the date by which the first strategy must be published, the frequency with which a relevant local authority must review any effect of its strategy on the provision of other local authority (domestic abuse) support in its area and the procedure to be followed in preparing strategies.
- 229 This section places a duty on relevant local authorities to appoint a domestic abuse local partnership board for the purposes of advising the authority on the exercise of its functions under section 57 and the provision of other local authority support in the authority's area.
- 230 It sets out the minimum required members of the board to best represent local agencies. In addition to a representative from the relevant local authority (who is expected to chair the board), the board membership must include at least one person representing the interests of: tier two local authorities in the relevant local authority's area; victims of domestic abuse; children of domestic abuse victims; charities and other voluntary organisations that work with victims of domestic abuse; persons who provide or have functions relating to health care services; and policing and criminal justice agencies. Subject to these minimum requirements, the composition of the board is a matter for the relevant local authority.

Section 59: Annual reports

- 231 This section places a duty on relevant local authorities to submit an annual report, as soon as reasonably practicable after the end of each financial year, to the Secretary of State on the exercise of the functions under this Part. This annual reporting requirement will help the Government and others to monitor how the new duties on local authorities are working, understand where there may be challenges and how the funding is being used, and help identify and disseminate good practice.
- 232 The Secretary of State may, by regulations, make provision about both the form and content of the annual report (subsection (2)). A standardised annual reporting framework will assist local authorities in reporting back to the Government on the delivery and outcomes of the new duties, as well as better enabling comparisons to be made across local authority areas.

Section 60: Guidance

- 233 This section places a duty on the Secretary of State to issue guidance to local authorities in England relating to the exercise of their functions under Part 4 (subsection (1)) and enables the Secretary of State to revise the guidance from time to time (subsection (3)). Local authorities are under a duty to have regard to the guidance when exercising functions under this Part (subsection (2)). The purpose of this guidance is to assist local authorities in the delivery of support to victims of domestic abuse and their children in safe accommodation. Any guidance issued under this section and any revisions to the guidance must be published (subsection (6)).
- 234 This section also places a duty on the Secretary of State to consult with the Domestic Abuse Commissioner, local authorities and other such persons the Secretary of State considers appropriate before issuing or revising such guidance (subsection (4)), except where the proposed revisions to the guidance are insubstantial (subsection (5)).

Section 61: Interpretation of Part 4

235 This section defines terms used in Part 4.

Part 5: Protection for victims and witnesses in court

Section 62: Special measures in criminal proceedings for offences involving domestic abuse

236 This section extends the eligibility for assistance given to intimidated witnesses in criminal proceedings to complainants of any offence where it is alleged that the behaviour of the accused amounted to domestic abuse (as defined by section 1 of the Act). As a result, complainants of offences involving domestic abuse are to be automatically treated as eligible for special measures on the grounds that they are in fear or distress about testifying. This is unless they tell the court that they do not want to be so eligible.

237 Special measures apply to witnesses who are giving evidence in criminal courts. In respect of intimidated witnesses, these measures include screening the witness from the accused, giving evidence by live link, giving evidence in private, removal of wigs and gowns, video recorded evidence in chief and video recorded cross-examination or re-examination⁴.

238 Complainants of sexual offences and modern slavery offences as well as witnesses in relation to certain offences involving guns and knives are already deemed to be automatically eligible on grounds of fear and distress (unless the witness does not want to be eligible). The effect of this section, in practice, is to extend coverage to complainants of offences involving or at risk of domestic abuse so that they are also automatically eligible for special measures (if they want to be).

239 Section 62 also provides that a special measures direction providing for the witness's evidence to be given in private can be given in cases where the proceedings relate to domestic abuse-related offences. Currently, such a direction can only be made in cases relating to sexual offences or modern slavery offences, or where it appears to the court that there are reasonable grounds for believing that any person other than the accused has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings (section 25 of the YJCEA 1999).

Section 63: Special measures in family proceedings: victims of domestic abuse

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

⁴ Pre-recorded cross-examination and re-examination under section 28 of the YJCEA 1999 is being rolled out in England and Wales using a phased approach. Currently, section 28 has been commenced for vulnerable witnesses in all Crown Court centres, and for complainants of sexual offences and modern slavery offences in three Crown Courts.

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

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

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

244 As eligibility for victims of domestic abuse will be assumed, the court will instead proceed straight to the second part of the test in Rules 3A.4 and/or 3A.5 – that is, determining whether it is necessary to make one or more participation directions. As with the practical effect of section 62, this section amends the law concerning eligibility for special measures but does not provide automatic access or guarantee the provision of special measures in any given case.

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

245 This section provides that Court Rules must make provision to enable the court to make a special measures direction in relation to victims and alleged victims of specified offences (to be specified in regulations made by the Lord Chancellor), and victims, or those at risk of being victims, of domestic abuse, and to require the court to consider whether the quality of their evidence or their participation in the proceedings is likely to be diminished by reason of vulnerability.

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

Section 65: Prohibition of cross-examination in person in family proceedings

247 This section inserts new Part 4B (comprising new sections 31Q to 31Z) into the Matrimonial and Family Proceedings Act 1984 (“MFPA 1984”) to automatically prohibit perpetrators or alleged perpetrators of abuse from cross-examining their victims in person in the family courts in certain circumstances in England and Wales, and vice versa, and give such courts discretion to prevent cross-examination in person in other circumstances where it would affect the quality of the witness' evidence or cause significant distress. It also gives family courts the power to, in certain circumstances, appoint a publicly-funded qualified legal representative to conduct cross-examination in the interests of the party prohibited or prevented from cross-examining in person

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

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

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

249 Section 31R provides that any person involved in family proceedings who has an unspent conviction or caution (as defined in subsection (5)) for, or who is charged with, a “specified offence” cannot cross-examine in person the victim of that offence, or alleged offence, during the course of the family proceedings. The section also provides that the victim or alleged victim cannot, in person, cross examine the perpetrator or alleged perpetrator. The prohibition

will not apply if the conviction is spent (under the 1974 Act) unless evidence in relation to the conviction or caution is admissible, or may be required, in the proceedings by virtue of section 7(2), (3), or (4) of that Act (which disapply the provisions of the 1974 Act in respect of specified, or prescribed, criminal or other judicial proceedings, including where justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions). If cross-examination takes place in breach of the provision, because the court was not aware of the conviction, caution or charge at the time the cross-examination took place, then the validity of decisions made by the court is not affected.

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

251 The offences that are relevant here are to be specified in regulations to be made by the Lord Chancellor under the power in section 31R(5). It is intended to use regulations to specify a comprehensive list of domestic abuse-related and other violent and sexual offences, including child abuse offence, based on the list of offences set out in documents issued by the Lord Chancellor as referred to in Schedules 1 and 2 to the Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098). The regulations may also specify offences which have been repealed and replaced but which remain in force insofar as they could be prosecuted in respect of conduct committed prior to their repeal. In addition, it is intended to make provision in relation to any similar domestic abuse-related, violent or sexual service disciplinary offences.

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

252 Section 31S makes provision for a prohibition on cross-examination in person when an “on-notice protective injunction” is in place. The person who is protected by the injunction may not be cross-examined directly by the person against whom the injunction is in force, and the person against whom the injunction is in force may not be cross-examined directly by the person protected by the injunction.

253 Subsection (5) sets out what is meant by “on notice” for the purposes of this section.

254 The first instance is where the court is satisfied that there has been a hearing at which the person against whom the injunction was made had a chance to ask for it to be varied or set aside. This might occur where the court has made an injunction to last for a given period, without the person against whom it was made having been told that the court was considering making the injunction (a “without notice” injunction). If there has since been a hearing which the person against whom the injunction was made was informed about, and at which that person could have asked the court to vary or remove the order, then that injunction will be considered “on notice” for the purpose of this section.

255 The second instance is where the injunction was made at a hearing and the court is satisfied that both the person protected by the injunction and the person against whom it was made had been informed about the hearing.

256 Section 31S(4) provides that “protective injunctions” are to be specified in regulations made by the Lord Chancellor. It is intended to use those regulations to specify a comprehensive list of protective injunctions or similar, based on the definition of “protective injunction” in paragraph 22 of Schedule 1 to the Civil Legal Aid (Procedure) Regulations 2012, as amended. It is intended to include, for example, non-molestation orders made under the Family Law Act 1996 and DAPOs made under Part 3 of the Act.

