

**Baker  
McKenzie.**

# Fighting Domestic Violence

Pro Bono Initiative

**Europe**

In association with



# United Kingdom

## Domestic Violence Legislation



“...victims of domestic abuse have both criminal and civil legal remedies available to them.”

# United Kingdom

## 1 Legal provisions

### 1.1 What are the relevant statutes and codes?

In the United Kingdom, there is currently no specific offense of "domestic violence" or "domestic abuse." However, UK law recognizes a broad range of behaviors and actions that are considered to be acts of domestic violence or domestic abuse. The relevant legislation on domestic violence/abuse in the United Kingdom is as follows:

#### England and Wales

Legislation	Description
<b>Domestic abuse</b>	
Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017	Legislation that requires the government to lay a report before each House of Parliament setting out the steps required to be taken to enable the United Kingdom to ratify the Istanbul Convention and the timescale within which the government would expect the United Kingdom to be able to ratify the Convention.
Family Law Act 1996 (as amended by the Domestic Violence, Crime and Victims Act 2004)	Legislation that enables victims of domestic abuse to apply to the family courts for civil orders (i.e., non-molestation and occupation orders).
Section 76, Serious Crime Act 2015	Legislation that criminalizes coercive and controlling behavior by a family member.
Protection from Harassment Act 1997	Legislation that criminalizes stalking and harassment.
Sexual Offences Act 2003	Legislation that criminalizes sexual offenses, including marital rape.
Domestic Violence, Crime and Victims Act 2004	Legislation that amends the Family Law Act 1996, the Protection from Harassment Act 1997, the Protection from Harassment (Northern Ireland) Order 1997 and the Criminal Justice Act 2003 to make provision in respect of various offenses relating to domestic violence including the

Legislation	Description
	offense of causing or allowing the death a child or vulnerable adult.
Domestic Violence, Crime and Victims (Amendment) Act 2012	Legislation that amends the Domestic Violence, Crime and Victims Act 2004 to cover cases of causing or allowing a child or vulnerable adult to suffer serious physical harm.
Children and Young Persons Act 1933 as amended on 3 May 2015, by Part 5 Section 66 of the Serious Crime Act 2015	Legislation that criminalizes neglect of and cruelty toward children.
Anti-social Behaviour, Crime and Policing Act 2004	Legislation that criminalizes a marriage that is conducted without the true consent of one or both parties either as a result of violence, threats, or coercion.
Female Genital Mutilation Act 2003	Legislation that makes it a criminal offense to "excise, infibulate or otherwise mutilate" the whole of any part of a girl's labia majora, labia minora or clitoris.
<b>Other related legislation</b>	
s.18, 20 and 47 Offences against the Persons Act 1861	Legislation that criminalizes physical violence against another person, with or without violence (including but not limited to punching, slapping, pushing, kicking, head-butting and hair pulling). The law also covers threats to kill, attempts to choke and false imprisonment.
s.39 Criminal Justice Act 1988	Legislation that criminalizes common assault.
Malicious Communications Act 1988 (as amended by the Criminal Justice and Courts Act 2015)	Legislation that criminalizes the posting of intimate images, messages or defamatory/insulting materials ("revenge porn").
Criminal Justice and Courts Act 2015	Legislation that amends the Malicious Communications Act to make provision in respect of the offense of disclosing private sexual photographs or films with intent to cause distress.
s.113 Civil Partnership Act 2004	Legislation that enables victims of domestic abuse in the context of civil partnerships, to apply to the family courts for civil orders.

## Scotland

Legislation	Description
Domestic Abuse (Scotland) Act 2018	Legislation that makes all domestic abuse toward a partner, whether psychological or physical, a criminal offense.
Criminal Justice and Licensing (Scotland) Act 2010	Legislation that criminalizes stalking.
Abusive Behaviour and Sexual Harm (Scotland) Act 2016	Legislation that criminalizes the disclosure of intimate images of another person without their consent.
Matrimonial Homes (Family Protection) (Scotland) Act 1981	Legislation that enables victims of domestic abuse in the context of married couples and co-habitees, to apply to the family courts for civil orders (e.g., matrimonial interdict, exclusion order, etc.).
Domestic Abuse (Scotland) Act 2011	Legislation that introduced an additional layer of protection for victims of domestic abuse, namely a domestic abuse interdict (order). Breaching a domestic abuse interdict carries higher penalties and may act as a more significant deterrent.

## Northern Ireland

Legislation	Description
Domestic Violence, Crime and Victims Act 2004	English legislation that amends the Family Law Act 1996, the Protection from Harassment Act 1997, the Protection from Harassment (Northern Ireland) Order 1997 and the Criminal Justice Act 2003 to make provision in respect of various offenses relating to domestic violence including the offense of causing or allowing the death a child or vulnerable adult.
The Family Homes and Domestic Violence (N.I.) Order 1998	Legislation that allows victims of domestic violence to apply for protective civil orders (non-molestation orders and occupation orders).
The Protection from Harassment (NI) Order 1997	Legislation that prohibits the act of harassment.
Sexual Offences (Northern Ireland) Order 2008	Legislation that criminalizes sexual assault and rape.

## 1.2 What is the controlling case law?

Case name and citation	Findings
<i>R v R</i> [1992] 1 AC 599	Determined under English law that it was possible for a man to rape his wife.
<i>R v Brown</i> [1993] UKHL 19, [1994] 1 AC 212	Determined that a person cannot "consent" to having anything more than "transient or trifling" injuries inflicted on them. In theory, this case should mean that the "rough sex" defense should not be possible for defendants in the UK, but this defense has been evoked by defendants in the UK in circumstances where a woman has been killed. The use of this defense has resulted in lesser charges of manslaughter — a lighter sentence than murder — being imposed, or the woman's death not being investigated as a crime. <sup>1</sup> It is anticipated that the use of this defense will be banned by the passing into law of the Domestic Abuse Bill (" <b>Bill</b> "), which at the time of writing is being considered by the UK Parliament. <sup>2</sup>
<i>R. v Uddin (Tohel)</i> [2017] EWCA Crim 1072	Determined that the words "or otherwise" in the definition of a "vulnerable adult" in Section 5(6) of the Domestic Violence, Crime and Victims Act 2004 (describing the main offense under the Act), envisaged a third category of potentially vulnerable adults who were not suffering from an illness, disability or old age, i.e., "battered wives."
<i>R v Allen</i> [2017] <sup>3</sup>	Defendant was imprisoned after admitting manslaughter, coercive behavior and stalking on the basis that his controlling and abusive behavior had led to his ex-partner's suicide.
<i>R v Ward</i> [2018] EWCA Crim 1464	The court identified aggravating factors in relation to false imprisonment and Section 18 of the Offences against the Persons Act 1861 (grievous bodily harm) including: gratuitous degradation of the victim; abuse of power over the victim in his own home; previous violence or threats toward the victim in the context of a series of offenses; and threats made to stop the victim reporting the offending.
<i>R v Broadhurst</i> [2019] EWCA Crim 2026	The defendant in this case was cleared of murder, having admitted to manslaughter of his partner after leaving his injured and bleeding partner to die after claiming she was injured during "rough sex." This case has been considered the catalyst for the introduction of a clause in the Bill that bans, in most circumstances, the use of the "rough sex defense," which — as noted above — has been sought to be used as a defense for serious harm.
<i>R v Cooksey</i> [2019] EWCA Crim 1410	The defendant was sentenced to six years' imprisonment for, amongst other offenses for which he received concurrent sentences, false imprisonment of his girlfriend, which occurred when the defendant attacked his girlfriend, punching her repeatedly in the ribs and face, and refused to allow her to go to work or leave their apartment without him for the following week. The defendant applied for leave to appeal against his sentence

Case name and citation	Findings
	and in refusing the application, the court of appeal noted that, "This court treats more seriously incidents of domestic violence than used to be the case, particularly where it is coupled, as here, with coercive and controlling behavior in a domestic setting."
<i>R v Challen</i> [2019] EWCA Crim 916	The court of appeal quashed the defendant's conviction for murder (a wife who killed her husband by striking him multiple times with a hammer). In reaching this decision, the court decided that there was evidence of an abusive relationship and that coercive control was capable of being relevant to the defenses of provocation and of diminished responsibility.

