



Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

Enhancing Legal Protections for Victims of Domestic Abuse

– A public consultation

**Department of Justice
December 2020**

Ministerial Foreword

Domestic abuse is never acceptable, no matter what form it takes, be it physical or non-physical abusive behaviour. It can affect people of every class, age, race, gender, gender identity or sexual orientation, from every workplace and community, our neighbours, our friends and even our families. Often the abuser is a partner or former partner, a close family member, the person who sits across from them at the dinner table, a person with whom they have shared their life, their home and their vulnerability; someone they should be able to trust but, tragically, cannot.

I am committed to doing everything I can to ensure effective measures are in place to protect victims of domestic abuse, in order to have a society where there is zero tolerance of this abhorrent behaviour, and importantly to ensure that victims feel safe. For too many home is no longer a safe place, nor does it offer a haven from harm. Rather it is the very place some are most vulnerable to abuse and to their abuser.

Since becoming Justice Minister measures to tackle domestic have been a key priority for me. This has included progressing legislation to introduce a new domestic abuse offence; work to introduce domestic homicide reviews; as well as the development of a new advocacy support service for victims of domestic and sexual violence and abuse. I am now bringing forward proposals for new Domestic Abuse Protection Notices and Orders. The Notices would provide immediate short term protection from abusive behaviour, while the Court Orders would provide longer term protection to those subjected to abusive behaviour or at risk of this (whether physical or non-physical). Notices could be brought forward by the police while Orders could be applied for by the police, victims, potentially by specified third parties or made by the Courts as part of proceedings.

Finally, I would encourage those who are suffering abuse, who are vulnerable and who need help at this time to reach out, to call or email the Domestic and Sexual Abuse helpline (0808 802 1414 and 24hrsupport@dvhelpline.org), to reach out to a friend or neighbour, or to call the police (in an emergency call 999, otherwise telephone 101). Help is available. You are not alone.

**NAOMI LONG, MLA
JUSTICE MINISTER**

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Section 1 – About this Consultation

- 1.1 This consultation seeks views on creating new Domestic Abuse Protection Notices (DAPNs) and Protection Orders (DAPOs) to enhance the protection available to victims of domestic abuse. Victims themselves, the Police Service of Northern Ireland, and potentially others such as social workers, housing advisers or those that may encounter domestic abuse within their work, would potentially be able to apply for the new order. Criminal, family, and civil courts would also be able to make DAPOs of their own volition in relevant court proceedings. The consultation is one of a number of actions the Department of Justice (“the Department”) is taking to improve responses to domestic abuse.
- 1.2 We welcome comments from members of the public, stakeholders and other interested parties. We are particularly interested to hear from victims and survivors of domestic violence and abuse, especially those who have applied for a non-molestation or occupation order, or have considered doing so. This consultation also seeks the views of key stakeholders, and directly affected parties, including the police, practitioners as well as organisations and individuals with a direct interest in preventing domestic violence and abuse, providing protection for victims and changing the behaviour of perpetrators.¹
- 1.3 The consultation provides an opportunity to inform the development of proposals for legislation. It is intended to bring forward primary legislation to implement provisions around Domestic Abuse Protection Notices and Orders, and expected to make such provision during amendment stage of the Justice (Miscellaneous Provisions) Bill.
- 1.4 The result of initial equality screening is included in section 6 ‘Impact of consultation proposals’ and further detail can be accessed on our website alongside this consultation under ‘Equality Screening’. If you are unable to access the website a copy can be sent to you on request.
- 1.5 For further information on how to respond please see section 7, ‘How to Respond, Duration, and Closing Date’. A consultation questionnaire template is also included at Appendix 2. A copy of the private notice associated with this consultation is included at Appendix 3.
- 1.6 The consultation will be open for **10 weeks**. The closing date is Friday

¹ For consistency, except where context requires otherwise, the person against whom an order is sought or imposed is referred to as the ‘alleged perpetrator’ in this consultation document. The person whom an order is intended to provide protection to is referred to as the victim, that is the person at risk.

12 February 2021 (please note we will be unable to accept consultation responses after this date).

- 1.7 There are a number of questions posed throughout the document to assist you in considering the proposed model. A consultation questionnaire is also provided to help in framing your response. As far as possible it would be helpful for responses to be made online through the NI Direct **Citizen Space** website, <https://consultations.nidirect.gov.uk/doj-corporate-secretariat/enhancing-legal-protections>, where the document and response questionnaire can be found. This will assist for analysis purposes.

Section 2 – Introduction

- 2.1 As part of our work to reduce domestic abuse in Northern Ireland, the Department is committed to ensuring that the justice system offers victims effective, supportive, responsive and timely protection from abuse, while challenging perpetrators to change their abusive behaviour.
- 2.2 The availability of protective orders that are able to prevent domestic abuse continuing or escalating is an important element in taking forward these aims.

Orders currently available

- 2.3 Each year, thousands of victims seek protection from domestic abuse through the family courts in Northern Ireland.¹ The main remedies available to victims are:
- Non-molestation orders – prohibit a person from molesting an associated person or relevant child;
 - Occupation orders – regulate the occupation of a dwelling house and provide for the peaceful use and enjoyment of the house.
- 2.4 In addition, a criminal court may issue a restraining order at the conclusion of criminal proceedings, whether or not the defendant is found guilty, if it considers the order is necessary to prevent the defendant from harassing the victim or causing them to fear violence.

Domestic Violence Protection Notices and Orders

- 2.5 Provision was made for the introduction of additional protective measures in the form of Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs) under section 97 of the Justice Act (Northern Ireland) 2015. DVPNs/DVPOs are civil orders that would be available to the police and magistrates' courts respectively, allowing a perpetrator of domestic violence to be immediately removed from the victim's home for up to 48 hours following an incident or threat of violence (through a DVPN) and to be prevented from returning to the home and having contact with the victim for up to 28 days (through a DVPO). Similar protections have

¹ According to the Northern Ireland Courts and Tribunals Service, between 2016 and 2019, more than 16,000 applications were made for non-molestation or occupancy orders under the Family Homes and Domestic Violence (NI) Order 1998.

been in place across England and Wales since March 2014 but have not yet been implemented in Northern Ireland, in part as a result of the previous absence of a legislature to bring forward the necessary secondary provisions.

- 2.6 It has also become apparent that there have been a number of implementation problems with DVPNs/DVPOs in England and Wales, including underuse by some police forces and limited sanctions for breach. The requirement that an individual “has been violent towards, or has threatened violence towards” the victim also has limitations in that victims of non-physical abuse and coercive control are unprotected unless there has also been physical violence or a threat of violence.
- 2.7 Given concerns about the use of DVPNs and DVPOs, including some of the limitations, the decision has been taken that these will not be introduced pending decisions on the introduction of Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs). It is therefore proposed to move towards introducing DAPNs and DAPOs in Northern Ireland, rather than implementing DVPNs and DVPOs in the interim.

Domestic Abuse Protection Orders

- 2.8 The Westminster government intends to replace DVPNs and DVPOs with DAPNs and DAPOs under the Westminster Domestic Abuse Bill 2020, which is currently progressing through the House of Lords.¹ The new orders will:
- increase the availability of protection for victims of domestic abuse where there is limited/no physical violence;
 - place positive requirements on alleged perpetrators to address their offending behaviour, as well as prohibiting them from abusing the victim;
 - give flexibility to victims, support services and the justice system in ensuring protection from abuse, both in the short and longer term;
 - be available across criminal, family and civil courts.
- 2.9 The Scottish Government introduced the Domestic Abuse (Protection) (Scotland) Bill in October 2020.² Under the proposals:

¹ Domestic Abuse Bill, <https://publications.parliament.uk/pa/bills/bill/58-01/124/5801124.pdf>

² Domestic Abuse (Protection) (Scotland) Bill, <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/domestic-abuse-protection-scotland-bill/introduced/domestic-abuse-protection-scotland-bill-as-introduced.pdf>

- the police will be able to issue a DAPN to provide the victim with immediate protection from domestic abuse until a DAPO can be made by a court;
- a court will be able to impose a DAPO to remove an alleged perpetrator from the victim's home and prohibit them from contacting or otherwise abusing the victim while the order is in effect;
- the DAPO can be made for up to two months and can be extended for up to a month.