257 Section 31S(3) confirms that if cross-examination takes place in breach of the provision, because the court was not aware of the existence of the on-notice protective injunction at the time the cross-examination took place, then the validity of decisions made by the court is not affected.

New section 31T – Prohibition of cross-examination in person: evidence of domestic abuse

258 Section 31T makes provision for a prohibition on cross-examination in person where “specified evidence” is adduced that a witness in the proceedings has been the victim of domestic abuse perpetrated by a party to the proceedings (or vice versa). Domestic abuse has the meaning given in section 1 of the Act.

259 Section 31T(3) provides that “specified evidence” is evidence specified, or of a description specified, in regulations made by the Lord Chancellor. It is intended to broadly replicate the list of evidence that is currently specified for the purposes of accessing civil legal aid (set out in Schedule 1 to the Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098), as amended). Such evidence includes, for example, a copy of a finding of fact made in legal proceedings in the UK, a letter or report from a health professional, a letter from any person who is a member of a local safeguarding forum or a letter from an independent domestic violence advisor.

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

260 Section 31U provides that, in addition to the automatic bar on cross-examination in person provided for in sections 31R to 31T, there are circumstances where the court has the discretion to prohibit cross-examination in person by giving a direction to that effect. The discretion can be exercised if someone involved in the proceedings applies for a direction or if the court itself raises the issue. The court can prohibit the cross-examination in person if it is satisfied that either the “quality condition” or the “significant distress condition” is met and that it will not be contrary to the interests of justice to direct that cross-examination by a party in person is prohibited. This discretionary power is intended to ensure that the court can prohibit cross-examination in person wherever it is needed, including in domestic abuse-related cases where the automatic prohibition does not apply, or where a party may experience significant distress or have the quality of their evidence compromised for reasons other than domestic abuse.

261 The “quality condition” will be met if the quality of the witness’s evidence on cross-examination would be likely to be diminished if the cross-examination is conducted by a party in person, and that the quality of the evidence would likely be improved if the court prohibited that cross-examination in person.

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

263 Section 31U(5) sets out factors that the court must consider when deciding whether the “quality condition” or “significant distress condition” is met. This includes views expressed by the witness or the party, the likely content of the questions to be asked, any finding of fact that has been made about the party’s or the witness’s behaviour, how the party or the witness is acting in the proceedings and the relationship between the party and the witness. This list is not exhaustive, and the court may have regard to other things when deciding if the “quality condition” or “significant distress condition” is met.

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

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

- 265 Section 31V provides more detail in relation to directions given by the court under section 31U. This covers how long a direction made under section 31U may last and the circumstances where a court may revoke a direction it has given under section 31U.
- 266 The court must provide its reasons for giving, refusing or revoking directions under section 31U (section 31V(4)).
- 267 It is also intended that there should be procedural rules of court in relation to these directions. The Family Procedure Rule Committee will be invited to consider making such rules under existing rule-making powers in the Courts Act 2003.

New section 31W – Alternatives to cross-examination in person

- 268 Section 31W makes provision in relation to alternatives to cross-examination in person. It applies where a party is prevented from cross-examining in person under section 31R to 31U.
- 269 Firstly, the court must consider whether there is a “satisfactory alternative” means for the witness to be cross-examined, or of obtaining the evidence that the witness might have given under cross-examination. An example of this might include the judge putting questions to the witness, where appropriate.
- 270 If the court concludes that there are no satisfactory alternative means available, the court will ask the party who has been prohibited from direct cross-examination to arrange, within a specified time, a qualified legal representative (as defined in section 31W(8)(b)) to cross-examine the witness on their behalf, and to notify the court of the arrangements.
- 271 If, after the specified time, the party has either notified the court that there is no qualified legal representative to act for them for the purposes of cross-examining the witness, or the court has not received any notification and it appears to the court that no legal representative will cross-examine the witness, then the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a court-appointed qualified legal representative. If the court decides it is necessary in the interests of justice, then it must appoint such a qualified legal representative to cross-examine the witness in the interests of the party. This legal representative, appointed by the court, is not responsible to the party.

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

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

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

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

New section 31Z – Regulations under Part 4B

- 274 Section 31Z sets out that the regulations made under powers included in new Part 4B will be made via statutory instruments, subject to the negative resolution procedure.

Section 66: Prohibition of cross-examination in person in civil proceedings

275 This section inserts new Part 7A (comprising sections 85E to 85N) into the Courts Act 2003 to make provision about the cross-examination of vulnerable witnesses in civil proceedings in England and Wales, including provision to automatically prohibit perpetrators or alleged perpetrators of abuse from cross-examining their victims in person in the civil courts, and vice versa, in certain circumstances in England and Wales, and gives such courts discretion to prevent cross-examination in person in other circumstances where it would affect the quality of the witness's evidence or cause significant distress. It makes provision to enable regulations to give civil courts the power to appoint a publicly funded qualified legal representative to conduct cross-examination in the interests of the party prohibited from cross-examining in person.

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

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

New section 85F – Prohibition of cross-examination in person: victims of offences

277 Section 85F provides that any person involved in civil proceedings who has an unspent conviction or caution (as defined in subsection (5)) for, or who is charged with, a “specified offence” cannot cross-examine in person the victim of that offence, or alleged offence, during the course of the civil proceedings. The section also provides that the victim or alleged victim cannot cross examine in person the perpetrator or alleged perpetrator. The prohibition will not apply if the conviction is spent (under the 1974 Act) unless evidence in relation to the conviction or caution is admissible, or may be required, in the proceedings by virtue of section 7(2), (3), or (4) of that Act (which disapply the provisions of the 1974 Act in respect of specified, or prescribed, criminal or other judicial proceedings, including where justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions).

278 If cross-examination takes place in breach of the provision, because the court was not aware of the conviction, caution or charge at the time the cross-examination took place, then the validity of decisions made by the court is not affected.

279 Section 85F(6) makes clear that the prohibition applies even where an order has been made for discharge, whether absolute or conditional.

280 The offences that are relevant here are to be specified in regulations to be made by the Lord Chancellor under the power in section 85F(5). It is intended to use regulations to specify a comprehensive list of domestic abuse-related and other violent and sexual offences, including child abuse offence, based on the list of offences set out in documents issued by the Lord Chancellor as referred to in Schedules 1 and 2 to the Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098). The regulations may also specify offences which have been repealed and replaced but which remain in force insofar as they could be prosecuted in respect of conduct committed prior to their repeal. In addition, it is intended to make provision in relation to any similar domestic abuse-related, violent or sexual service disciplinary offences.

New section 85G – Prohibition of cross-examination in person: persons protected by injunctions etc

281 Section 85G makes provision for a prohibition on cross-examination in person when an “on notice protective injunction” is in place. The person who is protected by the injunction may not be cross-examined directly by the person against whom the injunction is in force, and the person against whom the injunction is in force may not be cross-examined directly by the person protected by the injunction.

- 282 Subsection (5) sets out what is meant by “on notice” for the purposes of this section.
- 283 The first instance is where the court is satisfied that there has been a hearing at which the person against whom the injunction was made had a chance to ask for it to be varied or set aside. This might occur where the court has made an injunction to last for a given period, without the person against whom it was made having been told that the court was considering making the injunction (a “without notice” injunction). If there has since been a hearing which the person against whom the injunction was made was informed about, and at which that person could have asked the court to vary or remove the order, then that injunction will be considered “on notice” for the purpose of this section.
- 284 The second instance is where the injunction was made at a hearing and the court is satisfied that both the person protected by the injunction and the person against whom it was made had been informed about the hearing.
- 285 Section 85G(4) provides that “protective injunctions” are to be specified in regulations made by the Lord Chancellor. It is intended to use those regulations to specify a comprehensive list of protective injunctions or similar, based on the definition of “protective injunction” in paragraph 22 of Schedule 1 to the Civil Legal Aid (Procedure) Regulations 2012, as amended.
- 286 Section 85G(3) confirms that if cross-examination takes place in breach of the provision, because the court was not aware of the existence of the on-notice protective injunction at the time the cross-examination took place, then the validity of decisions made by the court is not affected.