### 1.3 What are the specific parts of the court system that address domestic violence?

Incidents of domestic violence can be addressed by the family courts and the criminal court. The relevant court will be determined by the course of action sought. For example in England, one would apply to the family courts in the event that the victim of domestic violence wished to obtain either: (i) an occupation order, which allows the victim to exclude an abuser from their property or to keep a certain distance from the property; or (ii) a non-molestation order, which prevents an abuser from using or threatening violence, harassing, intimidating, or pestering a victim.

If the abuser breaks one of the above-listed orders, or commits a criminal offense in breach of one of the above-listed laws, the police will investigate the case and pass their evidence to the Crown Prosecution Service (CPS). The CPS will decide if there is enough evidence to charge the abuser with a criminal offense, at which point the case will be heard in either the magistrates court or, for more serious offenses (or if so chosen by the defendant), the crown court.

Domestic abuse cases may also be heard in specialist domestic violence courts in England, Wales and Scotland. These specialist courts were introduced in 2005/2006 to improve the court process for victims of domestic abuse. Total numbers across England, Wales and Scotland are difficult to obtain, but there are over 140 in England and Wales. The specialist courts have specifically trained court personnel, separate entrances/exits and waiting rooms for victims to ensure that they do not come into contact with their attackers.

#### What are potential causes of action?

As set out in further detail below, there is currently no specific offense of "domestic violence." The law recognizes a broad range of behaviors and actions that are considered to be acts of domestic violence, a nonexhaustive list of which is as follows:

##### Physical abuse

- physical violence, with or without weapons, e.g., punching, slapping, pushing, kicking, head-butting and hair pulling (possible criminal offenses: causing common assault, actual bodily harm or grievous bodily harm, wounding)
- neglecting, abusing or ill-treating an individual whereupon the act has caused serious physical harm or death (possible criminal offense: serious physical harm or death)
- violence resulting in death (possible criminal offenses: murder or manslaughter)
- forcing entry into a house (possible criminal offense: using violence to secure entry)

- throwing articles, e.g., crockery, even if they miss their target (possible criminal offenses: common assault, actual bodily harm, grievous bodily harm, wounding, criminal damage or threatening behavior)
- tying someone up (possible criminal offenses: common assault, actual bodily harm or false imprisonment)
- damaging or destroying property or threatening to damage or destroy property (possible criminal offenses: criminal damage, threatening to cause criminal damage or harassment)
- harming or threatening to harm a pet (possible criminal offenses: criminal damage, threatening to cause criminal damage or cruelty to animals)
- locking someone in a room or house or preventing him or her from leaving (possible criminal offense: false imprisonment)
- preventing someone from visiting relatives or friends (possible criminal offense: false imprisonment)
- preventing someone from seeking aid e.g., medical attention (possible criminal offense: false imprisonment)
- using violence or threatening violence to prevent someone from dressing as they choose or forcing them to wear particular make-up, jewellery and hairstyles (possible criminal offenses: actual bodily harm or harassment)
- secret or enforced administration of drugs (possible criminal offenses: common assault, actual bodily harm, grievous bodily harm and administering poison)

#### Emotional, psychological and mental abuse

- neglecting, abandoning or ill-treating a child (possible criminal offense: child cruelty)
- pressuring a victim/witness to "drop the case" or not to give evidence (possible criminal offenses: witness intimidation, obstructing the course of justice or conspiracy to pervert the course of justice)
- racial abuse (possible criminal offenses: racially aggravated threatening behavior or harassment)
- "outing," e.g., sexual orientation or HIV status (possible criminal offenses: harassment, actual bodily harm or blackmail)

#### Stalking and harassment

- offensive/obscene/menacing telephone calls, text messages, letters, emails, social media/online messages (possible criminal offenses: improper use of public telecommunication systems, malicious communications, actual bodily harm, grievous bodily harm or harassment/stalking)
- posting of intimate images, messages, or defamatory/insulting material (possible criminal offenses: improper use of public telecommunication systems, malicious communications or harassment/stalking)
- excessive contact, e.g., numerous phone calls to check someone's whereabouts, leaving unexpected/unwanted gifts, defamation of character to friends/family employers, etc. (possible criminal offense: harassment/stalking)
- following an individual physically, or using online methods such as checking online media activity, or tracking an individual through GPS applications (possible criminal offense: stalking)



- constantly visiting an individual (or their friends'/family's) home, workplace or regularly known location (possible criminal offense: stalking)
- breaching the conditions of a non-molestation order (possible criminal offense: breach of non-molestation order)

#### Sexual abuse

- intentional or reckless transmission of sexually transmitted infection (possible criminal offense: grievous bodily harm)
- enforced sexual activity (possible criminal offense: rape, sexual assault, causing/controlling prostitution for gain and using intimate relationship to force someone into prostitution for gain)

#### Financial abuse

- enforced financial dependence or unreasonably depriving someone of money (possible criminal offense: harassment)

#### Verbal abuse

- persistent verbal abuse, e.g., constant unreasonable criticism (possible criminal offenses: harassment or actual bodily harm)
- threatening with an article used as a weapon, e.g., a knife, tool, telephone, chair (possible criminal offenses: threats to kill, common assault or threatening behavior)
- threatening to kill someone (possible criminal offenses: threats to kill or harassment)
- threats to cause injury (possible criminal offenses: common assault or threatening behavior)
- threats to damage seriously or undermine social status (possible criminal offense: blackmail)

#### Religious and spiritual abuse

- ridiculing or insulting religious or spiritual beliefs or preventing the other from practicing their religious or spiritual beliefs (possible criminal offense: coercive and controlling behavior)

#### Honor-based violence

- violence, threats of violence, intimidation coercion or abuse (including psychological, physical, sexual, financial or emotional abuse) that has or may have been committed to protect or defend the honor of an individual, family and/ or community for alleged or perceived breaches of the family and/or community's code of behavior (possible criminal offenses: coercive and controlling behavior, harassment or actual bodily harm)

#### Forced marriage

- being forced to enter a marriage without expressing valid consent (possible criminal offense: forced marriage)

#### Female genital mutilation (FGM)

- removal or mutilation of whole or any part of a girl's external genitalia for nonmedical reasons (possible criminal offense: FGM)
- breast flattening (possible criminal offense: child abuse)

## 2 Introduction: framework guiding domestic violence law

### 2.1 Are there civil and criminal legal remedies for domestic violence victims?

In the UK, victims of domestic abuse have both criminal and civil legal remedies available to them. Both criminal and civil legal remedies offer protection to victims and, in addition to this, some criminal legal remedies (which are aimed at punishing the perpetrator) may result in long-term consequences for the perpetrator (i.e., custodial sentence, criminal record).

#### Criminal legal remedies

Most forms of domestic abuse are criminal offenses.<sup>4</sup> Whilst there is currently no specific statutory definition of "domestic violence" or "domestic abuse," these terms are applied to a number of offenses committed within a domestic setting.

The CPS, the authority responsible for prosecuting crimes in England and Wales,<sup>5</sup> has published guidance and examples of where domestic abuse will constitute a criminal offense.<sup>6</sup>

A detailed list of the types of criminal offenses that can be attributed to domestic abuse is included in Section 1 of this guide. These offenses are regarded as particularly serious by the CPS (or, where the crime is committed and prosecuted in Scotland, the Crown Office and Procurator Fiscal Service; or Northern Ireland, the Public Prosecution Service) as they include a violation of trust and security that would normally exist between two people in an intimate or family setting. Further details on the sentencing of and potential penalties for a perpetrator can be found in Section 5.5 of this guide.