The way forward in Northern Ireland

2.10 In deciding on the way forward in Northern Ireland we want to ensure that the most appropriate measures are introduced to not only meet our needs locally but also to take account of the experience in other jurisdictions, including learning lessons from any difficulties that have been experienced elsewhere. The proposals for DAPNs and DAPOs contained in this consultation document take account of the measures to be introduced in England and Wales, as well as Scotland, and are reflective of the recent model developed for England and Wales. We are also seeking views on elements for the new orders to ensure that they are both as effective as possible and also reflect the circumstances in Northern Ireland.

Section 3 – Background to the Proposals

Protective Orders Currently Available in Northern Ireland

- 3.1 A number of court orders are available for protecting victims of domestic abuse in Northern Ireland and deterring perpetrators from continuing their abusive behaviour.
- 3.2 Under the Family Homes and Domestic Violence (Northern Ireland) Order 1998, victims are able to apply to the family court for a **non-molestation order** to prevent an (ex)partner, relative or household member from harassing or harming them, and/or an **occupation order** to decide who should live in the family home. In an emergency, short-term orders can be granted by the court without the abuser being in court (known as ex-parte), with a full hearing following five to six weeks later. Legal Aid is available to enable victims of domestic abuse to be able to apply for these orders.
- 3.3 A family court may also make a non-molestation order of its own volition in any family proceedings that the alleged perpetrator is a party to.
- 3.4 Breach of a non-molestation order is a criminal offence and the individual can be arrested and may be prosecuted if sufficient evidence is available. Breach of an occupation order is not a criminal offence unless a power of arrest has been attached to the order.
- 3.5 Non-molestation orders are more common than occupation orders. Ex-parte injunctions and interim orders are often made before the final order is made. Approximately 9,443 non-molestation and occupation orders were made between 2016 and 2019, with 6,654 of these being short-term ex-parte non-molestation (or non-molestation and occupation) orders.
- 3.6 The Protection from Harassment (Northern Ireland) Order 1997 also empowers criminal courts to protect victims. A judge or magistrate may issue a **restraining order**, at the conclusion of criminal proceedings, if they consider the order is necessary to prevent the defendant from harassing the victim or causing them to fear violence. A restraining order may be made even if the defendant is found not guilty. Between 2016 and 2019 2,265 restraining orders were issued, with just over 10% (287) against defendants who had been acquitted.

3.7 Restraining orders place the onus to protect the victim on the criminal court, rather than expecting the victim to take legal action to protect themselves, as non-molestation and occupation orders generally do. As well as the practical benefits this offers the victim, it also signals to the victim, the perpetrator and the public the seriousness with which the court views harassment.

Emergency Barring Orders in England & Wales and Scotland

3.8 Emergency barring orders have been introduced in a number of jurisdictions across Europe and beyond. Within the UK the Scottish government consulted on options for introducing emergency barring orders in December 2018¹ and introduced legislative proposals, on domestic abuse protection notices and orders, to the Scottish Parliament in October 2020 (Domestic Abuse (Protection) (Scotland) Bill). A wider review of the civil measures available for addressing domestic abuse has also been proposed.²

3.9 Emergency barring orders have been in place across all police forces in England and Wales since March 2014 in the form of Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs). A DVPN can be issued by the police when an individual has threatened or been violent to the victim. It allows for that individual to be immediately removed from the victim's home for up to 48 hours and prevents them from molesting the victim. Within that time, the police must apply to a magistrates' court for a DVPO. If granted, the DVPO extends the period of protection of the victim for a minimum of 14 days and a maximum of 28 days.

3.10 DVPNs/Os provide breathing space for the victim and give them 'time for action'. Support from specialist voluntary and community sector organisations is usually offered to the victim to help them plan a safe future, such as applying for a longer lasting non-molestation and/or occupation order. DVPOs also give the victim time away from the alleged perpetrator to consider if they would support a criminal prosecution.

3.11 Section 97 of the Justice Act (Northern Ireland) 2015, which enacted Schedule 7 of the same Act provided for the introduction of DVPNs and DVPOs in Northern Ireland.³ As noted above the decision has been taken not to introduce these notices and orders in their current

¹ Scottish Government, *Scottish Government Consultation on Protective Orders for People at Risk of Domestic Abuse*, (Dec 2018), https://consult.gov.scot/justice/people-at-risk-of-domestic-abuse/user_uploads/290884_sct1218171740-001_protective_p3.pdf

² Ibid. p31

³ Available at <https://www.legislation.gov.uk/nia/2015/9/schedule/7>

format, without further consideration to additional requirements, given some of the difficulties associated with them.

Domestic Abuse Protection Notices and Orders (DAPNs and DAPOs)

- 3.12 There have been a number of implementation issues with DVPNs/DVPOs in England and Wales including inconsistent use across different forces and limited sanctions when they are breached. The orders have been significantly underused in some areas, with an expectation that victims apply for non-molestation and occupation orders rather than making use of DVPNs/DVPOs. The sanctions imposed by courts for breaches of DVPNs/DVPOs have also often been relatively low level, which may cause them to be viewed as less effective as a deterrent. The focus on violence and threats of violence has made DVPNs/DVPOs difficult to use in cases of coercive control where physical violence/threats have been limited. This has left some victims who might be at particular risk unprotected.
- 3.13 In March 2018, the Westminster government issued a consultation paper, *Transforming the response to domestic abuse*, which included proposals to overhaul the system of protective orders to deal with domestic abuse.¹ The proposals, with some modifications following consultation, are in the Domestic Abuse Bill which is progressing through Parliament and should receive Royal Assent in 2021.
- 3.14 Under the Westminster Bill, DVPNs and DVPOs respectively will be replaced by DAPNs, to provide immediate protection to victims of all forms of domestic abuse, and DAPOs, to provide flexible, longer-term protection. Like DVPNs, DAPNs will be available only to the police. DAPOs will be available from the courts for a wider range of applicants including the police, victims and potentially by specified third parties. Criminal, family, and civil courts would be able to make a DAPO during court proceedings, which do not have to be domestic abuse-related.
- 3.15 The new orders will be piloted in a small number of geographical locations to assess their effectiveness before being rolled out across England and Wales. The pilot is expected to last two years and have approximately 10% of national coverage.²

¹ HM Govt. *Transforming the Response to Domestic Abuse*, (March 2018), pp.34-40

https://consult.justice.gov.uk/homeoffice-moj/domestic-abuse-consultation/supporting_documents/Transforming%20the%20response%20to%20domestic%20abuse.pdf

² *Impact Assessment: Domestic Abuse Bill*,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/904498/ANNEX_A-20200708_Domestic_Abuse_Bill_Enactment_IA_July_2020-FINAL.pdf, paragraphs 20b and 63.

Section 4 – Proposals for Domestic Abuse Protection Notices and Orders (DAPNs and DAPOs) in Northern Ireland

Should Domestic Abuse Protection Orders be introduced locally?