New section 85H – Prohibition of cross-examination in person: evidence of domestic abuse

- 287 Section 85H makes provision for a prohibition on cross-examination in person where “specified evidence” is adduced that a witness in the proceedings has been the victim of domestic abuse perpetrated by a party to the proceedings (or vice versa). Domestic abuse has the meaning given in section 1 of the Domestic Abuse Act.
- 288 Section 85H provides that “specified evidence” is evidence specified, or of a description specified, in regulations made by the Lord Chancellor. It is intended to broadly replicate the list of evidence that is currently specified for the purposes of accessing civil legal aid (set out in Schedule 1 to the Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098), as amended). Such evidence includes, for example, a copy of a finding of fact made in legal proceedings in the UK, a letter or report from a health professional, a letter from any person who is a member of a local safeguarding forum or a letter from an independent domestic violence advisor.

New section 85I – Direction for prohibition of cross-examination in person: other cases

- 289 Section 85I provides a power for the court to give a direction prohibiting cross-examination in person if none of new sections 85F to 85H operates to prevent the party from cross-examining the witness and where the conditions in section 85I(1)(b)(i) and (ii) of the Courts Act 2003 are met. In effect, the court may give a direction in one of two circumstances, namely where cross examination in person by a party (that is, the perpetrator) is likely to diminish the quality of the witness’s (that, is the victim’s) evidence, or would cause significant distress to the witness, and it would not be contrary to the interests of justice to give the direction. This section will apply reciprocally so as to prevent a victim of abuse from having to cross-examine their perpetrator.
- 290 Section 85I(2) and (3) sets out what constitutes the “quality condition” and “significant distress condition”.

291 The “quality condition” will be met if the quality of the witness’s evidence on cross-examination would be likely to be diminished if the cross-examination is conducted by a party in person, and that the quality of the evidence would likely be improved if a direction was given.

292 The “significant distress condition” will be met if the cross-examination in person would be likely to cause significant distress to the witness or the party conducting the cross examination and the distress caused is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.

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

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

New section 85J – Directions under section 85I: supplementary

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

New section 85K – Alternatives to cross-examination in person

296 Where a person is prohibited from cross-examining another in person, section 85K makes provision for the court to consider whether there are satisfactory alternatives to cross examination in person. If the court considers there are none, then it must invite the person affected to arrange for a qualified legal representative to act for him or her for the purpose of cross-examining the witness and require them to notify the court by the end of a specified period whether a qualified legal representative is to act for them for that purpose. If the person does not do so, then the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a qualified legal representative, and, if so, the court must appoint a qualified legal representative for that purpose.

New section 85L – Costs of legal representatives appointed under section 85K(6)

297 Section 85L confers a power for the Lord Chancellor to make regulations about the payment out of central funds of fees and costs of a qualified legal representative appointed under section 85K(6) and to cover related costs connected to their appointment.

New section 85M – Guidance for legal representatives appointed under section 85K(6)

298 Section 85M confers on the Lord Chancellor the power to issue guidance about the scope and nature of the role of a court-appointed qualified legal representative. The intention is that the guidance will set out further practical detail about the scope of this new statutory role. A qualified legal representative is required to have regard to the guidance.

New section 85N – Regulations under Part 7A

299 Section 85N provides that regulations under new Part 7A of the Courts Act 2003 may make different provision for different purposes.

Section 67: Orders under section 91(14) of the Children Act 1989

- 300 Section 91(14) of the Children Act 1989 allows family courts to bar individuals from making further specified applications under that Act without permission of the court. These orders are known as section 91(14) orders or sometimes ‘barring orders’.
- 301 Section 67 inserts a new section 91A into the Children Act 1989 which makes further provision about the circumstances in which the court may make an order under section 91(14) of that Act.
- 302 This follows recommendations made by the Ministry of Justice’s Expert Panel in their report titled ‘Assessing Risk of Harm to Children and Parents in Private Law Children Cases’, published in June 2020.
- 303 New section 91A(2) provides that the circumstances in which the court may make such an order include where the court is satisfied that the making of a further application under that Act, by any person to be named in the order, would put the child concerned, or another individual, at risk of harm.
- 304 New section 91A clarifies that barring orders are available to parents and children to protect them where further proceedings would risk causing them harm, in particular where proceedings could be a form of continuing domestic abuse.
- 305 The broad concept of ‘harm’ is used, as defined in section 31(9) of the Act, so as to include but not limit the circumstances to domestic abuse.
- 306 New section 91A(3) provides for a narrower definition of ‘harm’ to be applied by the court where the person referred to in section 91A(2) is not a child i.e. ill-treatment or the impairment of physical or mental health. This is because the definition of ‘harm’ in the 1989 Act includes elements specific to a child, such as impairment of development.
- 307 New section 91A(4) makes it clear that where a person who has been named in any barring order subsequently applies for leave, the court must consider whether there has been a material change of circumstances since the barring order was made.
- 308 New section 91A(5) clarifies that a section 91(14) order can be made by the court of its own initiative, or pursuant to an application by a person who could be put at risk of harm by a further application, by or on behalf of the child concerned or by any other person who is a party to the application. New section 91A(6) clarifies that the child concerned is the child referred to in section 91(14).

Part 6: Offences involving violent or abusive behaviour

Section 68: Controlling or coercive behaviour in an intimate or family relationship

- 309 Section 76 of the Serious Crime Act 2015 provides for the offence of controlling or coercive behaviour in an intimate or familial relationship. The offence was created to close a gap in the law around patterns of controlling or coercive behaviour during a relationship where person A and person B are "personally connected", as defined in section 76(2) and (6), as intimate partners; former partners who still live together; or family members who live together.
- 310 Section 68 amends the definition of “personally connected” in section 76 of the Serious Crime Act 2015 to align it with that in section 2 of the Domestic Abuse Act. This removes the current requirement for A and B to live together if they are former intimate partners or family members in order to be "personally connected", so that the offence would apply regardless of whether persons A and B live together in the same household. It is therefore no longer a requirement of the section 76 offence for ex- intimate partners or family members to live

together in order to be considered “personally connected”, thereby bringing within the ambit of the offence controlling or coercive behaviour by a former intimate partner that takes place post-separation or by a family member who does not live with the victim.

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

- 311 Section 69 amends the offence under section 33 of the Criminal Justice and Courts Act 2015, of disclosing a private sexual photograph or film with intent to cause distress to an individual who appears in the photograph or film, so as to include threats to disclose private sexual photographs or films.
- 312 New section 33(2A) of the Criminal Justice and Courts Act 2015 (as inserted by subsection (5)) ensures that the prosecution will not have to prove the private sexual photograph or film referred to in the threat exists so long as the individual is said to feature in them.
- 313 The three specific defences to the original substantive offence at section 33 of the Criminal Justice and Courts Act 2015 would be available in relation to any threat to disclose. Those three defences are: the disclosure was for the purposes of preventing, detecting or investigating crime; was made in the course of publication of journalistic material; and was believed to be in the public interest; or the image was previously disclosed for reward with the subject’s consent.
- 314 Subsection (10) makes consequential amendment to Schedule 8 to the Criminal Justice and Courts Act 2015 (which relates to providers of information society services).

Section 70: Strangulation or suffocation

- 315 Section 70 creates a new offence of the non-fatal strangulation or suffocation of another person.
- 316 This section inserts new sections 75A and 75B into the Serious Crime Act 2015.
- 317 New section 75A(1) sets out that a person commits the offence if, the person “intentionally strangles” another person (new section 75A(1)(a)) or they commit another act that affects the other person’s ability to breathe and that act constitutes a battery of the other person (new section 75A(1)(b)).
- 318 “Strangulation” or “strangles” are not specifically defined and have their ordinary meaning. Battery in this section is a reference to the common law offence of battery. An act that affects the ability of the other person to breathe and constitutes a battery can include, but is not limited to, suffocation.
- 319 New section 75A(2) makes clear that it is a defence for a person accused of the offence to show that the other person consented to the strangulation or other act that affected their ability to breathe. This reflects the current law as set out in the case of *R v Brown* [1993] 2 W.L.R. 556 and subsequent cases, that where a person consents to an act that amounts to no more than a battery, consent of the victim is a valid defence for the person who committed the battery. This subsection has however to be read in conjunction with new section 75A(3).
- 320 New section 75A(3)(a) provides that the defence set out in new section 75A(2) would not apply when the person suffers “serious harm” as a result of the strangulation or other act that affects their ability to breathe. “Serious harm” is defined in new section 75A(6) as amounting to grievous bodily harm or wounding within the meaning of section 18 of the Offences against the Person Act 1861 or actual bodily harm under section 47 of the 1861 Act. New section 75A(3) reflects the law as set out in *R v Brown* and subsequent cases, which means that where a person consents to an act that causes serious harm, by which is meant injury that constitutes actual bodily harm or more serious injury, the consent does not give rise to a valid defence. In short, a person cannot validly consent to having serious harm inflicted upon them.