The Bill is currently in the process of progressing through the UK Parliament<sup>7</sup> and under the Bill, a new statutory offense for domestic abuse will be introduced. The Bill defines "domestic abuse" as the behavior of one person (A) to another person (B) where A and B are over 16 and personally connected to each other and that behavior is abusive, which consists of physical or sexual abuse, violent or threatening behavior, controlling or coercive behavior, economic abuse, psychological emotional or other abuse, and it does not matter whether this behavior is a single event or a course of conduct.<sup>8</sup>

#### Criminal procedure prior to obtaining legal remedy

In an emergency situation or if the victim of domestic abuse is in immediate danger, the first point of contact should be the police.<sup>9</sup> An emergency situation would be where a crime is taking place, where there is a danger to life or where violence is being used or threatened.<sup>10</sup> Where there is not an emergency or any immediate danger to the victim, domestic abuse can still be reported to the police, either by the victim themselves or by a relative, friend or support worker, and may also be reported anonymously.<sup>11</sup> Many victims may not feel comfortable or able to approach the police due to their circumstances; however, third-party reports are still valuable to the police as they can alert them to possible criminal offenses taking place in the area.

The first contact with the police is the initial report or complaint, which allows the police to assess whether a criminal offense has been committed and also enables them to start their investigation. At this stage, the victim will be asked to give their initial account and will be asked some questions, primarily to ascertain whether they are at risk or in any danger. Notes will be taken of the account so that if the case proceeds to trial, these can be used to support the prosecution's case. These

notes can also be used in family court proceedings. When the domestic abuse is reported to the police in the initial report, it will be allocated a reference number within the police system. This should also be issued to the victim to help identify their case within the police system and should also be quoted if the victim contacts the police. When the domestic abuse is reported over the phone, a 'CAD' or 'ICAD' number should also be given to the victim, as this reference number identifies the related police dispatch and any activity recorded against it, such as the time of the 999 (emergency) call and the time the police arrived at the scene.<sup>12</sup>

The police will then take a formal statement from the victim about what has happened. For domestic abuse victims, it is most common that the police officer will write down the victim's experience and then draft this into a witness statement. The victim will then be asked to read and confirm the witness statement is correct before signing it. The victim may instead record an Achieving Best Evidence video ("**ABE Video**"),<sup>13</sup> after which a brief written statement should be prepared for the witness immediately after the interview to confirm the information they have given is accurate.<sup>14</sup> In both cases, it is important that the witness statement be taken in a way that is most appropriate to the victim. For example, if the victim's first language is not English, it may be more appropriate for them to be able to communicate in their first language and an interpreter should be provided. The police should not ask children or family members to interpret in domestic abuse cases. After making the initial report and providing a formal statement (or ABE Video), the victim should request the crime reference number (if this has not already been provided) from the police as this can be useful if contacting other agencies for support.

Where the police have been called to an emergency situation, each police officer is able to use their powers to intervene, arrest, caution or charge the perpetrator. If the police consider that there are "reasonable grounds" for justifying an arrest, they should do this without asking the victim's "permission" or insisting on taking the victim's statement before doing so. The police do not need a warrant to arrest someone they suspect is about to commit an arrestable offense nor do they need to see the abuse take place.

Arrest of the perpetrator may act as a deterrent against reoffending and may demonstrate that police take domestic violence seriously; however, it does not necessarily lead to a charge. Police will consult with the CPS about the charge, as ultimately, (in England and Wales) it is the CPS who decide whether or not the perpetrator will be charged. In order for the CPS to proceed with a prosecution, a two-stage test must be met. This requires that the CPS must be satisfied that there is enough evidence to provide a realistic prospect of conviction of the perpetrator on the charge (the "evidential" stage) and bringing the prosecution must be in the public interest (the "public interest" stage).<sup>15</sup> It is important to note that a victim does not have to support the prosecution of a criminal offense for the police/CPS to proceed with charging and prosecuting the perpetrator. Where the victim withdraws their support for a prosecution, the CPS will require details on why this is.<sup>16</sup> Where the victim decides that they do not want to attend court or make another statement, the CPS may still continue if they consider that they have enough evidence to proceed without relying on the witness.<sup>17</sup> In certain circumstances, such as where the victim has been intimidated, the victim's statement can still be used as evidence in court without the victim being identified. Equally, where the victim wishes to withdraw their witness statement, the CPS and the police may continue with a prosecution, where the "public interest" supports doing so.<sup>18</sup>

When the CPS decides to charge and proceed with a prosecution of domestic abuse (for example, under a criminal offense such as stalking, harassment, rape or sexual assault, as further detailed in Section 5), the perpetrator will first appear before a magistrates' court. Here the perpetrator will be either remanded into custody or released on bail (often with conditions attached and also depending on the seriousness of the charge). It may then be several months before the full case is heard. Prior to this, the victim may also make a "victim personal statement" in which they are able to provide more detail on how the abuse or violence has affected them and whether they wish to claim compensation, such as from the Criminal Injuries Compensation Authority (see further details below).

If the perpetrator is found guilty of a domestic abuse offense, sentencing will depend on the seriousness of the offense and whether the abuser has had any previous convictions, and can range from a conditional discharge to a prison sentence. See Section 5.5 for further information about penalties and sentencing. Whilst criminal remedies can offer some protection to the victim (i.e., when the perpetrator is given a prison sentence), they are primarily aimed at punishing the perpetrator.

A restraining order can also be granted against the perpetrator, either on conviction or on acquittal of a criminal offense, if the court believes that the victim is at risk. This means that the perpetrator is prohibited from doing certain things, such as contacting the victim or visiting their home or place of work. Restraining orders can take effect for a specific period or until a further order is made. It is a serious criminal offense<sup>19</sup> if the perpetrator breaches the restraining order, which is punishable by up to five years in prison and/or fine.<sup>20</sup>

### **Domestic violence protection notices (DVPNs) and domestic violence protection orders (DVPOs)**

In England and Wales, a DVPN is a notice given to the perpetrator by the police, in order to provide the victim with emergency protection. The notice will contain conditions, such as barring the perpetrator from contacting the victim or returning to their home. Within 48 hours of a DVPN being issued, the police must apply to the magistrates' court for a DVPO.<sup>21</sup> DVPOs, which are different to restraining orders, are also available in England and Wales and can be put in place by the police and magistrates. The effect of a DVPO is that the perpetrator is prohibited from having contact with the victim and from returning to their home for up to 28 days. However, a breach of a DVPO is not a criminal offense. See Section 4 for further detail about these orders and their equivalents in Scotland and Northern Ireland.

### **Criminal injuries compensation**

Victims of a violent crime can also consider applying for compensation from the Criminal Injuries Compensation Authority. In order to be eligible for compensation, the crime needs to have been reported to the police and a claim can only be made within two years of the crime. Victims may be eligible for compensation when: (i) they were injured; (ii) a close relative died; (iii) they saw the crime happen to a loved one or were there immediately afterwards; or (iv) they paid for the funeral of the person that died. Victims may be able to get compensation for physical injuries and sexual or physical abuse, as well as other injuries and expense.<sup>22</sup> The crime must have taken place in England, Wales or Scotland.

For sexual offenses such as sexual assault or rape, it is not necessary to prove any mental or physical injury as the experience inflicted on the victim of these crimes is automatically seen as injury.