- 4.1 Protective orders play a vital role in protecting domestic abuse victims and deterring perpetrators from continuing their abusive behaviour. In Northern Ireland currently, protective orders can be made if:
- the victim applies to the family court themselves for a non-molestation and/or occupation order;
 - the family court makes a non-molestation order of its own volition during other proceedings; or
 - the perpetrator is tried in a criminal court, when the court may issue a restraining order.
- 4.2 Although the majority of non-molestation and occupation order applications relate to domestic abuse situations, none of the protective orders currently available are domestic abuse specific. Section 97 of the Justice Act (Northern Ireland) 2015 provided for domestic abuse related orders, where this involved violence or the threat of violence, in the form of Domestic Violence Protection Notices and Orders (DVPNs and DVPOs). This legislation would have enabled the police and magistrates' courts to take action to protect a victim for up to 48 hours (DVPN) and up to 28 days (DVPO).
- 4.3 These were not introduced in Northern Ireland, in part due to the absence of the legislative Assembly. Although there is evidence that they help to reduce re-victimisation, the wording of the legislation makes them difficult to use in situations of non-physical domestic abuse and coercive control. Given concerns about the use of DVPNs and DVPOs elsewhere, including some of the limitations, the decision has been taken that these will not be introduced pending decisions on the introduction of Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs). It is proposed to move towards introducing DAPNs and DAPOs in Northern Ireland, rather than implementing DVPNs and DVPOs in the interim.
- 4.4 We propose to create a new Domestic Abuse Protection Notice (DAPN) and a new Domestic Abuse Protection Order (DAPO), and to revoke the legislative provisions related to DVPNs and DVPOs. DAPNs and DAPOs would be available to protect victims from domestic abuse, including physical violence and the threat of violence as well as non-physical abuse and coercive control. This would be

linked to the definition of abusive behaviour in the Domestic Abuse and Family Proceedings Bill and apply to individuals who are personally connected as set out in that legislation. It is hoped that the new notices and orders could enable a more coherent response to domestic abuse across the criminal, civil and family courts. As well as prohibitions, such as the alleged perpetrator not contacting the victim, coming within a certain distance of their home, not entering the home or requiring them to leave the home, the Department also proposes to take enabling powers that would allow the courts, in the longer term, to include positive requirements of the alleged perpetrator, such as attending a behavioural change programme, as conditions of the DAPO. It is likely that the Department will wish to have DAPNs and DAPOs in place across Northern Ireland, in terms of prohibitions, ahead of introducing any provisions that would place positive requirements on alleged perpetrators. Account would also need to be taken of the funding available for these ahead of introduction.

- 4.5 The DAPN would be made by the police to protect a victim who has been subject to abusive behaviour by an individual who is personally connected to them. The victim must be aged 16 years or over and the alleged perpetrator must be aged 18 years or over. The DAPN would be a short-term measure and would provide the victim with immediate protection and a breathing space away from the alleged perpetrator during which they could consider their options going forward. The police would subsequently be required to apply to a magistrates' court for a Domestic Abuse Protection Order (DAPO) to provide longer-term protection to the victim.
- 4.6 A number of specified third parties may be able to apply to the family courts for a DAPO on the victim's behalf. The availability of third party applications have the potential to protect victims that are unlikely to approach the police and would potentially enable specified organisations to take action on their behalf rather than expecting the victim to take legal measures themselves.
- 4.7 It is anticipated that in police and any third party applications the victim would generally not need to appear in court. This is likely to be of particular benefit to those victims who feel too intimidated to apply to court on their own behalf and would therefore extend protection to some of the most vulnerable victims. The availability of any third party application route could also provide MARACs with an additional tool for protecting high risk victims.
- 4.8 Victims would be able to apply for a DAPO in their own right, as an alternative to a non-molestation order and/or occupation order. The

conditions that are currently available in non-molestation and occupation orders respectively would be available in DAPOs. For those victims who might currently seek both a non-molestation order and an occupation order, the DAPO would be able to contain the required conditions within a single order.

- 4.9 Over the longer term, DAPOs could include positive requirements, such as requiring the alleged perpetrator to attend a behavioural change programme, that are not available with the current orders. Non-molestation orders and occupation orders would however continue to be available, both for domestic abuse victims who choose to use them rather than applying for a DAPO, and for victims where the alleged perpetrator is not personally connected to them, such as in cases of stalking or harassment by someone other than a former partner or close family member. The Department would intend to keep under review the extent to which the new notices and orders are used versus current protective orders.
- 4.10 Criminal, civil and family courts would also be able to make DAPOs during other proceedings in order to protect victims. This would include in criminal and family proceedings that do not appear at the outset to be domestic abuse related but where concerns relating to domestic abuse emerge during the proceedings. For example in a criminal trial for a non-domestic abuse offence or in divorce proceedings in the family court. Relevant civil proceedings would be specified in regulations and could include housing-related proceedings in the first instance. Further consideration will be needed as to the detail of this and how it may operate.
- 4.11 A summary of the key proposals is set out at **Appendix 1**.

Question 1:

Do you agree that we should introduce Domestic Abuse Protection Notices and Domestic Abuse Protection Orders?

Specific Proposals for the Domestic Abuse Protection Notice

- 4.12 The DAPN would be available for all types of domestic abuse including where there is violence, threats of violence as well as non-physical abuse (including controlling and coercive behaviour). It would act as an emergency notice in situations of domestic abuse and would provide immediate breathing space to a victim. It would be issued to the alleged perpetrator by the PSNI and would be effective from the

time of issue. The approval of a senior police officer, likely to be at least the rank of Inspector, would be required for a DAPN to be issued. The DAPN would prohibit the alleged perpetrator from being abusive to the victim and would allow the PSNI to immediately remove the alleged perpetrator from the victim's home for a short period of time following the issuing of the notice and until an order, providing longer term protection, is in place. The alleged perpetrator would not be permitted to contact the victim or to approach their home while the notice was in place.

- 4.13 As with the DVPN, the police would be expected to consult with the victim before issuing a DAPN in order to ascertain their views. However, their consent would not be required where it is considered that there is a risk to the individual which could be addressed through the use of a notice or order. A notice could be issued, and an order pursued, against the victim's wishes if the police considered that it was in the victim's interests. This is intended to support victims who are too frightened of the alleged perpetrator to initiate action against them or who are being controlled and manipulated by the alleged perpetrator not to take action. As part of the process the police would be expected to take into account the welfare of any person under the age of 18 whose interests the officer considered relevant to the giving of the notice, such as any children of the victim and/or alleged perpetrator and any other children who live with them.
- 4.14 A DAPN would be served on the alleged perpetrator by a police officer and would state the grounds on which it was given. On serving the notice the officer would be required to ask the alleged perpetrator for an address at which they could be issued notice of the hearing of the application for the DAPO.
- 4.15 The current provision in relation to DVPNs provides that a DVPO must be obtained within 48 hours of the service of the notice. We are proposing that the duration of the new DAPN would be for up to four or perhaps seven days, rather than up to 48 hours as would have been the case with a DVPN. This is to ensure that the police have sufficient time to apply to a magistrates' court for a DAPO while the DAPN is still in place. The slightly longer duration aims to address two issues. On a practical level, the limited number of magistrates' courts available on Saturdays would mean that DAPNs issued on Thursdays and Fridays would be at higher risk of lapsing if the time limit was 48 hours. Of greater significance, however, is the need for sufficient time to be available for an adequate assessment of any conditions that should be imposed on the alleged perpetrator as part of the DAPO.

- 4.16 Many domestic abuse perpetrators are serial perpetrators. The intention is that the issuing of a DAPO, along with any future positive requirements that may be associated with this, could assist in tackling abusive behaviour, not only for the victim named in the DAPO but for any future partners. Sufficient time is required for the assessment to be undertaken and for any associated documentation to be prepared for the police to present to court. It is considered that a minimum of four days is practically required to ensure that an appropriate application for a DAPO can be prepared and considered by the court. We would welcome views on whether this time period should be shorter (up to 48 hours, as with the legislation governing DVPOs) or longer (up to seven days).
- 4.17 We recognise that having a DAPN in place for four to seven days without a court considering the merits of the case could potentially impinge on the rights of the alleged perpetrator to a prompt court hearing and to a private and family life. This is particularly the case where the police suspect that the alleged perpetrator poses a risk to the victim but have not charged them with a criminal offence. It is considered that a proposed four day period would most appropriately balance the rights of the alleged perpetrator with the victim's right to life and to be free from inhuman or degrading treatment. This is considered important in order to avoid the situation where either police officers fail to use their powers to protect victims, or there is an inability to obtain an order that has the necessary protections associated with it. We have sought to develop proposals that will work in practice.
- 4.18 It is important to note that the limited use of DVPNs and DVPOs by police forces in England and Wales has been criticised by a range of organisations including HM Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS).¹ It has been considered by some that a time limit of 48 hours to apply for a DVPO, following the issuing of a notice, can act as a disincentive for frontline officers. The evaluation of the DVPN/DVPO pilot that preceded the rollout of the orders across England and Wales recommended extending the duration of the DVPN from 48 hours to four to seven days.² A longer period is also in line with practice in other jurisdictions that have emergency barring orders. For example, the initial order is for two weeks in Austria and for ten

¹ Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, *A progress report on the police response to domestic abuse*, (November 2017), p.25, <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/progress-report-on-the-police-response-to-domestic-abuse.pdf>

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, *The police response to domestic abuse: an update report*, (February 2019), p.43, <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/the-police-response-to-domestic-abuse-an-update-report.pdf>

² Home Office, *Evaluation of the Pilot of Domestic Violence Protection Orders*, (November 2013), p.7, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/260897/horr76.pdf

days in the Netherlands. We would welcome your views on the duration of DAPNs and our consideration that a four day period may, on balance, be most appropriate.