- 321 New section 75A(3)(b) clarifies that serious harm must be intended by the perpetrator, or that the perpetrator is reckless as to the other person suffering serious harm. This means that where a person intends to inflict harm that amounts only to a battery and the other person consents to that act, but where serious harm occurs, a valid defence of consent would only be available where the prosecution cannot prove they intended to cause serious harm or were reckless as to serious harm being caused.
- 322 New section 75A(4) provides that for the consent defence in new section 75A(2) to be made out sufficient evidence that there was consent has to be provided by the defendant to raise the issue and the contrary is not then proved beyond reasonable doubt by the prosecution.
- 323 The new offence is triable in either a magistrates' court or the Crown Court. New section 75A(5) sets out the penalties for the offence. The maximum penalty on summary conviction in a magistrates' court is 12 months imprisonment (but this should be read as six months' until such time as provisions in the Sentencing Act 2020 come into force) and/or an unlimited fine. On conviction on indictment in the Crown Court the maximum penalty is five years' imprisonment and/or an unlimited fine.
- 324 New section 75A(6) defines "serious harm" for the purposes of new section 75A(3) with reference to existing offences of causing grievous bodily harm, wounding and causing actual bodily harm under sections 18 and 47 of the Offences Against the Person Act 1861.
- 325 Section 70 also inserts new section 75B into the Serious Crime Act 2015. New section 75B makes it an offence triable in England and Wales for a person who is a United Kingdom national (as defined in new section 75B(2)) or is habitually resident in England or Wales to do an act in a country outside the United Kingdom that amounts to an offence under section 75A if it occurred in England and Wales.

Schedule 2: Strangulation or suffocation: consequential amendments

- 326 The Schedule makes amendments to other enactments consequential on the new offence of strangulation or suffocation, adding the new offence to lists of offences of violence which are prescribed for other purposes e.g. enabling an extended sentence of imprisonment to be passed or other orders made.

Section 71: Consent to serious harm for sexual gratification not a defence

- 327 This Section restates in statute law the general proposition (established in the case of *R. v. Brown* [1993] 2 W.L.R.556) that a person may not consent to the infliction of serious harm and, by extension, is unable to consent to their own death. It also reflects the exception in relation to consent in cases involving the transmission of sexually transmitted infections, in so far as the law has been established by the cases of *R v Dica* [2004] 3 All ER 539 and *R v Konzani* [2005] EWCA Crim 706.
- 328 Subsection (1) sets out that the 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", as defined within subsection (3).
- 329 Subsection (2) provides that, unless subsection (4) applies, it is not a defence that another person consented to the infliction of the serious harm for the purposes of obtaining sexual gratification.
- 330 Subsection (3) defines what is meant by "relevant harm" and "serious harm" by reference to sections 18 (causing grievous bodily harm with intent), 20 (inflicting grievous bodily harm) and 47 (actual bodily harm) of the Offences Against the Person Act 1861 ("the 1861 Act").

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

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

333 Subsection (6) provides that 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.

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

334 This section extends the circumstances in which certain sexual and violent offences committed abroad may be prosecuted in England and Wales, where the offence is committed by a UK national or a person habitually resident in England and Wales.

335 Subsection (1) makes it an offence in England and Wales for a person who is a UK national (as defined in subsection (8)), or is habitually resident in England and Wales, to commit certain acts in a country outside the UK. The act done must amount to an offence listed in subsection (2) and must also amount to an offence in the country where it was committed.

336 Subsection (3) excludes murder and manslaughter from the ambit of subsection (1) where a person would otherwise be guilty of those offences under other laws, such as sections 9 and 10 of the Offences Against the Person Act 1861 or section 4 of the Suppression of Terrorism Act 1978.

337 Subsection (4) provides that the precise description of the offence does not need to be the same in both countries. For example, the provisions could apply to someone who committed grievous bodily harm in another country although that offence was described differently under the law in that country.

338 Subsections (5) to (7) provide a procedure under which the defendant can challenge the prosecution to prove that the act in question constitutes an offence under the law of the country where it took place.

Section 73: Offences against the person committed outside the UK: Northern Ireland

339 This section makes provision for Northern Ireland analogous to that in section 72 in respect of England and Wales.

Section 74: Amendments relating to offences committed outside the UK

340 This section introduces Schedule 3 which further extends the circumstances in which certain sexual and violent offences committed abroad may be prosecuted in England and Wales (Part 1 of Schedule 3), Scotland (Part 2) or Northern Ireland (Part 3) where the offence is committed by a UK national or a person habitually resident in the relevant part of the UK.

Schedule 3: Amendments relating to offences committed outside the UK

Part 1: England and Wales

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

- 342 Section 4 of the 1997 Act makes it an offence for a person to pursue a course of conduct which causes another to fear, on at least two occasions, that violence will be used against him or her, and where he or she knows, or ought to know, that his or her course of conduct will cause the victim to fear violence on each occasion. Section 4A of the 1997 Act provides a similar offence in relation to stalking involving fear of violence or serious alarm or distress.
- 343 New section 4B(1) makes it an offence in England and Wales for a person who is a UK national (as defined in new section 4B(2)) or is habitually resident in England and Wales to pursue, wholly or partly in a country outside the UK, a course of conduct that would amount to an offence under section 4 or 4A of the 1997 Act if it occurred in England and Wales.
- 344 Paragraph 2 amends section 72 of the Sexual Offences Act 2003. Section 72 already makes it an offence in England and Wales for a UK national or resident (as defined in section 72(9)) to commit certain acts in a country outside the UK. Schedule 2 to the Sexual Offences Act 2003 lists the sexual offences to which section 72 applies.
- 345 The effect of the amendments to section 72 is to make it an offence in England and Wales for a UK national or resident to commit certain other acts in a country outside the UK. The act done must amount to an offence under any of sections 1 to 4 of the Sexual Offences Act 2003 (namely, rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without consent) where the victim of the offence was aged 18 or over at the time of the offence and, for a UK resident, the act must also amount to an offence in the country where it was committed. Consistent with the amendments to section 72, paragraph 2(3) amends Schedule 2 to the Sexual Offences Act 2003 so that, rather than applying to section 72 generally, it instead contains provisions applying to specific subsections of section 72.
- 346 Paragraph 3 inserts a new section 76A in the 2015 Act. Section 76 of the 2015 Act makes it an offence for a person (A) repeatedly or continuously to engage in behaviour towards another person (B) that is controlling or coercive. The offence applies where, at the time of the behaviour, A and B are personally connected, the behaviour has a serious effect on B and A knows or ought to know that the behaviour will have a serious effect on B.
- 347 New section 76A(1) makes it an offence in England and Wales for a person who is a UK national (as defined in new section 76A(2)) or is habitually resident in England and Wales to engage in behaviour, wholly or partly in a country outside the UK, that would amount to an offence under section 76 of the 2015 Act if it occurred in England and Wales.

Part 2: Scotland

- 348 Paragraph 4 amends section 11 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), which makes provision for certain offences committed outside the UK, including murder and culpable homicide. Section 11(1) of the 1995 Act makes it an offence for any British citizen or British subject to do any act or make any omission in a country outside the UK which, if done or made in Scotland, would constitute the crime of murder or of culpable homicide.
- 349 Paragraph 4(3) inserts a new section 11(2A) in the 1995 Act which extends extraterritorial jurisdiction to the common law offence of assault, and makes it an offence in Scotland for any “relevant person” to do any act in a country outside the UK which if done in Scotland would constitute the crime of assault. The act done must also amount to an offence in the country where it was committed.
- 350 Paragraph 4(3) also inserts new section 11(2B) to 11(2F) in the 1995 Act. New section 11(2B) provides that the precise description of the offence does not need to be the same in both countries. There is a presumption under new section 11(2C) that the act committed in a country outside the UK, which would be an assault if committed in Scotland, is an offence

under the law of the country where the act took place. However, new section 11(2C) to 11(2E) provide a procedure under which the accused can challenge the prosecution to prove that the act in question constitutes an offence under the law of the country where it took place. New section 11(2F) defines “relevant person,” as a person who is a UK national or is habitually resident in Scotland.