For crimes that occurred in Northern Ireland, victims may be entitled to compensation under the 2009 criminal injuries compensation scheme instead. Under this scheme, victims also need to make a claim within two years.<sup>23</sup>

For historic crimes that occurred in Northern Ireland between 1 March 1969 and 30 June 1988, following amendments to the existing legislation, which came into force 9 June 2020, victims may now be able to make a claim for compensation that they were previously denied (or discouraged from applying for) due to the 'same household' rule. The "same household" rule prevented claims where the injuries had been inflicted on victims living in the same household as their perpetrator.<sup>24</sup> This was amended in 1988 but, at that time, was not made retrospective. Applicants will still need to meet the eligibility criteria set out under the 2009 Criminal Injuries Compensation Scheme. As above, the time limit for receipt of applications for compensation is two years, running from 9 June 2020.

## Civil legal remedies

As noted above, civil legal remedies are also available, which are aimed more at the protection of the victim than at punishing the perpetrator.

In England and Wales, there are two main types of civil remedies (in the form of orders) available for domestic abuse victims: (i) non-molestation orders and (ii) occupation orders. A non-molestation order will prevent the perpetrator from using or threatening violence, intimidating, harassing or pestering the victim. An occupation order can exclude the perpetrator from the home shared with the victim. Both orders can be obtained at once, but there is a higher threshold for an occupation order to be granted. A victim can apply for either a non-molestation order or an occupation order where they are associated with their perpetrator (i.e., married, engaged, in a civil partnership, living together, relatives, have a child together or are in an intimate personal relationship of a significant duration).

Both orders will be granted by civil court. If the perpetrator breaches the non-molestation order, this is a criminal offense that can be punishable by a fine or up to five years in prison. If an occupation order has a power of arrest attached to it, the police will be able to arrest the perpetrator for breach of the order. If it does not have a power of arrest attached, the victim may apply to the court to have the perpetrator arrested or punished.<sup>25</sup>

Civil action can also be taken by the victim of harassment offenses committed by the perpetrator. Harassment is where the perpetrator causes alarm or distress to the victim or puts them in the fear of violence, and the victim must have experienced more than one incident of harassment by the same person.<sup>26</sup> A claim needs to be made within six years of the harassment having occurred and can be made even when the perpetrator has not been found guilty of the criminal offense of harassment. A court can make an order or impose an injunction against the perpetrator (breach of which would constitute a criminal offense, as above) and the victim may also ask the court to award compensation where they have suffered financial or emotional loss.<sup>27</sup>

Further information on available orders and the process for obtaining them is provided below in Section 4.2.

## 2.2 Is domestic violence identified in national law as a human right (noting that at a European level, protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

Domestic abuse (or, protection from it) is not specifically identified under national law as a human right. The rights contained in the European Convention on Human Rights (ECHR and the "**Convention Rights**") were implemented in the UK by the Human Rights Act 1998 ("**HRA 1998**"). Protection from domestic abuse is not recognized as a human right under the HRA 1998, but several of the Convention Rights may be relevant in a domestic abuse context. The Convention Rights that are in force in the UK, by means of the HRA 1998, include the right to life (Article 2 ECHR); the right to protection from torture, inhumane and degrading treatment (Article 3 ECHR); the right to a fair trial (Article 6); the right to respect for private and family life (Article 8); and the right to protection from discrimination (Article 14). The European Court of Human Rights, which is responsible for overseeing the implementation of the ECHR, has indicated that domestic abuse may be within the scope of Articles 2, 3, 8 and 14 and that the relevant state can be held accountable where the steps they have taken are not sufficient to protect the victim from further abuse.<sup>28</sup> In the context of the UK's withdrawal from the European Union ("**Brexit**"), whilst the UK is no longer an EU member state, during the "transition period" (i.e., the period from the UK's withdrawal from the EU on 31 January 2020 up until the UK's departure date of 31 December 2020) EU law will continue to apply to the UK. As noted above, the Convention Rights are in force

in the UK by virtue of the HRA 1998, although at the time of writing, the impact on human rights protection and its interaction with domestic abuse offenses post-Brexit is still uncertain.

## 2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No.210)?

The United Kingdom signed the Istanbul Convention on 8 June 2012, but has yet to ratify it. It is anticipated that the passing of the Bill will pave the way for the UK to ratify the Istanbul Convention. However, as the Bill does not contain provisions to ensure support for migrant women experiencing domestic abuse, it is considered by some to fall short of compliance with the Convention.<sup>29</sup>

In 2017, the Preventing and Combating Violence Against Women and Domestic Violence (ratification of convention) Act 2017 came into force across the UK ("**Ratification Act**"). The Ratification Act provided that the government has to report on progress toward ratification of the Istanbul Convention every year, and produce a timetable as to when the UK would be expected to be able to ratify the Convention.<sup>30</sup> Once the government has determined that the UK is compliant with the Istanbul Convention, Parliament will be notified of this and the date by which the Convention is expected to be ratified.<sup>31</sup>

In October 2019, the Home Office published its most recent report on progress ("**2019 Report on Progress**").<sup>32</sup> The 2019 Report on Progress is the third annual report on the ratification of the Istanbul Convention to be laid before Parliament.<sup>33</sup> The 2019 Report on Progress contained an update on progress made toward ratification of the Istanbul Convention by the UK, both since the previous report was laid before Parliament (on 30 October 2018) and since the UK signed the Istanbul Convention in June 2012.

The Istanbul Convention consists of 81 articles that aim to address violence against women and girls through focusing on prevention, protection, prosecution and integrated policies. The UK government believes that it is already compliant with the majority of the Istanbul Convention's articles and is working toward compliance with the following remaining articles:<sup>34</sup>

- Article 4: Fundamental rights, equality and nondiscrimination. This is currently under review in England, Scotland, Wales and Northern Ireland in relation to protecting the rights of victims without discrimination on the ground of migrant or refugee status.<sup>35</sup> This had previously been marked as compliant, but concerns were raised by the Joint Committee on the Draft Domestic Abuse Bill (comprised of cross-party Members of Parliament Peers) ("**Joint Committee**") following its scrutiny of the draft Bill, and the UK government is now reviewing the UK's compliance with Article 4(3). As noted above, there are some concerns that the current draft of the Bill fails to protect adequately the rights of those with migrant or refugee status.
- Article 33: Psychological violence. This article requires that state parties to the Istanbul Convention criminalize the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats. The passing of the Bill will lead to compliance in Northern Ireland.<sup>36</sup> England, Wales and Scotland are already compliant.<sup>37</sup>
- Article 44: Jurisdiction. State parties must be able to prosecute, amongst other things, national law offenses committed overseas by their nationals or residents. In the UK, this requires the introduction and enactment of legislation to grant 'extraterritorial jurisdiction' over some offenses (i.e., to allow prosecution in the UK of offenses committed overseas). These legislative measures are contained within the Bill.

- Article 59: Residence status. The Istanbul Convention requires that state parties implement legislation that protects victims whose resident status is dependent on their spouse or partner, and that in the event of the dissolution of the marriage or relationship, the victim is granted an autonomous residence permit. The Istanbul Convention also requires that the victim may obtain suspension of expulsion orders in order to apply for an autonomous residence order; reinstatement of residence for victims of forced marriages (in circumstances where they have lost it by being taken into another country); and a renewable residence permit in certain circumstances. This had previously been marked as compliant, but concerns were raised by the Joint Committee following their scrutiny of the draft Bill and the UK government is now reviewing the UK's compliance with Article 59.

Since the 2018 report on progress ("**2018 Report on Progress**"), the UK has also continued to address violence against women and girls by means of other initiatives.<sup>38</sup> In 2019, the Home Office published a refreshed strategy on ending violence against women and girls (following the initial 2016 cross-governmental strategy ("**VAWG Strategy**")), setting out the UK government's approach to addressing and challenging all forms of violence against women and girls, including domestic abuse.<sup>39</sup> Alongside this, an action plan delivery update was published, the Ending Violence Against Women and Girls 2016-2020: Progress Update ("**Action Plan Update**"),<sup>40</sup> setting out progress on the 95 actions to which the government committed in the VAWG Strategy. The Action Plan Update includes details of action items that have been completed, are on track to be completed, and are currently a work in progress, across several key areas. This includes action items in relation to school and education (i.e., developing new guidance for lessons in schools about gender equality), raising awareness (i.e., developing government communication resources and national campaigns), tackling perpetrators (i.e., by considering criminalizing the breach of a DVPO), broader safeguarding measures, actions for the health service, international actions, the prevention of online abuse and exploitation (i.e., through ensuring support for victims of revenge pornography) and reviewing the response of the police and the CPS. In addition to this, the first cross-government Male Victims Position Statement was published in order to clearly state and enhance the UK's response to male victims of crimes covered by the VAWG Strategy.