Question 2:

Do you agree that the proposed Domestic Abuse Protection Notices and Orders should apply to not only physical violence and threats of violence but also non-physical abusive behaviour?

Question 3:

What length of time should a Domestic Abuse Protection Notice be valid for before the police have to apply to a magistrates' court for a Domestic Abuse Protection Order, the suggestion being up to four days?

Support for victims

4.19 A DAPN would enable the police to quickly remove the alleged perpetrator from the victim's home while also providing the victim with immediate protection. It would give the victim 'breathing space' or 'time for action' during which they could plan their longer-term future. At this time PSNI should advise the victim about relevant support services, where appropriate, while the DAPN was in force.

Specific proposals for the Domestic Abuse Protection Order

4.20 As with the DAPN, the new DAPO would be available for not only physical violence and threats of violence but also non-physical abusive behaviour. It is intended that this be linked to the definition of abusive behaviour within the Domestic Abuse and Family Proceedings Bill.

Obtaining an Order

4.21 There would be a number of routes leading to a court making a DAPO:

- the police could apply to a magistrates' court for a DAPO following the issue of a DAPN;
- the police could apply for a DAPO as a standalone application to a magistrates' court at any other time;
- a victim could apply to a family court for a DAPO on their own behalf;
- a victim could apply to a family or civil court for a DAPO in ongoing

family or civil proceedings to which the victim and alleged perpetrator are both parties;

- a criminal, civil or family court could make a DAPO under its own volition during other proceedings such as a criminal trial or divorce proceedings;
- a relevant third party (including specified services) could potentially apply to a family court for a DAPO on the victim's behalf; or
- any other person could potentially apply to a family court for a DAPO on the victim's behalf, with the leave of the family court.

4.22 As with the current system of protective orders in Northern Ireland, the applicant would be required to present evidence of domestic abuse to the court and the respondent would have the opportunity to refute any such evidence in court.

4.23 By enabling these orders to be made across family, civil and criminal courts, we intend to provide a more flexible and comprehensive response to domestic abuse across the justice system. The courts would be able to make a DAPO in situations where no application for an order had been made by the police, the victim or potentially by specified third parties, in order to protect individuals who are identified as being at risk. They would be able to make a DAPO without notice to the alleged perpetrator in certain situations, for example, where there is reason to believe that they may significantly harm or intimidate the victim to make them withdraw the application, or where they may deliberately seek to evade service of notice of the proceedings. As with restraining orders under the Protection from Harassment (Northern Ireland) Order 1997, a criminal court would be able to make a DAPO whether the defendant was convicted or acquitted.

4.24 Victims would be able to apply for DAPOs themselves, or for the existing protective orders if they prefer. However, by enabling the police and potentially by specified services providers to apply for a DAPO on the victim's behalf, and by allowing courts to make an order of their own volition, it is hoped to make the process of obtaining protection less burdensome for victims, especially for those who are intimidated or unable to make an application on their own behalf. We also want to send a clear signal that ending domestic abuse and protecting victims from further harm is a shared responsibility. Where any power is to be potentially exercised by third parties we would specify these in regulations. Further consideration will be given to how this may operate and those professionals that may be able to avail of it. This could potentially include social workers, housing advisers or others that may encounter domestic abuse within their work. We

would welcome views on whether individuals and organisations, other than the police, victim or courts should be able to apply for a DAPO and if so who this should cover.

- 4.25 Statutory guidance will be needed in order to provide information about the various routes for obtaining a DAPO. There will also be a need to raise understanding about domestic abuse protection notices and orders among those working in the domestic abuse field, as well as the judiciary, in order to ensure a consistent approach across the different courts as to the circumstances in which an order is made and any conditions that may be attached to it.

Question 4:

Do you agree that there should be multiple routes via which an application for a Domestic Abuse Protection Order can be made?

Question 5:

Do you agree that regulations should specify the 'relevant third parties' who would potentially be able to apply for a Domestic Abuse Protection Order?

Question 6:

Which individuals/organisations should be identified as potential 'relevant third parties'? Please give reasons.

Question 7:

Do you agree that courts should be able to make Domestic Abuse Protection Orders of their own volition during other proceedings, including in criminal trials?

Availability of special measures

- 4.26 The availability of special measures in court (such as the victim giving evidence via a live video link or from behind a screen shielding them from an alleged perpetrator) supports victims' access to the justice system. Under the Domestic Abuse and Family Proceedings Bill, special measures will be available to domestic abuse victims when giving evidence in a criminal trial against a defendant. Court rules already make provision for a court hearing family proceedings to allow a witness to give evidence by video link and other special measures

may be considered by the court on a case-by-case basis. The Bill contains provision to require court rules to make specific provision in relation to special measures for victims of domestic abuse giving evidence in family proceedings. This will ensure that victims will be able to avail of special measures, if needed, when applying for a DAPO

Conditions attached to DAPOs

- 4.27 It is intended that in the longer term DAPOs could contribute to more effective management of abusers, through the use of positive requirements such as behavioural change programmes. Many individuals are repeat offenders, both in relation to the victim that originally brought them to the attention of agencies, and potentially in relation to future partners. We want to make provision that would enable the new orders, once these have bedded in across Northern Ireland, and an accurate assessment of uptake can be determined, to challenge individuals' abusive behaviour and reduce the risk that they pose to their current victim and also potential future partners/family members.
- 4.28 Ahead of this it is proposed that courts should be able to attach a range of conditions to DAPOs that they consider necessary to reduce the risk of the individual committing further domestic abuse. These would include prohibitions (for example requirements not to contact the victim, including online; to leave the victim's home if they live together; not to come within a certain distance of the victim's home or workplace) and, in the longer term, positive requirements (such as attending a domestic abuse behavioural change programme, or an alcohol or drug treatment programme). More generally it is proposed that it would be a criminal offence to breach any conditions attached to the new order.
- 4.29 Prohibitions are already part of existing protective orders such as non-molestation orders. Positive requirements would be a new type of condition, aimed at reducing the risk an individual poses by encouraging behaviour and attitudinal change. It is proposed that in order to allow the new notices and orders to bed in, work effectively and accurately ascertain the numbers involved, that any provision in relation to positive requirements, such as behavioural change programmes, be considered in the longer term, with enabling powers to allow the detail of this to be stipulated in secondary legislation. This would enable an assessment to be undertaken of the effectiveness of the orders, and to plan how to expand the provision in relation to positive requirements. This will also be subject to the necessary

funding being available in due course.

- 4.30 All those subject to DAPNs or DAPOs would be required to advise the police of their address and any change of address during the course of the notice or order. It would be a criminal offence to fail to comply with this requirement without reasonable excuse. In addition, the Department may specify by regulations further notification requirements that a court may impose on certain perpetrators to prevent domestic abuse, such as details of with whom they live, their intimate relationships and any associated children.
- 4.31 The individual would also be required to keep any organisation responsible for monitoring compliance with any positive requirements informed of any changes of address. This would assist with perpetrator management and make it more difficult for perpetrators to evade compliance with DAPO conditions.
- 4.32 The applicant, victim or alleged perpetrator would have the right to appeal the court's decisions in relation to making the order and any conditions attached to it.