351 Paragraph 4(2) makes amendments to the language in section 11 of the 1995 Act to ensure it is consistent with that used in the Convention, substituting “British citizen or British subject” in subsections (1) and (2) with “relevant person,” as defined in new section 11(2F).

352 Paragraph 5 amends Part 7 of the Sexual Offences (Scotland) Act 2009 (“the 2009 Act”), which, amongst other things, makes provision for certain sexual offences committed outside the UK. Paragraph 5(2) inserts a new section 54D in the 2009 Act. This makes it an offence in Scotland for a UK national (as defined in new section 54D(9)) or habitual resident of Scotland to commit an act amounting to an offence under any of sections 1 to 4 of the 2009 Act (namely, rape, sexual assault by penetration, sexual assault and sexual coercion) where the victim of the offence was aged 18 or over at the time of the offence and, for a habitual resident of Scotland, where the act also constitutes an offence in the country where it was committed. (Section 55 of the 2009 Act already provides Scottish courts with extraterritorial jurisdiction over equivalent offences against a child under the age of 18.)

353 The jurisdiction of sheriff courts is territorial, and a sheriff court has no jurisdiction to try offences committed outside the sheriffdom in the absence of a statutory provision conferring that jurisdiction. New section 54D(8) provides that a person accused of committing an offence outside the UK may be prosecuted, tried and punished in a sheriff court in the district in which they are apprehended or held in custody, or in a sheriff court district to be determined by the Lord Advocate.

354 Paragraph 6 amends Part 2 of the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”), which makes provision for the offence of stalking as well a number of other offences. Section 39 of the 2010 Act provides for an offence of stalking, which makes it an offence for a person to engage in a course of conduct (conduct on at least two occasions) which causes another to suffer fear or alarm, and where he or she intends to cause the victim to suffer fear or alarm, or knows, or ought in all the circumstances to have known, that engaging in the course of conduct would be likely to cause the victim to suffer fear or alarm.

355 Paragraph 6 inserts a new section 39A in the 2010 Act. This makes it an offence in Scotland for a UK national (as defined in new section 39A(3)) or habitual resident of Scotland to pursue, wholly or partly in a country outside the UK, a course of conduct that would amount to an offence under section 39 of the 2010 Act if it occurred in Scotland.

356 The jurisdiction of sheriff courts is territorial, and a sheriff court has no jurisdiction to try offences committed outside the sheriffdom in the absence of a statutory provision conferring that jurisdiction. New section 39A(2) provides that if a person’s course of conduct consists entirely of conduct in a country outside the UK, the person may be prosecuted, tried and punished in a sheriff court in the district in which they are apprehended or held in custody, or in a sheriff court district to be determined by the Lord Advocate. Existing jurisdictional rules will apply when the course of conduct consists of both conduct in Scotland and conduct in a country outside the UK.

Part 3: Northern Ireland

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

358 Article 6 of the 1997 Order makes it an offence for a person to pursue a course of conduct which causes another to fear, on at least two occasions, that violence will be used against him, and where he knows, or ought to know, that his course of conduct will cause the victim to fear violence on each occasion.

359 New section 6A makes it an offence in Northern Ireland for a person who is a UK national (as defined in new section 6A(2)) or is habitually resident in Northern Ireland to pursue, wholly or partly in a country outside the UK, a course of conduct that would amount to an offence under section 6 of the 1997 Order if it occurred in Northern Ireland.

360 Paragraph 8 amends Article 76 of the Sexual Offences (Northern Ireland) Order 2008 (“the 2008 Order”) which makes provision for certain sexual offences committed outside the UK. Paragraph 8(b) inserts a new paragraph 76(2A) into the 2008 Order. This makes it an offence in Northern Ireland for a UK national or a person who is habitually resident in Northern Ireland to commit an act outside the UK amounting to an offence under any provision of Part 2 of the 2008 Order (namely, rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without consent) where the victim of the offence was aged 18 or over at the time of the offence and, for a person habitually resident in Northern Ireland, the act constitutes an offence in the country where it was committed. (Article 76 of the 2008 Order already makes provision for extraterritorial jurisdiction over equivalent offences against a child under 18.)

Part 7: Miscellaneous and general

Section 75: Strategy for prosecution and management of offenders

361 Section 75 places a duty on the Secretary of State (in practice, the Home Secretary) to publish a perpetrator strategy within twelve months of Royal Assent of the Domestic Abuse Act. The strategy must set out the Government’s plans for bringing perpetrators to justice, assessing and managing the risks posed by individuals who commit offences involving domestic abuse (including, amongst other risks, the risks associated with stalking as defined in section 1(4) of the Stalking Protection Act 2019), and outlining the strategy for reducing the risk that perpetrators will commit further offences of domestic abuse. Subsection (2) requires the Secretary of State to keep the strategy under review and enables the Secretary of State to revise it.

362 Subsection (4) provides that in preparing the strategy, the Secretary of State is under a duty to consult with the Domestic Abuse Commissioner and other such persons he or she considers appropriate. The Secretary of State must similarly consult with the Commissioner and others on any revision of the strategy unless the revision is insubstantial (subsection (5)).

Section 76: Polygraph conditions for offenders released on licence

363 This section amends section 28 of the 2007 Act to allow the Secretary of State to include a polygraph testing condition in the licence of a person who has committed a domestic abuse-related offence.

364 Section 28 of the 2007 Act permits a polygraph condition to be included in the licence of an offender convicted of a specified sexual offence who is released from custody into the community on licence. Any offender released from custody with such a condition would be required to undertake polygraph tests.

365 The term “licence” refers to the conditions which apply to an offender when conditionally released from prison. Failure to abide by the conditions may lead to their recall to prison. Licence conditions are imposed on offenders under section 250 of the Criminal Justice Act 2003 for determinate offences, and under section 31 of the Crime (Sentences) Act 1997 for

indeterminate offenders. Section 250 of the Criminal Justice Act 2003 provides that the licence of any prisoner serving a determinate sentence must include the standard conditions (as set out in the Criminal Justice (Sentencing) (Licence Conditions) Order 2015 (SI 2015/337)) and may include any condition authorised under the electronic monitoring legislation and the polygraph condition legislation (namely, Part 3 of the 2007 Act). Article 6 of the 2015 Order sets out the standard conditions that must be included in an offender's licence where the offender is subject to a polygraph condition. Article 6(2) provides that:

“While subject to a polygraph condition an offender must–

- a) attend a polygraph testing session and examination as instructed by the supervising officer, and comply with the process;
- b) comply with any instruction given during a polygraph session by the person conducting the polygraph;
- c) not frustrate the polygraph testing process.”

366 Subsections (2) and (4) amend subsection (2) and insert new subsections (3A) to (3C) into section 28 of the 2007 Act, the effect of which is to extend the provisions of that section so that they not only apply to offenders released from custody having served a sentence for a relevant sexual offence, but also to offenders released from custody having served a sentence for a relevant offence involving domestic abuse (as defined in new section 28(3B) – the definition includes offences relating to breach of a restraining order or a DAPO which may not, of themselves, involve domestic abuse). A polygraph condition may only be applied to offenders who are aged 18 or over on the day of their release from custody (section 28(2)(b)).

367 Imposing polygraph examinations on certain domestic abuse perpetrators would assist National Probation Service offender managers by providing them with additional information (through self-disclosure by the offender) about the offender's risk that would not otherwise be available, for example details of any contact with their victims and whether or not they are forming new relationships. In addition, risk factors such as alcohol consumption that may be related to the offender's behaviour can be monitored and addressed. Such additional information would enable the offender manager to monitor compliance with other conditions of the offender's licence and improve risk management plans (see section 29(1)(a) of the 2007 Act). Under section 30 of the 2007 Act, any statement made by a person during a polygraph session or any physiological reaction made during such a session may not be used in criminal proceedings in which that person is the defendant. Any statement made by a person during a polygraph session could, however, be used as the basis for recalling the offender to prison for breach of a licence condition.