## **2.4 If your country has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law? If the 1979 Convention has not been ratified or signed, is it envisaged that your country will do so?**

The UK signed the 1979 Convention in 1981 and ratified it in 1986.<sup>41</sup> By ratifying the 1979 Convention, the UK has agreed to ensure that measures are implemented that ensure that women enjoy human rights on an equal basis with men, including eradicating stereotypical roles for both men and women, ensuring that women equally participate in public life, ensuring equality for women before the law and eliminating the discrimination of women in employment.<sup>42</sup>

The implementation of the 1979 Convention is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW). Under the 1979 Convention,<sup>43</sup> State Parties are expected to submit a national report to CEDAW at least every four years providing details on the measures they have adopted to give effect to Convention provisions.<sup>44</sup>

The latest report produced by the UK was its eighth periodic report to CEDAW ("**Eighth Report**"),<sup>45</sup> which was considered by CEDAW in February 2019.

The Eighth Report covers the period from 2011 to 2017 and was prepared in response to CEDAW's 2013 recommendations ("**2013 Recommendations**"). The Eighth Report sets out the UK government's approach to advancing gender equality and eliminating discrimination. In response to the 2013 Recommendations, the UK government implemented measures, such as in relation to tackling discrimination and advancing gender equality by implementing provisions in the Equality Act 2010 to prohibit direct and indirect discrimination, victimization and other specific conduct, and also by introducing gender pay gap reporting.

In response to the Eighth Report, CEDAW provided recommendations to the UK government in March 2019 ("**2019 Recommendations**").<sup>46</sup> These included, amongst others, recommendations that the UK should:

- incorporate the 1979 Convention into domestic law and create a national mechanism to oversee this implementation
- ensure that women's rights are protected during the UK's withdrawal from the European Union
- assess the impact of public spending, tax and welfare reforms on women's rights and take appropriate steps to limit any negative effects
- address and end negative gender stereotypes and promote positive and diverse representations of gender in schools, public campaigns and in the media
- require employees to protect women against sexual harassment in the workplace

CEDAW's General Recommendation No. 35 on gender-based violence against women ("**General Recommendation No. 35**")

In the 2019 Recommendations and specifically in relation to General Recommendation No. 35, CEDAW recommended that the UK:

- ratify the Istanbul Convention
- adopt legislation and comprehensive policy measures to ensure women are protected from all forms of gender-based violence in the UK, including in Northern Ireland
- ensure asylum-seekers, migrant women and women with unstable immigration statuses can seek protection and support without fear of their immigration status being reported to the UK authorities
- ensure that all laws and policies protect women with disabilities from all forms of gender-based violence, in particular where the perpetrator is their caregiver
- ensure that the policy of commissioning services (i.e., the process of planning, prioritizing and assessing healthcare needs and services) does not undermine the provision of any specialized services for women who are victims of gender-based violence

These recommendations are yet to be implemented into national law, but the UK has until March 2023 to address the 2019 Recommendations and submit its ninth periodic report. CEDAW has also asked that the UK provide within two years (by 2021) written information on steps taken to implement four of the 2019 Recommendations, these being for the UK to:

- fully incorporate the provisions of the 1979 Convention into UK legislation throughout all territories under its jurisdiction (specifically including Northern Ireland), and extend the UK's ratification to all UK overseas territories and the Crown dependencies of Jersey and Guernsey<sup>47</sup>



- undertake a thorough assessment of how its withdrawal from the European Union will impact the rights of women, including women in Northern Ireland, and adopt effective measures to mitigate any possible negative effects<sup>48</sup>
- ensure provisions of the 1979 Convention, the European Convention on Human rights and European Union legislation, legal acts and court decisions are included in national legislation<sup>49</sup>
- consider creating a national mechanism to oversee the coordination and monitoring of the implementation of the 1979 Convention<sup>50</sup>

## Ongoing progress

Many of the 2019 Recommendations have not been reflected specifically in the Bill, although the UK government has made some progress in addressing the required changes, including through nonlegislative measures. Prior to the publication of the 2019 Recommendations, the UK government conducted a consultation on the Bill and published its consultation response in January 2019 ("**Consultation Response**").<sup>51</sup> In the Consultation Response, the government stated that it has committed funds to specialist needs, for example in order to expand the capacity within the women's sector to improve the response to disabled victims and to help build long-term capacity and expertise around immigration rights and increase the current protections available to migrant victims under the destitute domestic violence concession. The Bill does not currently provide legislative protection for disabled domestic abuse victims, especially protection against abuse from their carers, as specified in the 2019 Recommendations.

The current draft of the Bill also does not specifically address the recommended inclusion of existing European legislation or case law. The UK government has not yet released an assessment of the impact of Brexit on women's rights, though the Scottish government published an impact report in January 2020.<sup>52</sup>

Equally, the Bill does not introduce a national mechanism to specifically oversee the implementation of the 1979 Convention, but does introduce a Domestic Abuse Commissioner who is responsible for encouraging good practice in the prevention of domestic abuse; the prevention, detection, investigation and prosecution of offenses involving domestic abuse; the identification of people who carry out domestic abuse, victims of domestic abuse and children affected by domestic abuse; and, the provision of protection and support to people affected by domestic abuse.

Other nongovernment organizations are also involved in monitoring the UK government's progress and in ensuring the UK's compliance with the 1979 Convention, such as the Equality and Human Rights Commission and the Women's Resource Centre. The work of these organizations has so far included monitoring the UK's progress by producing a shadow report to CEDAW (following a consultation of hundreds of women's rights organizations) and writing to the Minister for Women asking the UK government to specify exactly how it will comply with the 1979 Convention.

### 3 Similarities and differences in terminology

Set out below are various terms and their definitions:

#### England

Term	Definition
<b>Domestic violence</b>	<p>There is no statutory definition of domestic violence/abuse. The cross-governmental definition is:</p> <p style="padding-left: 40px;">Any incident or pattern of incidents of controlling, coercive, threatening behavior, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality.<sup>53</sup></p> <p>It covers, but is not limited to psychological, physical, sexual, financial and emotional forms of abuse.</p> <p>Contrary to the terms of the Istanbul Convention, the current definition does not acknowledge that domestic abuse is a gendered crime, and a form of violence particularly targeted against women and girls.</p> <p>A statutory definition of "domestic abuse" (with supporting guidance) has been included in the Bill:</p> <ol style="list-style-type: none"><li>1. Behaviour by a person ("A") towards another person ("B") is "domestic abuse" if—<ol style="list-style-type: none"><li>(a) A and B are each aged 16 or over and are personally connected, and</li><li>(b) the behaviour is abusive.</li></ol></li><li>2. Behaviour is "abusive" if it consists of any of the following—<ol style="list-style-type: none"><li>(a) physical or sexual abuse;</li><li>(b) violent or threatening behaviour;</li><li>(c) controlling or coercive behaviour;</li><li>(d) economic abuse (defined below);</li><li>(e) psychological, emotional or other abuse.</li></ol></li><li>3. "Economic abuse" means any behaviour that has a substantial adverse effect on B's ability to—<ol style="list-style-type: none"><li>(a) acquire, use or maintain money or other property, or</li><li>(b) obtain goods or services.</li></ol></li><li>4. For the purposes of the Bill, A's behaviour may be behaviour "towards" B despite the fact that it consists of conduct directed at another person (for example, B's child).</li><li>5. References in the Bill to being abusive towards another person are to be read in accordance with this definition.</li><li>6. "Personally connected" means:</li></ol>