Question 8:

Following the introduction of Domestic Abuse Protection Orders across Northern Ireland more generally, and in the longer term, do you agree that courts should be able to impose positive requirements as well as prohibitions as part of the conditions attached to the proposed order?

Question 9:

Do you agree that courts should be able to require individuals subject to a Domestic Abuse Protection Order to notify personal details to the police?

Question 10:

If so, what personal details should the courts be able to require individuals to provide to the police?

Protecting children

- 4.33 Domestic abuse negatively impacts on children in numerous ways. Children often witness or overhear domestic abuse and can also be

affected by the wider relationship dynamics within which domestic abuse is occurring even if they are not present at the time of an incident. Some individuals also direct abuse at children as one of the ways in which they seek to control not only the adult victim but the whole household. As part of the DAPN and DAPO process, the police and courts respectively will be required to consider the welfare of any children that are members of the victim's household as part of making the notice/order. Consideration could also have to be given to whether this should apply to any other children that are normally living in the household or are affected.

- 4.34 Family courts would be able to issue DAPOs during other proceedings, which will increase the options available to courts to protect children who are exposed to domestic abuse. In addition, we are seeking views on whether the courts should be able to impose prohibitions within the DAPO explicitly protecting any children under the age of 18, such as prohibiting the alleged perpetrator from contacting the child in person or electronically. The court would need to be aware of any other order that may be in place, such as in relation to child contact, that might prevent such a condition being imposed.
- 4.35 Both DAPNs and DAPOs would only be able to be made against alleged perpetrators aged 18 years or over.

Question 11:

As well as enabling conditions to protect the victim, should it be open to the courts to impose conditions within the Domestic Abuse Protection Order requiring the alleged perpetrator not to approach or contact any associated children?

Monitoring compliance

- 4.36 The aim of protective orders is to exert pressure on those carrying out abusive behaviour so that they desist from abusing the victim. To be effective, alleged perpetrators must comply with the conditions imposed and agencies must take action if they fail to do so. We propose that the DAPO should make clear who would be responsible for supervising compliance with the conditions the order imposes on the individuals. For most prohibitions, such as contacting the victim or coming to the victim's home, the PSNI would be responsible for supervising compliance. For any future positive requirements, such as attending a substance misuse or behavioural change programme, the organisation responsible for providing the programme would supervise compliance with that requirement and would notify the PSNI if the

individual failed to comply.

- 4.37 A protocol is in place to ensure that the Northern Ireland Courts and Tribunal Service (NICTS) shares information about the existence of non-molestation and/or occupation orders promptly with the PSNI. We would expect a similar approach to be developed regarding DAPOs.
- 4.38 We are seeking views on whether, in the longer term, electronic monitoring should be used to help monitor compliance with a DAPO. A number of different technologies are available which could be used, for example, to remotely monitor the individual's compliance with conditions such as abiding by an exclusion zone around the victim's home and/or workplace. Electronic monitoring could be used to track an alleged perpetrator's location with the aim of preventing stalking or intimidation.
- 4.39 Although electronic monitoring has the potential to enhance compliance with conditions placed upon the alleged perpetrator, we recognise that its use would need to be proportionate and fair. We would include a set of statutory safeguards to ensure that electronic monitoring is only used when necessary and proportionate. As the effectiveness of electronic monitoring in relation to domestic abuse is relatively untested, any introduction of this would have to be piloted in the first instance, likely within the criminal courts, before considering use in any other courts. It is proposed that an enabling power be provided for in legislation that would allow this measure to be further considered and brought forward in the longer term.

Question 12:

Should provision be made that would, in the longer term, enable courts to be given an express power to impose electronic monitoring as a condition of a Domestic Abuse Protection Order?

Question 13:

What safeguards should be put in place relating to any use of electronic monitoring with Domestic Abuse Protection Orders?

Breach of DAPN or DAPO

- 4.40 For orders to operate effectively, those subject to the order must face sanctions for breaches. In Northern Ireland currently, it is not a criminal offence to breach an occupation order unless a power of

arrest has been attached to the order. Without a power of arrest, the breach is dealt with as a potential contempt of court. Where an individual breaches an occupation order but there is no non-molestation order in force, the victim would have to make a further application to the court which may result in the court issuing an arrest warrant.

- 4.41 Breach of a non-molestation order or a restraining order is a criminal offence and the alleged perpetrator can be arrested and may be prosecuted if sufficient evidence of a breach is available. According to the Northern Ireland Courts and Tribunals Service, between 2016 and 2019, 1709 defendants appeared in court for breaching a non-molestation order at least once, with the majority being found guilty. In the same period, 9380 non-molestation orders were granted, either on an ex-parte basis or as a full order. As breaches may not always be reported by the victim, or do not always result in arrest or prosecution, the proportion of non-molestation orders breached may be higher than the number of cases prosecuted implies.
- 4.42 It is proposed that it would be a criminal offence to breach a DAPN or DAPO. A magistrates' court would be able to impose a sentence of up to six months imprisonment and/or a fine and the Crown Court up to five years and/or an unlimited fine for a breach of a DAPO. The maximum penalty is similar to that for a breach of a non-molestation order and we consider that it sends a strong message that non-compliance will be taken seriously.
- 4.43 As a DAPO would have effect throughout the UK it would be an offence to breach it while in another part of the UK. For example, if a DAPO required the alleged perpetrator not to contact the victim in any way, they would breach the order by sending a text message or e-mail while they were in another part of the UK. Such a breach would constitute an offence in Northern Ireland that would be liable to prosecution here.
- 4.44 We recognise that domestic abuse is a complex issue and as such some victims may be concerned about applying for a DAPO, or reporting a breach, if it will result in the alleged perpetrator being prosecuted. In order to ensure that the possibility of criminal action does not deter victims from applying for a DAPO, or from reporting breaches, we propose to allow courts to deal with a breach as a contempt of court which would not result in a conviction, if the victim requests this approach and the court considers that to be in the victim's interests. A similar model is already used for breach of non-molestation orders. The court would need to be satisfied that the

victim had not requested that the breach be dealt with as a contempt of court because they were being pressurised by the alleged perpetrator to do so.

Question 14:

Do you agree that breach of the proposed order should be a criminal offence?

Question 15:

If you do agree that breach of the proposed order should be a criminal offence, should it be possible for breach to alternatively be punished as a contempt of court?

Length of orders

4.45 DVPOs in England and Wales, as well as those that would have been introduced locally, had a maximum duration of 28 days. For the new DAPOs it is proposed that the court would have flexibility in terms of the length of time that it would be in place for. It is anticipated that the duration of DAPOs could be similar to the current non-molestation orders, which we understand are typically issued for one to two years. The court would be required to specify the period for which a DAPO would be in place at the time of making the order. The DAPO could be modified within that time and a new order put in place if necessary before the expiry of the existing order. The intention is to provide the courts with flexibility in responding to domestic abuse and for them to be able to make orders for the length of time considered appropriate, taking account of the particular circumstances of the case.

Question 16:

Do you agree that courts should have flexibility in determining how long to impose a Domestic Abuse Protection Order for?

Varying or discharging orders

4.46 Courts are already able to vary or discharge occupation and non-molestation orders on application by the victim or alleged perpetrator. We propose that they should also be able to vary or discharge DAPOs at the request of the victim, alleged perpetrator or the applicant, where the application was made by the police or a potentially a third party, or of the court's own volition. This will allow the court to take account of

changing circumstances. Where a victim requests that an order be made less onerous for the alleged perpetrator, we would expect the court to be satisfied that the victim had not been pressurised or coerced to do so. Where an alleged perpetrator requests that an order be less onerous, we would expect the court to seek the views of the victim.

Question 17:

Do you agree that courts should be able to vary or discharge Domestic Abuse Protection Orders either of their own volition or at the request of the victim, or alleged perpetrator, or the applicant?

Question 18:

What safeguards should be put in place to ensure that the Domestic Abuse Protection Order is not varied or discharged because the victim is being pressurised by the alleged perpetrator?