Section 77: Guidance about the disclosure of information by police forces

368 This section requires the Secretary of State (in practice, the Home Secretary) to issue statutory guidance to the police about the disclosure of police information by police forces for the purposes of preventing domestic abuse, that is about the exercise of their functions under the Domestic Violence Disclosure Scheme (“DVDS”), commonly referred to as “Clare's Law”. Such guidance is currently issued on a non-statutory basis (see paragraph 60 above).

369 Subsection (2) requires chief officers of police to have regard to any guidance issued under this section. This means that the police must take the guidance into account during the exercise of their functions under the DVDS and that, if they decide to depart from the guidance, they must have good reasons for doing so.

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

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

372 Topics which the Government would expect to be covered in such statutory guidance include:

- Recommended minimum levels of knowledge and experience required by practitioners to discharge their functions under the DVDS effectively;
- Suggested step-by-step processes and timescales for the two disclosure routes under the scheme (the “right to ask” and the “right to know”), including example scenarios for each route;
- Minimum standards of information to be obtained from the applicant;
- Minimum standards of intelligence checks to be completed;
- Guidance on effective engagement with a multi-agency forum such as a Multi-Agency Risk Assessment Conference to inform decision-making;
- Guidance on robust risk assessment and safety planning in order to safeguard the individual or individuals potentially at risk of domestic abuse;
- Suggested types of information which may be disclosed under the scheme, such as details of allegations, charges, prosecutions and convictions for relevant offences;
- Guidance on what constitutes a “reasonable and proportionate” disclosure in line with relevant human rights and data protection legislation and the 1974 Act; and
- Suggested forms of wording for communicating outcomes at each stage of the DVDS process.

Section 78: Homelessness: victims of domestic abuse

373 This section gives those who are eligible and are homeless as a result of being a victim of domestic abuse, “priority need” status for accommodation secured by the local authority.

374 Local authorities have a number of statutory duties to support those who are homeless or at risk of homelessness. The Housing Act 1996 (as amended by the Homelessness Reduction Act 2017) places duties on local housing authorities to take reasonable steps to try to prevent and relieve a person’s homelessness.

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

376 The existing categories of priority need include a “person who is vulnerable as a result of ceasing to occupy accommodation by reason of violence from another person or threats of violence from another person which are likely to be carried out”. Prior to this section coming into effect, victims of domestic abuse may be considered to be in this category and therefore have priority need for accommodation, if they can show they are vulnerable as a result of ceasing to occupy accommodation as a result of domestic abuse. This section amends section 189 of the Housing Act 1996 to create a distinct new priority need category, namely “a person

who is homeless as a result of that person being a victim of domestic abuse". This will mean that victims of domestic abuse that are homeless and eligible for homelessness assistance, will no longer need to fulfil the vulnerability test to be considered in priority need for accommodation. To further clarify this new position, this section also amends Article 6 of the Homelessness (Priority Need for Accommodation) (England) Order 2002 to clarify that for those who are in priority need due to being vulnerable as a result of ceasing to occupy accommodation by reason of violence from another person or threats of violence, 'violence' does not include violence which is domestic abuse.

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

Section 79: Grant of secure tenancies in cases of domestic abuse

378 This section amends the 1985 Act to require local authorities, when re-housing a person, or offering a person a new sole tenancy in the same home, where that person has or had a "lifetime tenancy" of social housing (whether under a secure tenancy other than a flexible tenancy or under an assured tenancy, granted by a private registered provider of social housing, by the Regulator of Social Housing or by a housing trust which is a charity, other than an assured shorthold tenancy), to grant such a person a new lifetime secure tenancy if the person, or a member of their household, is or has been a victim of domestic abuse (as defined by new section 81ZA(4) of the 1985 Act) carried out by another person, and the new tenancy is being granted for reasons connected with that abuse.

379 This section will have effect until Schedule 7 to the 2016 Act and the 2018 Act are brought into force, after which the equivalent provisions will be those contained in the 2018 Act (see paragraphs 62 to 66 above).

Section 80: Prohibition on charging for the provision of medical evidence of domestic abuse

380 Section 80 prohibits charges for the preparation and provision of domestic abuse legal aid letters by health professionals in general practice in the circumstances set out below.

381 Charging is prohibited where a relevant health professional prepares or provides a letter supporting an application for legal aid in instances of domestic abuse and the health professional has assessed the patient in the course of providing services under a General Medical Services ("GMS"), Personal Medical Services ("PMS") or Alternative Provider Medical Services ("APMS") contract.

382 Charging is also prohibited for the preparation or provision of a letter supporting an application for legal aid in instances of domestic abuse where a relevant health professional wholly or mainly provides services under a GMS, PMS or APMS contract.

383 A relevant health professional is defined in subsection (4) and in practice means a health professional who works in general practice.

384 This section also prohibits charging for this letter through any vehicle - both by the health professional themselves and the practice as a company or partnership.

385 Subsection (3)(b) enables the Secretary of State to make regulations to extend the prohibitions to any other evidence letters or reports provided by relevant health professionals to demonstrate domestic abuse for purposes other than to obtain legal aid.

386 Subsection (6) enables the Secretary of State in relation to England and the Welsh Ministers in relation to Wales to make regulations to amend the definitions of "relevant health professional" and "qualifying medical services contract".

Section 81: Review of processing of victims' personal data for immigration purposes

- 387 The Immigration and Asylum Act 1999 permits the Home Office to share and receive information with law enforcement partners for the purpose of crime prevention, detection and effective immigration control. The immigration exemption (at paragraph 4 of Schedule 2 to the Data Protection Act 2018) is one of a number of 'exemptions' under that Act (others include crime and taxation). The immigration exemption allows certain specified data subject rights under the General Data Protection Regulations to be restricted in certain limited circumstances (where full compliance would prejudice immigration control or the investigation or detection of activities that would undermine the maintenance of effective immigration control).
- 388 Police forces across the United Kingdom share data with immigration enforcement on migrant victims of crime they encounter if they know or suspect that an immigration offence has occurred. On receipt of the referral, Immigration Officers use the information to confirm the migrants identify, immigration status and any known vulnerability and provide advice on addressing any safeguarding concerns.
- 389 A super-complaint brought by Liberty and Southall Black Sisters in December 2018 was investigated by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services' ("HMICFRS") who published their findings in December 2020. The super-complaint asserted that data-sharing practices deterred migrant victims, with insecure immigration status, from reporting crimes to the police for fear of immigration enforcement action being taken against them.
- 390 HMICFRS made eight recommendations: five for the National Police Chiefs' Council, two for the Home Office and one shared recommendation. Recommendation two asks the Home Office to review the legal and policy framework underpinning data sharing and specifically asks the Home Office to consider the mechanism of establishing a firewall and to identify the correct basis on which any proposed firewall should be implemented.
- 391 Section 81 puts the data sharing review onto a statutory footing and places a duty on the Secretary of State to lay a report before Parliament on the outcome of the review by 30 June 2021. The Secretary of State may by regulations extend the relevant period by a further period of up to six months.

Section 82: Code of practice

- 392 Following completion of the data sharing review provided for in section 81 of the Act, a data-sharing code of practice between police and immigration enforcement will be drafted and laid before Parliament. The code of practice will govern the processing of data in relation to potential domestic abuse victims for immigration purposes. In preparing the code, the Secretary of State is required to consult the Domestic Abuse Commissioner, the Information Commissioner and other persons the Secretary of State considers appropriate. The Secretary of State is required to keep the code of practice under review (subsection (2)). A person to whom the code is issued (for example, the police and Immigration Officers) is required to have regard to the code when processing domestic abuse data for immigration purposes (subsection (3)).

Section 83: Report on the use of contact centres in England

- 393 Section 83 requires the Secretary of State to publish a report within two years of Royal Assent of the Act on the extent to which those using child contact centres in England are protected from the risk of domestic abuse or, in the case of children, other harm. The definition of a "contact centre" is deliberately broad so as to encompass all locations where contact occurs.

Section 84: Power of Secretary of State to issue guidance about domestic abuse, etc

394 This section confers a power on the Secretary of State (generally, the Home Secretary) to issue guidance about any of the provisions in the Act and about other matters relating to domestic abuse in England and non-devolved matters in Wales. Amongst other things, such guidance must provide further explanation of the definition of domestic abuse, including by illustrating the different forms it can take (for example, forced marriage and coercive control related to a victim's immigration status) and the adverse effect on children. Guidance must also take account of the fact that the majority of victims of domestic abuse are female. Such statutory guidance would help promote understanding amongst public authorities of domestic abuse and the powers available to them to protect and support victims.