Term	Definition
	<ul style="list-style-type: none"> <li>(a) they are, or have been, married to each other;</li> <li>(b) they are, or have been, civil partners of each other;</li> <li>(c) they have agreed to marry one another (whether or not the agreement has been terminated);</li> <li>(d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);</li> <li>(e) they are, or have been, in an intimate personal relationship with each other;</li> <li>(f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child ("parental relationship" is defined below);</li> <li>(g) they are relatives.</li> </ul>
	<p>7. Parental relationship in relation to a child means if—</p> <ul style="list-style-type: none"> <li>(a) the person is a parent of the child, or</li> <li>(b) the person has parental responsibility for the child.</li> </ul>
	<p>8. In this section—</p> <p>"child" means a person under the age of 18 years;</p> <p>"civil partnership agreement" has the meaning given by section 73 of the Civil Partnership Act 2004;</p> <p>"parental responsibility" has the same meaning as in the Children Act 1989 (see section 3 of that Act);</p> <p>"relative" has the meaning given by section 63(1) of the Family Law Act 1996.</p>

## Stalking

Whilst there is no strict legal definition of "stalking," the relevant legislation (Section 2A of the Protection from Harassment Act 1997) describes stalking as harassment (i.e., a course of conduct of two incidents or more) and sets out a nonexhaustive list of example behaviors that will amount to stalking, including: contacting/attempting to contact; publishing statements or material about the victim; monitoring the victim (including online); loitering in a public or private place; interfering with property; and watching or spying.<sup>54</sup>

A person will be guilty of the offense of stalking if they know or ought to know that the course of conduct amounts to harassment of the other person.

This definition is slightly wider than the definition in the Istanbul Convention. Under the terms of the Istanbul Convention, the conduct of the perpetrator needs to be "threatening" — such that the victim fears for their safety — to amount to stalking.

## Harassment

Harassment is a course of conduct (meaning two or more incidents) that is deliberately intended to cause another person distress or alarm.<sup>55</sup>

When deciding whether any particular course of conduct amounts to harassment, the court will consider whether a reasonable person,

Term	Definition
	looking at the behavior from outside the situation, would think that it amounts to harassment.
<b>Victim</b>	<p>Under the Code of Practice for Victims of Crime (2015), a "victim" is defined as:</p> <ul style="list-style-type: none"> <li>▪ a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; and</li> <li>▪ a close relative of a person whose death was directly caused by a criminal offence. "Close relative" is defined as the spouse, the partner, the relatives in direct line, the siblings and the dependants of the victim. Other family members, including guardians and carers, may be considered close relatives at the discretion of the service provider.<sup>56</sup></li> </ul>
<b>Abuser</b>	There is no statutory definition of an abuser.
<b>Civil protection order</b>	<p>There are three types of injunction that a victim can apply for to protect against domestic violence in England and Wales:</p> <ol style="list-style-type: none"> <li>1. an occupation order to exclude someone from your home</li> <li>2. a non-molestation order to prevent someone who is connected to the victim (e.g., a family member or someone who the victim has had a relationship with) from being violent, threatening violence, harassing or intimidating them</li> <li>3. a restraining order to protect someone from harassment or fear of violence for a specified period or until a further order is made</li> </ol> <p>Further information about these orders is available in Section 4.</p> <p>In England and Wales, in the immediate aftermath of a domestic abuse incident, the police and magistrates may put in place a DVPO to provide the victim with a period of time, up to 28 days, in which to consider their options and get the support that they need. Breach of a DVPO is not currently a criminal offense.</p> <p>In Scotland, a spouse, civil partner or cohabitant can make an application for a "non-molestation interdict" to prevent certain conduct by their former partner.</p> <p>The Bill introduces two new civil protections that will replace DVPOs. The first is a domestic abuse protection notice, which can be issued by the police to provide immediate protection following a domestic abuse incident (for example to require a perpetrator to leave the victim's home for up to 48 hours). The second is the domestic abuse protection order, which provides for flexible, longer-term protection for victims. Such orders will be available on application by the police to the magistrates' court, and to the victims and specified third parties in the family court.</p>
<b>Causes of action</b>	There are multiple causes of action that can be pursued depending on the nature of the abuse suffered by the victim, see above.

Term	Definition
<b>Marital rape</b>	Marital rape is the act of sexual intercourse with one's spouse without the spouse's consent. <sup>57</sup> Marital rape can be committed by those who cohabit as spouses, but are not legally married.

## Scotland

Term	Definition
<b>Domestic violence</b>	Whilst there is no strict definition of "domestic violence," the offense of "domestic abuse" was introduced in the Domestic Abuse (Scotland) Act 2018, which criminalizes behavior that a reasonable person would consider likely to cause their partner or ex-partner to suffer physical or psychological abuse. <sup>58</sup> Examples of abusive behaviors and the intended effects are set out in the legislation.
<b>Stalking</b>	<p>There is no strict legal definition of "stalking" but the offense is set out in Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010<sup>59</sup> as two or more incidents of conduct that cause, are intended to cause, or where the perpetrator's behavior is reckless as to whether it causes, the victim to suffer fear and alarm.</p> <p>The legislation includes a definition of the relevant "conduct" including following, monitoring, loitering, etc.</p>
<b>Harassment</b>	<p>Harassment is a course of conduct (meaning two or more incidents) that is deliberately intended to cause another person distress or alarm.<sup>60</sup></p> <p>When deciding whether any particular course of conduct amounts to harassment, the court will consider whether it was intended or whether a reasonable person, looking at the behavior from outside the situation, would think that it amounts to harassment.</p>
<b>Victim</b>	The Victim's Code for Scotland sets out the rights of victims but does not provide a definition of "victim." <sup>61</sup>
<b>Abuser</b>	There is no statutory definition of an abuser.
<b>Civil protection order</b>	<p>In Scotland, interdicts are available for a range of behavior including:</p> <ul style="list-style-type: none"> <li>▪ coming within a certain distance of the victim's home or place of work</li> <li>▪ coming within a certain distance of the victim's child's school</li> <li>▪ removing furniture or belongings from the victim's home</li> <li>▪ threatening the victim</li> <li>▪ physically assaulting the victim</li> <li>▪ verbally assaulting the victim</li> <li>▪ making abusive phone calls to the victim</li> </ul>

Term	Definition
	<ul style="list-style-type: none"> <li>doing anything to frighten, alarm or distress the victim or the victim's children</li> </ul>
<b>Causes of action</b>	There are multiple causes of action that can be pursued depending on the nature of the abuse suffered by the victim, see above.
<b>Marital rape</b>	Marital rape is the act of sexual intercourse with one's spouse without the spouse's consent. <sup>62</sup>

## Northern Ireland

Term	Definition
<b>Domestic violence</b>	<p>There is not currently a statutory definition of "domestic violence" in Northern Ireland. The definition of domestic abuse as outlined in the Northern Ireland government strategy 'Stopping Domestic and Sexual Violence and Abuse in Northern Ireland' is, any:</p> <p>Threatening, controlling, coercive behaviour, violence or abuse (psychological, virtual, physical, verbal, sexual, financial or emotional) inflicted on anyone (irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form of disability) by a current or former partner or family member.</p> <p>'Family members' include mother, father, son, daughter, brother, sister, grandparents, whether directly or indirectly related, in-laws or stepfamily.</p> <p>'Intimate partners' means there must have been a relationship with a degree of continuity and stability. The relationship must also have had (or reasonably supposed to have had) a sexual aspect, such as in the relationship between husband and wife or between others generally recognised as a couple including same sex couples.</p> <p>The offense of abusive behavior is proposed to be included in the Domestic Abuse and Family Proceedings Bill 2020, which criminalizes behavior that a reasonable person would consider likely to cause their partner or ex-partner to suffer physical or psychological abuse. Examples of abusive behaviors and the intended effects are set out in the draft legislation.</p>
<b>Stalking</b>	There is no legal definition of stalking. As per the Police Service of Northern Ireland, it is generally accepted that it includes repeated attempts to impose unwanted communications and/or contacts on another in a manner that could be expected to cause distress and/or fear in any reasonable person. <sup>63</sup>
<b>Harassment</b>	The Protection from Harassment Order (NI) 1997 prohibits the act of harassment, stating that a person must not pursue a course of conduct that amounts to harassment of another and that the perpetrator knows or ought to know will cause the victim harassment (which includes alarming the person or causing them distress).