Perpetrator management

- 4.47 Effective management of the alleged perpetrator's risk to the victim and to others is an essential part of preventing domestic abuse. Our intention is that the new DAPN/DAPO process provides another important tool in challenging abusive behaviour of individuals.
- 4.48 No single agency or intervention can solve domestic abuse on its own. We consider that an inter-agency approach to perpetrator management will be essential, in the context of any positive requirements that are brought forward and consideration will need to be given to perpetrator management systems as part of this future aspect of introducing DAPNs/DAPOs.
- 4.49 Domestic abuse is a complex issue. Agencies may face conflicting accounts and counter-allegations from the people involved and may find it difficult to identify who is the victim and who is the aggressor. This is particularly the case in situations where domestic abuse exists alongside drug/alcohol abuse and mental health issues. There is a risk that some alleged perpetrators of domestic abuse may seek to manipulate the process to present themselves as the victim, especially where the victim has retaliated or used violence in self-defence. In these situations the alleged perpetrator may seek to increase their control of the victim by having them removed from a shared home. We

would welcome views on how to approach issuing DAPNs and applying for DAPOs where there are counter-allegations of abuse.

Question 19:

Do you have any views about how the Domestic Abuse Protection Notice/Order process can contribute to better perpetrator management?

Question 20:

How can we ensure that the alleged perpetrator is not able to use the DAPN/DAPO process to further abuse a victim?

Implementation of DAPNs and DAPOs

- 4.50 Victims of domestic abuse can receive Legal Aid when applying for protective injunctions and we propose that a similar approach would apply to victims seeking DAPOs. However, the aim with the introduction of DAPOs is to shift the onus, at least in part, from the victim having to take legal action to protect themselves to the police, the courts and potentially specified service providers acting to protect the victim. It is our intention to send a clear message that domestic abuse is not a private matter and that a range of bodies have a responsibility to prevent it continuing or escalating. We also want to ensure that victims are not left unprotected if they are too frightened of, or too restricted by, the alleged perpetrator's controlling behaviour to be able to initiate action on their own behalf.
- 4.51 DAPNs and DAPOs offer a new approach to protecting victims of domestic abuse and holding abusive individuals to account. We want the new orders to be easy to access and also be supported by clear guidance and appropriate training for the agencies responsible for making sure they work effectively. We will want to work with experts from the police, courts and specialist domestic abuse sector to ensure that these new orders work on the ground. It will also be important to hear from victims, as well as those subject to the new orders, about their experience of the approach being adopted. To this end, one option would be to pilot DAPNs and DAPOs for between one to two years in a number of areas (likely one urban and one rural) and modify the approach as required before rolling it out across the whole of Northern Ireland. It is intended to use the pilot to better understand the costs involved and to plan how to then implement DAPOs effectively across Northern Ireland as a whole after the pilot period.

- 4.52 It is proposed that in order to allow the new notices and orders to bed in, work effectively and accurately ascertain the numbers involved, that any provision in relation to positive requirements be introduced in the longer term, with enabling powers to allow the detail of this to be stipulated in secondary legislation. This would enable an assessment to be undertaken of the effectiveness of the orders and to plan how to expand the provision in relation to positive requirements, such as behavioural change programmes, across Northern Ireland.
- 4.53 Consideration will be given to how best to provide for the costs of applying for a DAPO during the initial phased pilot period. It is intended to use the pilot to better understand the costs involved and to plan how to then implement DAPOs effectively across Northern Ireland as a whole after the pilot period.

Question 21:

It is intended to pilot DAPNs and DAPOs in two geographical locations. Do you have any views on this?

Question 22:

Do you have any views as to the two locations that Domestic Abuse Protection Orders could be piloted in, possibly Belfast and one 'more rural' area (dependant on numbers)?

Question 23:

Do you have any other comments you wish to make regarding the introduction of Domestic Abuse Protection Notices and Orders?

Section 5 – Impact of the consultation proposals

Equality and human rights impacts

- 5.1 As a public authority the Department is required, under Section 75 of the Northern Ireland Act 1998, to have due regard to the need to promote equality of opportunity. Public authorities are also required to identify whether a policy has a differential impact upon relevant groups; the nature and extent of that impact; and whether such an impact is justified. These obligations are designed to ensure that equality and good relations considerations are made central to government policy development.
- 5.2 The options for introducing DAPNs and DAPOs discussed in this consultation have been screened for equality impact. Such measures, if implemented, would apply equally to all victims and alleged perpetrators of domestic abuse, irrespective of which Section 75 category they belong to. However, women are more likely than men to be victims of domestic abuse and more likely to seek a protective order than men.¹ It is, therefore, anticipated that any new legislative provision to improve access to protective orders, enabling victims, the police and recognised third party organisations to apply for them, would benefit a higher proportion of women than men.
- 5.3 Conversely, men are more likely than women to be perpetrators of domestic abuse so a higher proportion of men than women are likely to be subject to the prohibitions and any positive requirements that DAPNs and DAPOs would introduce. Our aim with the new approach is to ensure that the new protective orders, along with any positive requirements, encourage individuals to change their abusive behaviour, and over the longer term this may in turn be of benefit to them.
- 5.4 Adults in their 20s and 30s are more likely to be victims of domestic abuse than those in other age groups so they may benefit more than other groups. There is a lack of data available locally for other Section 75 groups but evidence from England and Wales suggests that disabled people, trans people and gay and bisexual men, experience heightened levels of domestic abuse. The policy is therefore likely to particularly benefit disabled victims, trans victims and gay and

¹ According to the Northern Ireland Courts and Tribunals Service, approximately 85% of applications for non-molestation orders are made by women.

bisexual male victims. People who are members of multiple Section 75 categories may face additional barriers to accessing safety, such as applying for a protective order, so the policy is also likely to be of particular benefit to them. Children affected by domestic abuse would also be expected to benefit as a result of more effective prohibitions against domestic abuse being in place and a reduction in living with/witnessing domestic abuse.

- 5.5 Overall, we do not anticipate any adverse equality related impacts on any section 75 category. We will, however, take account of views expressed through this consultation in developing any proposals for legislation and revisit the screening if required.

Question 24:

Do you have any comments to make on the potential implications the introduction of Domestic Abuse Protection Notices and Orders may have on equality, in terms of the impact of the proposals for different groups?

Question 25:

Is there an opportunity to better promote equality of opportunity or good relations as part of the proposals?

- 5.6 The introduction of DAPNs and DAPOs would extend the scope of protective orders to all forms of domestic abuse, including non-physical abuse and coercive control. This would enhance protection for victims from inhuman or degrading treatment or punishment.
- 5.7 As set out earlier we recognise that imposing a DAPN for up to four, or even seven, days potentially impacts on the rights of alleged perpetrators. We have sought to balance the rights of those to be subject to the orders to a prompt court hearing, and to private and family life, against the rights of the victim to life and to be free from inhuman or degrading treatment.
- 5.8 We also recognise that the proposed use of electronic monitoring may raise concerns about the human rights of those subject to it. However we are also aware of the negative impacts on victims, and their children, such as fear and trauma, when protective orders are breached. In some cases, breach of a protective order has been for the purpose of physically or sexually assaulting the victim, resulting in serious injury and even death. We consider that electronic monitoring may deter an individual from breaching an order. It would alert the

police to take prompt action to protect the victim if an exclusion zone was breached, and assist in monitoring compliance with DAPOs.

- 5.9 It is likely that any use of electronic monitoring would be tested in the criminal courts in the first instance, in order to determine how, in what circumstances and to what extent it may have a role in protecting victims and challenging perpetrators to change their abusive behaviour. It would also be necessary to include a set of safeguards to ensure that electronic monitoring would only be used when necessary and proportionate.

Question 26:

Do you have any comments on the potential implications the introduction of Domestic Abuse Protection Notices and Orders may have on human rights?