395 In preparing the guidance, the Secretary of State is under a duty to consult the Domestic Abuse Commissioner, the Welsh Ministers in so far as the guidance is to a body exercising devolved Welsh functions, and such other persons as he or she considers appropriate (for example, the police and other practitioners) (subsection (6)). Persons exercising public functions to whom the guidance is given will be under a duty to have regard to the guidance when exercising such functions (subsection (4)).

Section 88: Financial provision

396 This section recognises that, as a matter of House of Commons procedure, a financial resolution needed to be agreed for the Bill from which the Act resulted.

Commencement

- 397 Section 90(1) provides for section 71 (consent to serious harm for sexual gratification not a defence); section 75 (strategy for prosecution and management of offenders); section 81 (review of processing of victims' personal data for immigration purposes); section 83 (report on the use of contact centres in England) and the general provisions in sections 85 to 89 and 91 (powers to make consequential or transitional provision, regulations, financial provisions, extent, commencement and short title) to come into force on Royal Assent. In addition, any power to make regulations under the Bill also comes into force on Royal Assent.
- 398 Sections 69 (threats to disclose private sexual photographs or films), 72 and 74(1) and Part 1 of Schedule 3 (extraterritorial jurisdiction) come into force at the end of the period of two months beginning with the day on which this Act is passed.
- 399 Section 80 (prohibition on charging for medical evidence of domestic abuse) comes into force on 1 October 2021.
- 400 Section 74(2) and Part 2 of Schedule 3 come into force in accordance with provision contained in regulations made by the Scottish Ministers.
- 401 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.
- 402 The remaining provisions of this Act come into force in accordance with provision contained in regulations made by the Secretary of State.

Related documents

403 The following documents are relevant to the Act and can be read at the stated locations:

- [Transforming the Response to Domestic Abuse: Government Consultation](#), HM Government, March 2018.
- [Transforming the Response to Domestic Abuse: Response to Consultation and Draft Bill](#) (CP 15), HM Government, January 2019.
- Joint Committee on the Draft Domestic Abuse Bill, [First Report](#) Session 2017-19, HL Paper 378, HC 2075, 14 June 2019.
- The Government [response](#) to the report from the Joint Committee on the Draft Domestic Abuse Bill (CP 137), 16 July 2019.
- The Government further [response](#) to the report from the Joint Committee on the Draft Domestic Abuse Bill (CP 214), 3 March 2020.
- [Migrant victims of domestic abuse review findings](#), Home Office, June 2020.
- [Domestic Abuse Services: Future Delivery of Support to Victims and their Children in Accommodation-Based Domestic Abuse Services](#), MHCLG, May 2019.

- [Domestic Abuse Services: Future Delivery of Support to Victims and their Children in Accommodation-Based Domestic Abuse Services](#) – Response to consultation, MHCLG, October 2019.
- [Domestic abuse in England and Wales overview: November 2019](#), Office of National Statistics.
- The [Economic and Social Costs of Domestic Abuse](#), Home Office, January 2019.
- [Violence against Women and Girls Report 2018-19](#), Crown Prosecution Service, September 2019.
- Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence ([Istanbul Convention](#)).
- Ratification of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence (Istanbul Convention) – [2019 Progress Report](#), Home Office, October 2019.
- [The police response to domestic abuse: an update report](#), Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, February 2019.
- [Vulnerable witnesses and parties within civil proceedings: current position and recommendations for change](#), Civil Justice Council, February 2020.
- Assessing risk of harm to children and parents in private family law children cases: [Final report and implementation plan](#), Ministry of Justice, June 2020.
- [Review of the controlling or coercive behaviour offence, Home Office, March 2021](#).
- [Draft statutory guidance](#), Home Office, July 2020.
- [Impact assessment](#).
- [Policy equality statement](#).
- [ECHR memorandums](#).
- [Delegated powers memorandums](#).

Annex A – Glossary

Affirmative procedure	Statutory instruments that are subject to the draft “affirmative procedure” must be approved by both the House of Commons and House of Lords to become law.
CJC	Civil Justice Council
CPR	Civil Procedure Rules
DAPN	Domestic abuse protection notice
DAPO	Domestic abuse protection order
DVDS	Domestic Violence Disclosure Scheme
DVPN	Domestic violence protection notice
DVPO	Domestic violence protection order
Istanbul Convention	Council of Europe Convention on preventing and combating violence against women and domestic violence
MFPA 1984	Matrimonial and Family Proceedings Act 1984
MHCLG	Ministry of Housing, Communities and Local Government
Negative procedure	Statutory instruments that are subject to the “negative procedure” automatically become law unless there is an objection from the House of Commons or House of Lords.
The 1974 Act	Rehabilitation of Offenders Act 1974
The 1985 Act	Housing Act 1985
The 1995 Act	Criminal Procedure (Scotland) Act 1995
The 1997 Act	Protection from Harassment Act 1997
The 2003 Act	Criminal Justice Act 2003
The 2007 Act	Offender Management Act 2007
The 2009 Act	Sexual Offences (Scotland) Act 2009
The 2010 Act	Criminal Justice and Licensing (Scotland) Act 2010
The 2015 Act	Serious Crime Act 2015
The 2016 Act	Housing and Planning Act 2016
The 2018 Act	Secure Tenancies (Victims of Domestic Abuse) Act 2018
UK	United Kingdom
YJCEA 1999	Youth Justice and Criminal Evidence Act 1999

Annex B – Territorial extent and application in the United Kingdom

Subject to certain limited exceptions, the provisions of the Act extend and apply to England and Wales or England only.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 1 to 3	Yes	Yes	No	No
Sections 4 to 21	Yes	Yes	No	No
Sections 22 to 38	Yes	Yes	No	No
Section 39	Yes	Yes	In part	In part
Sections 40 to 56	Yes	Yes	No	No
Sections 57 to 61	Yes	No	No	No
Sections 62-67	Yes	Yes	No	No
Sections 68 to 71	Yes	Yes	No	No
Section 72	Yes	Yes	No	No
Section 73	No	No	No	Yes
Section 74	In part	In part	In part	In part
Sections 75 to 77	Yes	Yes	No	No
Sections 78 and 79	Yes	No	No	No
Section 80	Yes	Yes	No	No
Sections 81 and 82	Yes	Yes	Yes	Yes
Section 83	Yes	No	No	No
Section 84	Yes	Yes	No	No
Sections 85 to 91	Yes	Yes	Yes	Yes
Schedule 1	Yes	Yes	No	No
Schedule 2	Yes	Yes	No	No
Schedule 3	In part	In part	In part	In part

Annex C – Hansard References

404 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	03 March 2020	Vol. 672, Col. 778-779
Second Reading	28 April 2020	Vol. 675, Col. 233-300
Public Bill Committee – 1 st sitting	04 June 2020	Col. 1-24
Public Bill Committee – 2 nd sitting	04 June 2020	Col. 25-76
Public Bill Committee – 3 rd sitting	09 June 2020	Col. 77-106
Public Bill Committee – 4 th sitting	09 June 2020	Col. 107-150
Public Bill Committee – 5 th sitting	10 June 2020	Col. 151-182
Public Bill Committee – 6 th sitting	10 June 2020	Col. 183-220
Public Bill Committee – 7 th sitting	11 June 2020	Col. 221-252
Public Bill Committee – 8 th sitting	11 June 2020	Col. 253-288
Public Bill Committee – 9 th sitting	16 June 2020	Col. 289-328
Public Bill Committee – 10 th sitting	16 June 2020	Col. 329-380
Public Bill Committee – 11 th sitting	17 June 2020	Col. 381-418
Public Bill Committee – 12 th sitting	17 June 2020	Col. 419-476
Report and Third Reading	06 July 2020	Vol. 678, Col. 683-794
<i>House of Lords</i>		
Introduction	07 July 2020	Vol. 804
Second Reading	05 January 2021	Vol. 809 Col. 20-130
Committee	25 January 2021	Vol. 809, Col. 1396-1498
Committee	27 January 2021	Vol. 809, Col. 1618-1742
Committee	01 February 2021	Vol. 809, Col. 1903-2012
Committee	03 February 2021	Vol. 809, Col. 2175-2296
Committee	08 February 2021	Vol. 810, Col. 21-158