Term	Definition
<b>Victim</b>	<p>A victim is:</p> <ul style="list-style-type: none"> <li>▪ someone who is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident</li> <li>▪ someone who provides a substantial amount of care on a regular basis for such an individual</li> <li>▪ someone who has been bereaved as a result of or in consequence of a conflict-related incident<sup>64</sup></li> </ul>
<b>Abuser</b>	There is no statutory definition of an abuser.
<b>Civil protection order</b>	<p>There are three types of injunction that a victim can apply for to protect against domestic violence in Northern Ireland:</p> <ol style="list-style-type: none"> <li>1. an occupation order to exclude someone from your home</li> <li>2. a non-molestation order to prevent someone who is connected to the victim (e.g., a family member or someone who the victim has had a relationship with) from being violent, threatening violence, harassing or intimidating them</li> <li>3. a restraining order to protect someone from harassment or fear of violence for a specified period or until a further order is made</li> </ol> <p>In emergency situations, an exclusion order will be granted where the abuse is so serious the perpetrator must be kept out of the matrimonial home until there is a full hearing.</p>
<b>Causes of action</b>	<p>There are multiple causes of action that can be pursued depending on the nature of the abuse suffered by the victim, see above.</p> <p>Note: The Public Prosecution Service for Northern Ireland has produced a list of rape and other sexual offenses.<sup>65</sup></p>
<b>Marital rape</b>	The offense of rape is criminalized in the Sexual Offences (Northern Ireland) Order 2008. Although the Act does not deal with marital rape specifically, the Public Prosecution Service for Northern Ireland states that the policy applies to "all types of rape" including "marital and relationship rape."

### 3.1 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

As noted above, the Bill includes a new statutory definition of domestic abuse, which will be the UK's first codified definition.

# 4 Protection for domestic violence victims and relief granted

## 4.1 Civil protection orders

### England and Wales

The main forms of protection orders currently available in England and Wales for domestic violence victims are:

1. non-molestation orders (NMOs)<sup>66</sup>
2. occupation orders (OOs)<sup>67</sup>
3. restraining orders<sup>68</sup>
4. domestic violence protection orders ("DVPOs")<sup>69</sup>

### NMOs and OOs

The aim of an NMO is to stop the perpetrator ("**Respondent**") from "molesting" an individual or a child (the victim or "**Applicant**"). This would include stopping them from using or threatening violence, intimidation or harassment.

An OO is intended to exclude the Respondent from the home that it shares (or intended to share) with the Applicant.

Both NMOs and OOs can be applied for directly by the victim of the domestic violence (although it is recommended that a solicitor be engaged to assist with this).

There is no specific provision in the legislation in relation to NMOs or OOs to allow for temporary custody of a child following the imposition of an NMO or OO, or to provide for specific child protection orders. However:

- the NMO can contain a specific provision prohibiting the Respondent from molesting a relevant child<sup>70 71</sup>
- the court does take into account whether children are involved when considering an OO, and will make sure that the well-being of the child is protected

The Respondent must be someone with whom the Applicant is "associated." This means that they must be related through one of the following means:

- relative
- co-habitant
- married, divorced or intended to be married to
- currently in or were in or intended to enter into a civil partnership
- live or have lived in the same household as a family
- have or have had an intimate personal relationship of significant duration with each other
- are a parent of the relevant child or have or had parental responsibility for the child<sup>72</sup>



A child (i.e., someone under the age of 16) can apply for an NMO with the permission of the court and an Applicant can apply if they are a parent of a relevant child or have parental responsibility for the child along with the Respondent.

To apply for an OO, the house in question must have been (or intended to be) the home of the Applicant and the Respondent. In addition, there are particular provisions in place depending on whether the Applicant is entitled to occupy the house (e.g., by way of beneficial interest); if only the Respondent is entitled to occupy the house (but the Applicant is a (former) spouse/civil partner/cohabitant of the Respondent); or if neither the Applicant nor the Respondent has a right to occupy the house.<sup>73</sup> The Applicant will have to apply for an OO under the relevant section of the Family Law Act 1996, depending on into which of these categories they fall.

If the Respondent breaches the terms of an NMO, they can be charged with a criminal offense, whereas breaching the terms of an OO is not a criminal offense. However, it is possible to request that the police arrest the Respondent for contempt of court if they breach an OO, and enforcement of the OO can then be dealt with by the civil courts.

The legislation does not stipulate a time limit for an NMO or OO.

### **Restraining orders**

A restraining order is another form of civil behavior order available to victims of domestic violence.<sup>74</sup> Unlike NMOs and OOs, a restraining order can only be made by the court on the conviction or acquittal of the Respondent for a criminal offense. It is a preventative measure intended to protect the victim.

There is no specific provision in the legislation on restraining orders to allow for temporary custody of a child following the imposition of an order, or to provide for specific child protection orders.

The court will only make a restraining order if it is considered necessary to protect the victim from harassment or conduct that will put them in fear of violence.<sup>75</sup> The use of restraining orders is not solely restricted to domestic abuse cases. Guidance from the CPS (the authority responsible for prosecuting crimes in England and Wales) on restraining orders states that they are most appropriate in the following circumstances:

1. where the defendant and the victim/witness know each other, e.g., domestic violence cases
2. where the parties have ongoing contact, e.g., where the victim runs a local business
3. where there is evidence that the victim has been targeted by the defendant (e.g., continued minor public order offenses or criminal damage)<sup>76</sup>

When deciding whether to make a restraining order, the court may take into account the evidence presented to it during the criminal trial, but may also require further evidence.

It is a criminal offense to breach a restraining order without a reasonable excuse. This could lead to imprisonment of up to five years, or a fine, or both.

There is no specific time limit per se, but restraining orders will be made by the court on conviction or acquittal of the Respondent.

### **DVPOs**

In addition to the orders described above, there are certain powers available to the police to provide instant protection to domestic violence victims in the immediate aftermath of a domestic violence incident. Since 8 March 2014, it has been possible for police forces in England and Wales

to issue DVPNs. A DVPN can be issued by a member of the police force (not below the rank of superintendent) against a person over the age of 18 if they have reasonable grounds for believing that:

1. the person has been violent toward, or threatened violence against, an associated person; and
2. the DVPN is necessary to protect that associated person from the violence, or threat of violence.<sup>77</sup>

The definition of an associated person is the same as that described above in relation to NMOs and OOs.<sup>78</sup>

The DVPN can offer various forms of protection to the victim, such as requiring that the Respondent (the perpetrator) leave the victim's home for a 48-hour period.

Once a DVPN has been issued, a police constable must apply to a magistrates' court within 48 hours for a DVPO.<sup>79</sup> If granted, this extends the protection offered by the DVPN for an additional 28 days.

Often a DVPO will be made before any criminal charges have been brought against the Respondent.

There is no specific provision in the legislation on DVPNs and DVPOs to allow for temporary custody of a child following the imposition of an order or to provide for specific child protection orders.