Rural Needs Impact

- 5.10 Domestic abuse occurs across the whole of Northern Ireland and is not confined to rural or urban areas. Therefore, the legislative options discussed in the consultation paper would apply to victims and alleged perpetrators of domestic abuse in rural areas, as well as urban areas. We do not consider that the legislative options will impact in a different way in rural areas compared to urban areas.

Question 27:

Do you have any comments on the potential implications the introduction of Domestic Abuse Protection Notices and Orders may have in rural areas?

Financial and public sector impact

- 5.11 The introduction of DAPNs and DAPOs would have a number of potential financial impacts relating to:
- a potential increase in applications for protective orders due to a widening of application routes and the extension of protection to non-physical abuse;
 - costs to the PSNI, and any third party organisations that are potentially specified, from making DAPO applications (although these would need to be set against a reduction in the number of

applications being made by victims where an agency is taking forward an application that would otherwise be made by a victim);

- costs to the PSNI of increased record keeping in relation to any future notification requirements;
- the provision of positive requirements in the longer term;
- the use of electronic monitoring in the longer term;
- training and familiarisation with the approach for those involved in the operation of the new notices and orders, especially the police and courts.

5.12 It is difficult to predict the potential increase in numbers of applications for protective orders being made, and what proportion of orders would be initiated by the police, relevant third party agencies and victims themselves. The Westminster government is working on an assumption of an increase of 5 – 10% in applications for protective orders and this has been taken as the starting point for consideration of the increase in applications in Northern Ireland. As this point it is also difficult to assess the proportion of DAPOs that will have positive requirements or electronic monitoring conditions attached, as these have not been options for courts previously.

5.13 It is intended that the proposed pilot would allow for numbers and associated costs, in relation to prohibitions, to be further assessed ahead of roll out across Northern Ireland and for further consideration to be given to the longer term introduction of positive requirements.

5.14 We anticipate that, once fully introduced, the introduction of DAPOs will facilitate a more consistent response to domestic abuse from the justice system by offering a comprehensive and flexible order to deal with abusive behaviour. This may result in earlier and more effective intervention by the justice system and other frontline agencies. This in turn may prevent the escalation of abuse and reduce revictimisation and reoffending, which could reduce emotional and physical costs to victims, their children and society.

5.15 The Department will consider potential financial impacts further, and funding of this, in developing future proposals for legislation.

Question 28:

Do you have any comments you wish to make regarding the financial impact of the introduction of Domestic Abuse Protection Notices and Orders?

Section 6 – Next steps

- 6.1 We will consider all contributions within the scope of this consultation and take them into account in the further development of proposals for legislation. A summary of responses will also be made available on the Department's website. As noted in section 1, implementation of the proposals contained in this paper will require legislation to be taken forward.
- 6.2 In discussions with our statutory and voluntary sector partners we have noted that funding will be a key implementation issue, in order to ensure that the new notices and orders are effectively utilised. It is hoped that piloting the use of the new notices and orders will help the Department to better understand uptake associated with the new provisions and the funding that will be needed in due course.
- 6.3 The importance of training for police, and those involved in the outworking of these new measures, is also noted in order to ensure that they operate as effectively as possible.

Section 7 – How to Respond, Duration, and Closing Date

- 7.1 The consultation will be open for 10 weeks. The closing date is **Friday 12 February** (please note we will be unable to accept consultation responses after this date).

Questions

- 7.2 There are a number of questions posed throughout the document to assist you in considering the proposed new approach. A consultation questionnaire is provided at the end of this document (**Appendix 2**), though we would prefer if possible that online responses are made through **Citizen Space**.

Enquiries and responses

- 7.3 As far as possible **responses** should be made through the NI Direct **Citizen Space** website, <https://consultations.nidirect.gov.uk/doj-corporate-secretariat/enhancing-legal-protections>, where the document and response questionnaire can be found.

- 7.4 Alternatively you can:

Phone: 028 9052 0534

E-mail: VAP@justice-ni.gov.uk

Write to: Community Safety Division
Room A4.03
Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

Privacy, Confidentiality and Access to Consultation Responses

- 7.5 For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full. For more information about what we do with personal

data please see our consultation privacy notice.

- 7.6 Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR) (EU) 2016/679.
- 7.7 If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as confidential, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR.

Alternative Formats

- 7.8 An electronic version of this document is available in the consultation section of the Department's website (www.justice-ni.gov.uk/consultations). Hard copies of this consultation document, and copies in other formats (including Braille, large print etc.), can be made available on request. If it would assist you to access the document in an alternative format or language other than English, please let us know and we will do our best to assist you.

Complaints

- 7.9 If you have any concerns about the way this consultation process has been handled, you should send them to the following address:

Standards Unit
Department of Justice
Knockview Buildings
Stormont Estate
Belfast
BT4 3SL
Email: Standardsunit@justice-ni.gov.uk

Appendix 1 – Overview of the Key Proposals regarding Domestic Abuse Protection Notices and Orders

Domestic Abuse Protection Notices and Orders aim to:

- deliver immediate short-term protection from all forms of domestic abuse through Domestic Abuse Protection Notices (DAPNs);
- provide an effective system of longer term protection through Domestic Abuse Protection Orders (DAPOs).

Key aspects of the proposals are set out below:

- a civil Domestic Abuse Protection Notice, issued by the police, would provide immediate protection from all forms of domestic abuse, including physical and non-physical abuse;
- this could be used where a senior police officer had reasonable grounds for believing that a person has been abusive to someone that they are personally connected to and that the notice is necessary to protect that person from domestic abuse or a risk of domestic abuse;
- the victim must be aged 16 years or over and the alleged perpetrator be aged 18 years or over;
- the Domestic Abuse Protection Notice could require an alleged perpetrator to not contact the victim, not come within a certain distance or their home, not enter their home or require them to leave the victim's home (prohibitions);
- the Domestic Abuse Protection Notice could last for a period of up to 4 (or even 7) days, at which point an application would have to be made to the magistrates' court for an Order;
- a civil Domestic Abuse Protection Order would provide flexible, longer-term protection for victims. The duration of Orders could be from around six months to one or two years, but could be longer where necessary and proportionate. Length of an order is on the basis of a court decision, on the balance of probabilities, and orders would be made where necessary and proportionate;
- the new Order would be available in both criminal and civil courts;
- applications for a Domestic Abuse Protection Order could be made by the police in a magistrates' court, or by a victim or potentially by specified third parties in a family court. Any other person would be able to apply with the leave of the family court. Where other agencies apply on the victim's behalf, the aim is for the victim to not have to appear in court, where they do not wish to do so;
- Domestic Abuse Protection Orders could also be made by the criminal,

civil or family court, of its own volition, during other court proceedings which would not necessarily have to be domestic abuse related but where concerns relating to domestic abuse emerge during the proceedings;

- as well as imposing prohibitions, Domestic Abuse Protection Orders could in the longer term include positive requirements such as requiring an individual to attend a behavioural change programme or be subject to electronic monitoring (the intention would be to introduce these once the new approach has bedded in across Northern Ireland and subject to the necessary funding);
- a court would be able to vary the requirements imposed by a Domestic Abuse Protection Order in order to respond to changes over time in the individual's behaviour and the level of risk they pose;
- Domestic Abuse Protection Orders would include notification requirements, requiring individuals to notify the police of their name and address and of any changes to this information while the order is in effect;
- legal aid would be available for civil representation for victims applying for an order and for representing the respondent in criminal courts, subject to means and merits tests;
- applicants, victims or alleged perpetrators would be able to appeal a court's decision in relation to making the Order or any conditions attached to it;
- breach of a Domestic Abuse Protection Order would be a criminal offence, carrying a maximum penalty of up to five years' imprisonment, or a fine, or both (similar to that for breach of non-molestation Orders and the new Notices and Orders in England and Wales). A breach could also be dealt with as a civil contempt of court at the victim's request;
- proposed that DAPNs and DAPOs would be tested in two geographical areas, to assess the effectiveness and impact of the prohibitions and the numbers involved, ahead of rollout across Northern Ireland with positive requirements provided for in the longer term and subject to the necessary funding being available.