These Explanatory Notes relate to the Domestic Abuse Act 2021 which received Royal Assent on 29 April 2021 (c. 17)

Stage	Date	Hansard Reference
Committee	10 February 2021	Vol. 810, Col. 350-476
Report	08 March 2021	Vol. 810, Col. 1318-1456
Report	10 March 2021	Vol. 810, Col. 1626-1794
Report	15 March 2021	Vol. 811, Col. 17-109
Report	17 March 2021	Vol. 811, Col. 334-397
Third Reading	24 March 2021	Vol. 811 Col.848-856
Commons Consideration of Lords Amendments	15 April 2021	Vol. 692, Col. 515-609
Lords Commons Reasons and Amendments	21 April 2021	Vol.811, Col. 1864-1948
Commons Consideration of Lords Message	26 April 2021	Vol.693, Col. 116-150
Lords Consideration of Commons Amendments and Reason	27 April 2021	Vol, 811, Col. 2164-2194
Royal Assent	29 April 2021	House of Commons Vol. 693 Col. 520
		House of Lords Vol. 811 Col. 2413

These Explanatory Notes relate to the Domestic Abuse Act 2021 which received Royal Assent on 29 April 2021 (c. 17)

Annex D – Progress of Bill Table

405 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3			Clause 3	Clause 3	Clause 3
Section 4	Clause 3	Clause 3	Clause 4	Clause 4	Clause 4
Section 5	Clause 4	Clause 4	Clause 5	Clause 5	Clause 5
Section 6	Clause 5	Clause 5	Clause 6	Clause 6	Clause 6
Section 7	Clause 6	Clause 6	Clause 7	Clause 7	Clause 7
Section 8	Clause 7	Clause 7	Clause 8	Clause 8	Clause 8
Section 9	Clause 8	Clause 8	Clause 9	Clause 9	Clause 9
Section 10	Clause 9	Clause 9	Clause 10	Clause 10	Clause 10
Section 11	Clause 10	Clause 10	Clause 11	Clause 11	Clause 11
Section 12	Clause 11	Clause 11	Clause 12	Clause 12	Clause 12
Section 13	Clause 12	Clause 12	Clause 13	Clause 13	Clause 13
Section 14	Clause 13	Clause 13	Clause 14	Clause 14	Clause 14
Section 15	Clause 14	Clause 14	Clause 15	Clause 15	Clause 15
Section 16	Clause 15	Clause 15	Clause 16	Clause 16	Clause 16
Section 17					Clause 17
Section 18	Clause 16	Clause 16	Clause 17	Clause 17	Clause 18
Section 19	Clause 17	Clause 17	Clause 18	Clause 18	Clause 19
Section 20					Clause 20
Section 21	Clause 18	Clause 18	Clause 19	Clause 19	Clause 21
Section 22	Clause 19	Clause 19	Clause 20	Clause 20	Clause 22
Section 23	Clause 20	Clause 20	Clause 21	Clause 21	Clause 23
Section 24	Clause 21	Clause 21	Clause 22	Clause 22	Clause 24
Section 25	Clause 22	Clause 22	Clause 23	Clause 23	Clause 25
Section 26	Clause 23	Clause 23	Clause 24	Clause 24	Clause 26
Section 27	Clause 24	Clause 24	Clause 25	Clause 25	Clause 27
Section 28	Clause 25	Clause 25	Clause 26	Clause 26	Clause 28
Section 29	Clause 26	Clause 26	Clause 27	Clause 27	Clause 29
Section 30	Clause 27	Clause 27	Clause 28	Clause 28	Clause 30
Section 31	Clause 28	Clause 28	Clause 29	Clause 29	Clause 31

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 32	Clause 29	Clause 29	Clause 30	Clause 30	Clause 31
Section 33	Clause 30	Clause 30	Clause 31	Clause 31	Clause 33
Section 34	Clause 31	Clause 31	Clause 32	Clause 32	Clause 34
Section 35	Clause 32	Clause 32	Clause 33	Clause 33	Clause 35
Section 36	Clause 33	Clause 33	Clause 34	Clause 34	Clause 36
Section 37	Clause 34	Clause 34	Clause 35	Clause 35	Clause 37
Section 38	Clause 35	Clause 35	Clause 36	Clause 36	Clause 38
Section 39	Clause 36	Clause 36	Clause 37	Clause 37	Clause 39
Section 40	Clause 37	Clause 37	Clause 38	Clause 38	Clause 40
Section 41	Clause 38	Clause 38	Clause 39	Clause 39	Clause 41
Section 42	Clause 39	Clause 39	Clause 40	Clause 40	Clause 42
Section 43	Clause 40	Clause 40	Clause 41	Clause 41	Clause 43
Section 44	Clause 41	Clause 41	Clause 42	Clause 42	Clause 44
Section 45	Clause 42	Clause 42	Clause 43	Clause 43	Clause 45
Section 46	Clause 43	Clause 43	Clause 44	Clause 44	Clause 46
Section 47	Clause 44	Clause 44	Clause 45	Clause 45	Clause 47
Section 48	Clause 45	Clause 45	Clause 46	Clause 46	Clause 48
Section 49	Clause 46	Clause 46	Clause 47	Clause 47	Clause 49
Section 50	Clause 47	Clause 47	Clause 48	Clause 48	Clause 50
Section 51	Clause 48	Clause 48	Clause 49	Clause 49	Clause 51
Section 52	Clause 49	Clause 49	Clause 50	Clause 50	Clause 52
Section 53	Clause 50	Clause 50	Clause 51	Clause 51	Clause 53
Section 54		Clause 51	Clause 52	Clause 52	Clause 54
Section 55	Clause 51	Clause 52	Clause 53	Clause 53	Clause 55
Section 56	Clause 52	Clause 53	Clause 54	Clause 54	Clause 56
Section 57	Clause 53	Clause 54	Clause 55	Clause 55	Clause 57
Section 58	Clause 54	Clause 55	Clause 56	Clause 56	Clause 58
Section 59	Clause 55	Clause 56	Clause 57	Clause 57	Clause 59
Section 60	Clause 56	Clause 57	Clause 58	Clause 58	Clause 60
Section 61	Clause 57	Clause 58	Clause 60	Clause 60	Clause 61
Section 62			Clause 60	Clause 60	Clause 62
Section 63			Clause 61	Clause 61	Clause 63
Section 64					Clause 64
Section 65	Clause 59	Clause 60	Clause 63	Clause 63	Clause 65
Section 66			Clause 64	Clause 64	Clause 66

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 67					Clause 67
Section 68					Clause 69
Section 69					Clause 70
Section 70					Clause 71
Section 71			Clause 65	Clause 65	Clause 72
Section 72	Clause 60	Clause 61	Clause 66	Clause 66	Clause 73
Section 73	Clause 61	Clause 62	Clause 67	Clause 67	Clause 74
Section 74	Clause 62	Clause 63	Clause 68	Clause 68	Clause 75
Section 75*					
Section 76	Clause 63	Clause 64	Clause 69	Clause 69	Clause 78
Section 77	Clause 64	Clause 65	Clause 70	Clause 70	Clause 79
Section 78		Clause 66	Clause 71	Clause 71	Clause 80
Section 79	Clause 65	Clause 67	Clause 72	Clause 72	Clause 81
Section 80					Clause 82
Section 81*					
Section 82*					
Section 83*					
Section 84	Clause 66	Clause 73	Clause 68	Clause 72	Clause 87
Section 85	Clause 67	Clause 74	Clause 69	Clause 74	Clause 88
Section 86	Clause 68	Clause 75	Clause 70	Clause 75	Clause 89
Section 87	Clause 69	Clause 76	Clause 71	Clause 76	Clause 90
Section 88	Clause 70	Clause 77	Clause 72	Clause 77	Clause 91
Section 89	Clause 71	Clause 78	Clause 73	Clause 78	Clause 92
Section 90	Clause 72	Clause 79	Clause 74	Clause 79	Clause 93
Section 91	Clause 73	Clause 80	Clause 75	Clause 80	Clause 94
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2				Schedule 2	Schedule 2
Schedule 3	Schedule 2	Schedule 2	Schedule 2	Schedule 3	Schedule 3

* Section added during ping pong.

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