



Domestic Abuse Act 2021

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GARDEN COURT CHAMBERS



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Introduction

- Refuge recorded an average of 13,162 calls and messages to its National Abuse helpline every month between April 2020 and February 2021.
- This is an increase of more than 60% on the number of monthly contacts before the first lockdown where the charity recorded an average of 8176 calls and messages.
- Between April 2020 – February 2020 it logged a total of more than 131,000 such contacts.
- 72% of the above are from women.



Domestic Abuse Act 2021

- In December 2019 the Government was elected with a manifesto commitment to “*support all victims of domestic abuse and pass the Domestic Abuse Bill*”.
- The Impact Assessment published alongside the Act indicates that the current estimated cost of the measures in the Act applying to England and Wales (or England only) is between £247 to £300 million per year once fully implemented.
- Bill came in right timing in light of the increase of domestic violence incidents since the pandemic and bill was passed on **29 April 2021**.



Definition of “Domestic Abuse” – Section 1

Pre-Condition’s

- A and B are aged 16 or over;
- And are personally connected to each other;
- The behaviour is “abusive”;

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



Definition of “Personally Connected” – Section 2

- Married
- Civil partners
- Agreed to marry one another (Terminated or not)
- Civil partnership agreement (Terminated or not)
- Intimate personal relationship
- Is or has been a parental relationship to the same child.
- They are relatives.



The previous examples are very similar to the “associated person’s” provisions at s62 (3) of the Family Law Act 1996:

- Married *
- Civil partners*
- Cohabitants or former cohabitant’s
- Lived in same household otherwise than being employee, lodger, tenant or boarder
- Relatives*
- Agreed to marry each other*
- Intimate personal relationship which is of significant duration*
- Civil partnership agreement*
- Parent’s to a child*
- Parties to same family proceedings.



Some introduction's following the new legislation

- Commissioner is appointed – section 4
- Commissioner has a list of functions – section 7
- One of these functions is to make recommendation's to LA's.
- LA has duty to co-operate and respond.
- LA has duty to make arrangement' for assessment of need for accommodation based support.
- Protection for victim's in legal proceedings such as prevention of cross examination.
- But in my view the interesting one is the introduction of Domestic Abuse Protection Notices and Domestic Abuse Protection Orders.



Domestic Abuse Protection Notices

A senior officer can issue if the officer has **reasonable grounds** for believing that P has been abusive towards a person aged 16 and over or to whom P is **personally connected** and that officer has **reasonable grounds to believe it is necessary** to give the notice to protect that person from domestic abuse, or risk of domestic abuse. – Section 22

The DAPN may provide for non-contact or not to come within a specified distance from the victim's premises.



Benefits of DAPN's

- Quick
- Avoids delay of going through criminal investigation.
- Avoids delay of waiting for non-molestation order and gives some element of protection before an order is made.
- Avoids necessity of restraining order which generally requires a trial first (although usually a criminal court would impose bail condition's on a suspect)



What does a DAPN do to protect the victim – Section 23 and Section 26

23 Provision that may be made by notices

(1) A domestic abuse protection notice may provide that the person to whom the notice is given (“P”)—

(a) may not contact the person for whose protection the notice is given;

(b) may not come within a specified distance of any premises in England or Wales in which that person lives.

“Specified” means specified in the notice.

26 Breach of notice

(1) If a constable has reasonable grounds for believing that a person is in breach of a domestic abuse protection notice, the constable may arrest the person without warrant.

(2) A person arrested by virtue of subsection (1) must be held in custody and brought before the appropriate magistrates’ court—

(a) before the end of the period of 24 hours beginning with the time of the arrest, or

(b) if earlier, at the hearing of the application for a domestic abuse protection order against the person (see section 28(3)).



Domestic Abuse Protection Orders



Meaning of Domestic Abuse Protection Order – Section 27

27 *Meaning of “domestic abuse protection order”*

(1) In this Part a “domestic abuse protection order” is an order which, for the purpose of preventing a person (“P”) from being abusive towards a person aged 16 or over to whom P is personally connected—

(a) prohibits P from doing things described in the order, or

(b) requires P to do things described in the order.

(2) A domestic abuse protection order may be made—

(a) on application (see section 28), or

(b) in the course of certain proceedings (see section 31).

(3) Section 32 sets out the conditions for making a domestic abuse protection order.

- THIS IS BASICALLY A NON-MOLESTATION ORDER!



So you may be thinking, well nothing has changed!

- Well not quite,
- The application for such order can be made by various parties which is a plus!
- Section 28(2) provides a list of person's who can apply:
 - *(a)the person for whose protection the order is sought;*
 - *(b)the appropriate chief officer of police (see subsection (4));*
 - *(c)a person specified in regulations made by the Secretary of State;*
 - *(d)any other person with the leave of the court to which the application is to be made.*

Usually you get cases where the police will tell the victim, go and get a non-molestation order, well now the police can apply on their behalf!



Four Ways A DAPO can be made

- **By application**
- **Where a DAPN is made** – officer **MUST** apply for DAPO
- Where a DAPN is made, application for DAPO must be heard by Magistrates no later than 48 hours after DAPN given.
- **During course of family proceedings**
- **After conclusion of criminal proceedings**
- **Civil proceedings**



Why is this essential?

- Parties may not be able to afford legal representation.
- Fearful of reporting abuse.
-
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Can you think of any other reasons why enabling more persons to apply is important?



Standard of Proof

- BALANCE OF PROBABILITIES AND PROPORTIONATE!



Powers of arrest if breach

(5) A person guilty of an offence under this section is liable—

(a) on summary conviction—

(i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020), or

*(ii) to a fine,
or both;*

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or both.

(6) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order under section 80 of the Sentencing Code (conditional discharge).



Further pointers.

- A DAPO can last indefinitely where as the current DVPO has time limit of 28 days.
- Breach under current DVPO scheme is non-arrestable.
- Statutory guidance should be coming soon– unclear how this framework will work alongside the Non-Molestation framework.



Further pointers.

- In the year ending December 2020, 36,952 Non-Molestation Orders were made (an increase of 89% over the past nine years).
- Government predicts 55,000 DAPO's will be made per year
- *We have made it clear that victims will not have to pay a fee to apply for a DAPO, to ensure that the new orders are accessible to victims.*
- Legal aid will 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.
- As a protective order, DAPOs could be added to the list of accepted evidence of domestic abuse and could therefore be used by the applicant to apply for Legal Aid in private family law disputes, subject to means and merits tests.



Conclusion

When viewing the provisions holistically, it seems the government's key aim in relation to the provisions was making protection easily accessible which is reflected by allowing DAPO's to be dealt with not only by family courts but both civil and criminal courts, in addition to enabling more persons to make that application on behalf of the victim.

Has anyone had any practical experience with the new provisions?



Thank you

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