Appendix 2 – Consultation Questionnaire

The Department of Justice is seeking your views on proposals to introduce Domestic Abuse Protection Notice and Orders. These are protective measures aimed at protecting victims of domestic abuse and deterring those who carry out abusive behaviour towards a partner, former partner or close family member. The notices and orders will be available to protect victims from domestic abuse, including physical violence and the threat of violence as well as non-physical abuse and coercive control.

As well as prohibitions, such as the alleged perpetrator not contacting the victim, coming within a certain distance of their home, not entering the home or requiring them to leave the home, the Department also proposes enabling powers that would allow the courts, in the longer term, to include positive requirements of the alleged perpetrator, such as attending a behavioural change programme, as conditions of the DAPO.

As far as possible it would be helpful for responses to be made online through the NI Direct **Citizen Space** website <https://consultations.nidirect.gov.uk/doj-corporate-secretariat/enhancing-legal-protections>, where the document and response questionnaire can be found. This will assist for analysis purposes.

Please submit your response online, **no later than close of play on Friday 12 February 2020**. Alternatively you can:

Phone: 028 9052 0534

E-mail: VAP@justice-ni.gov.uk

Write to: Community Safety Division
Department of Justice
Room A4.03
Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

SECTION 1: ABOUT YOU

Question (a):

I am responding as... *(Please tick one option only)*

A member of the Public

On behalf of an organisation

Other.....*(Please specify)*

Question (b):

Please enter your details below:

Name:

Organisation: *(if applicable)*

Email Address:

Question 1: Do you agree that we should introduce Domestic Abuse Protection Notices and Domestic Abuse Protection Orders?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 2: Do you agree that the proposed Domestic Abuse Protection Notices and Orders should apply to not only physical violence and threats of violence but also non-physical abusive behaviour?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 3: What length of time should a Domestic Abuse Protection Notice be valid for before the police have to apply to a magistrates' court for a Domestic Abuse Protection Order, the suggestion being up to four days?

- Up to 4 days
- Up to 7 days
- Other (please specify)
- Don't know
- No answer

Please advise and give reasons for your response

Question 4: Do you agree that there should be multiple routes via which an application for a Domestic Abuse Protection Order can be made?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 5: Do you agree that regulations should specify the ‘relevant third parties’ who potentially would be able to apply for a Domestic Abuse Protection Order?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 6: Which individuals/organisations should be identified as potential ‘relevant third parties’?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 7: Do you agree that courts should be able to make Domestic Abuse Protection Orders of their own volition during other proceedings, including in criminal trials?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 8: Following the introduction of Domestic Abuse Protection Orders across Northern Ireland more generally, and in the longer term, do you agree that courts should be able to impose positive requirements as well as prohibitions as part of the conditions attached to the proposed order?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 9: Do you agree that courts should be able to require individuals subject to a Domestic Abuse Protection Order to notify personal details to the police?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 10: If so, what personal details should the courts be able to require individuals to provide to the police?

Please advise and give reasons for your response

Question 11: As well as enabling conditions to protect the victim, should it be open to the courts to impose conditions within the Domestic Abuse Protection Order requiring the alleged perpetrator not to approach or contact any associated children?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 12: Should provision be made that would, in the longer term, enable courts to be given an express power to impose electronic monitoring as a condition of a Domestic Abuse Protection Order?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 13: What safeguards should be put in place relating to any use of electronic monitoring with Domestic Abuse Protection Orders?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 14: Do you agree that breach of the proposed order should be a criminal offence?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 15: If you do agree that breach of the proposed order should be a criminal offence, should it be possible for breach to alternatively be punished as a contempt of court?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 16: Do you agree that courts should have flexibility in determining how long to impose a Domestic Abuse Protection Order for?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 17: Do you agree that courts should be able to vary or discharge Domestic Abuse Protection Orders either of their own volition or at the request of the victim, or alleged perpetrator, or the applicant?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 18: What safeguards should be put in place to ensure that the Domestic Abuse Protection Order is not varied or discharged because the victim is being pressurised by the alleged perpetrator?

Please advise and give reasons for your response

Question 19: Do you have any views about how the Domestic Abuse Protection Notice/Order process can contribute to better perpetrator management?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 20: How can we ensure that the alleged perpetrator is not able to use the DAPN/DAPO process to further abuse a victim?

Please advise and give reasons for your response

Question 21: It is intended to pilot DAPNs and DAPOs in two geographical locations. Do you have any views on this?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 22: Do you have any views as to the two locations that Domestic Abuse Protection Orders could be piloted in, possibly Belfast and one 'more rural' area (dependant on numbers)?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 23: Do you have any other comments you wish to make regarding the introduction of Domestic Abuse Protection Notices and Orders?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

It would be helpful if you reference which part of the document you are commenting on.

Question 24: Do you have any comments to make on the potential implications the introduction of Domestic Abuse Protection Notices and Orders may have on equality, in terms of the impact of the proposals for different groups?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 25: Is there an opportunity to better promote equality of opportunity or good relations as part of the proposals?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 26: Do you have any comments on the potential implications the introduction of Domestic Abuse Protection Notices and Orders may have on human rights?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 27: Do you have any comments on the potential implications the introduction of Domestic Abuse Protection Notices and Orders may have in rural areas?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Question 28: Do you have any comments you wish to make regarding the financial impact of the introduction of Domestic Abuse Protection Notices and Orders?

- Yes
- No
- Don't know
- No answer

Please advise and give reasons for your response

Appendix 3: Privacy Notice

Data Controller Name: Department of Justice

Address: Community Safety Division
Department of Justice
Room A4.03
Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

Telephone: 028 9052 0534

Email: VAP@justice-ni.gov.uk

Data Protection Officer Name: Department of Justice Data Protection Officer

Telephone: 02890 378617

Email: DataProtectionOfficer@justice-ni.gov.uk

Why are you processing my personal information?

The Department is seeking comments from interested parties as part of its public consultation on the consultation on policy proposals relating to Domestic Abuse Protection Notices and Orders. The Department is not seeking personal data as part of the consultation but is likely to receive names and addresses/e-mail addresses as part of a consultee's response.

Consultation is a requisite part of the development of public policy and strategy.

- ***ONLY if you are relying on consent to process personal data.***

The Department is not relying on consent for processing the data supplied by the applicant. The Department is required to seek consultation responses as part of policy development.

What categories of personal data are you processing?

Responses to the consultation will include names and addresses and/or e-mail addresses.

Where do you get my personal data from?

The personal data will originate from the person responding to the consultation.

Do you share my personal data with anyone else?

We will not share your personal data with other organisations.

Do you transfer my personal data to other countries?

No.

How long do you keep my personal data?

We will retain your data in line with 5.7 of Schedule 5 of the DoJ Retention and Disposal Schedule (<https://www.justice-ni.gov.uk/publications/doj-retention-and-disposal-schedule>).

(If you use automated decision making or profiling) How do you use my personal data to make decisions about me?

The Department will not use automated processing for responses to this consultation.

What rights do I have?

You have the right:

- to obtain confirmation that your data is being [processed, and access to your personal data](#)
- to have personal data [rectified if it is inaccurate or incomplete](#)
- to have personal data erased and to prevent processing, [in specific circumstances](#)
- to 'block' or suppress processing of personal data, [in specific circumstances](#)
- to data portability, [in specific circumstances](#)
- to object to the processing, [in specific circumstances](#)
- in relation to [automated decision making and profiling](#)

How do I complain if I am not happy?

Complaints should be submitted to:

Freedom of Information Unit
Department of Justice

Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

Telephone: 02890 378617

Email: FOI@justice-ni.gov.uk

If you are unhappy with any aspect of this privacy notice, or how your personal information is being processed, please contact the *Departmental Data Protection Officer* at: DataProtectionOfficer@justice-ni.gov.uk

If, after contact the Departmental Data Protection Officer, you are still not happy, you have the right to lodge a complaint with the Information Commissioner's Office (ICO):

Information Commissioner's Office

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 0303 123 1113

Email: casework@ico.org.uk

<https://ico.org.uk/global/contact-us/>