If the Respondent breaches the DVPN or DVPO, they may be arrested by the constable if the constable has reasonable grounds for believing that the Respondent is in breach.

DVPNs and DVPOs were introduced in order to ensure that the police and magistrates' court could offer protection to victims of domestic violence in situations where there is insufficient evidence to charge the Respondent with a criminal offense.<sup>80</sup>

### **New regime: domestic abuse protection order**

On 3 March 2020, the UK government reintroduced the Bill into Parliament, which proposes a new civil domestic abuse protection notice (DAPN) and a new civil domestic abuse protection order (DAPO) to replace DVPNs and DVPOs. These widen the scope of protection to cover all forms of domestic abuse, including that which is not physical (such as controlling or coercive behavior).

If the Bill is brought into force, it will repeal all existing DVPOs (at the time of writing, it is unclear whether the DVPOs that are still in effect at the time the Bill is passed will be replaced by DAPOs automatically). NMOs and restraining orders will remain in place, but only so that they can be used in nondomestic abuse situations, where the abuser is not associated with the victim (i.e., not a former partner or family member, etc.).

Similar to a DVPN, a DAPN will be issued by the police to provide immediate protection to a victim following an incident. One of the key issues with the current system, which the proposed new regime is designed to rectify, is the absence of criminal sanctions if a DVPO is breached and the fact that it can only last for a maximum of 28 days. If the Respondent breaches a DAPO, they will have committed a criminal offense with a maximum penalty of five years' imprisonment and/or a fine.

DAPOs will also allow for the imposition of both prohibitive and positive requirements on the Respondent, such as requiring them to attend a mental health assessment.<sup>81</sup>

The key provisions of the Bill that relate to the protection of victims of domestic abuse will apply only to England and Wales.<sup>82</sup>

## Scotland

The main civil protection orders available to victims of domestic violence in Scotland are as follows:

1. interdicts
2. exclusion orders
3. non-harassment orders

### Interdicts

An interdict is a civil court order that instructs the Respondent not to do something, e.g., to refrain from a particular behavior or to stay away from a particular person or location. An interdict is equivalent to an injunction under the law of England and Wales.

Interdicts can be used in various situations to cover different types of behaviors, including domestic abuse. For example, an interdict could prevent a Respondent from: threatening or assaulting (physically or verbally) the Applicant or their child; removing belongings from the Applicant's home; coming within a certain distance of the Applicant's home, place of work, child's school; or doing anything that might frighten the Applicant or their child.<sup>83</sup> While there is no specific provision for the temporary custody of a child following the obtainment of an interdict, the well-being of the child is clearly of relevance.

The Applicant can apply for a common law interdict (also known as a non-molestation interdict) to prevent certain conduct that amounts to an illegal act by a former partner (such as a spouse, civil partner or cohabitant). In addition, statute provides for specific interdicts for various domestic situations, as follows:

1. **Matrimonial interdict:** This can be used to restrain or prohibit the behavior of one spouse toward the other spouse or toward a child of the family.<sup>84</sup> This can include prohibitions on a spouse entering or remaining in a matrimonial home or any other residence occupied by the Applicant, or the Applicant's place of work, or any school attended by a child in the permanent or temporary care of the Applicant.<sup>85</sup>
2. **Civil partners interdict:** This is known as a "relevant interdict" and provides civil partners with the same protections as offered by the matrimonial interdict.<sup>86</sup>
3. **Domestic interdict:** This is the same as a matrimonial interdict, but for cohabiting couples.<sup>87</sup>

If the Applicant obtains an interdict, they can apply to the court for a determination that the interdict is a domestic abuse interdict.<sup>88</sup> This can be done if the Applicant and Respondent were spouses, civil partners, cohabitants or in an intimate personal relationship.<sup>89</sup> This can be beneficial to the Applicant because a domestic abuse interdict may lead to higher penalties. Penalties include: on summary conviction (i.e., conviction in a magistrates' court, the lowest criminal court), a Respondent can be imprisoned for up to 12 months and/or receive a fine; and on conviction on indictment (i.e., conviction following a jury trial in the crown court), a Respondent can be imprisoned for up to five years and/or fined.<sup>90</sup>

In contrast, a breach of an interdict that is not a domestic abuse interdict is harder to pursue. The Applicant would have to bring a separate action and prove the breach beyond reasonable doubt.

Another option available to the Applicant is to apply for a power of arrest to be attached to the interdict. This would mean that the police may arrest the Respondent on reasonable suspicion of breach, as long as there is a risk of further abuse or breach if the Respondent is not arrested.<sup>91</sup>

If the interdict is a matrimonial interdict, relevant interdict or domestic interdict and is made alongside an exclusion order (see below), the court must attach a power of arrest if it is sought.<sup>92</sup> In the case of any other interdict, the court will attach a power of arrest if it is satisfied that it is necessary to protect the Applicant from risk of abuse.<sup>93</sup>

The legislation does not stipulate a time limit for obtaining an interdict.

### **Exclusion orders**

An interdict cannot be used to evict the Respondent from the home that it shares (or shared) with the Applicant if they have occupying rights. However, the Applicant can apply for an exclusion order, which is a protective court order that suspends the occupancy rights of a spouse, civil partner or co-habitant if necessary for the protection of the Applicant or their child.<sup>94</sup> The Applicant does not have to be physically living in the home at the time of applying for an exclusion order.

There is no specific provision in the legislation on exclusion orders to allow for temporary custody of a child following the imposition of an order or to provide for specific child protection orders.

The legislation does not stipulate a time limit for obtaining an exclusion order.

### **Non-harassment order**

An Applicant can also apply for a non-harassment order (or restraining order), which will prevent the Respondent from engaging in particular conduct. Non-harassment orders cover all situations, but are also applicable to domestic abuse situations in Scotland.<sup>95</sup> Breach of a non-harassment order is a criminal offense.<sup>96</sup> On summary conviction, the Respondent can be imprisoned for up to six months and/or fined; conviction on indictment can lead to imprisonment for up to five years and/or a fine.<sup>97</sup>

A non-harassment order may include provision for the order to apply in favor of a child usually residing with the victim or the Respondent if the court is satisfied that it is appropriate for the child to be protected by the order.<sup>98</sup>

In addition, a non-harassment order can be imposed following conviction of a criminal offense for domestic abuse.<sup>99</sup> The Domestic Abuse (Scotland) Act 2018, which came into force on 1 April 2019, introduced a new criminal offense of domestic abuse, which included psychological abuse. If an individual is convicted under this Act, the court is required to consider making a non-harassment order against that person.<sup>100</sup>

No action will be brought unless it is commenced within three years of: (a) the date on which the alleged harassment ceased; or (b) the date (if later than the date in (a)) on which the pursuer in the action became (or on which it would have been reasonably practicable for them to become) aware that the Respondent was a person responsible for the alleged harassment or the employer or principal of such person.<sup>101</sup>

### **New regime: emergency protective orders**

In October 2019, the Scottish government announced that it would introduce a further protective order for domestic abuse victims: emergency protective orders (these have not yet come into force). These are intended to grant immediate, short-term powers to police to remove perpetrators from the home to protect victims (regardless of who has occupying rights). Prior to the

announcement in October 2019, a consultation on these measures was conducted by the Scottish government and resulted in almost unanimous agreement that the police should be granted these immediate powers.

## Northern Ireland

Victims of domestic violence in Northern Ireland have the following protection orders available to them:

1. non-molestation orders (NI NMO)<sup>102</sup>
2. occupation orders (NI OO)<sup>103</sup>
3. restraining orders<sup>104</sup>

In addition, a new Domestic Abuse and Family Proceedings Bill is passing through the Assembly, which will include a new offense of coercive and controlling behavior.

### NI NMOs and NI OOs

The NI NMOs and NI OOs are similar to those available in England and Wales. An NI NMO is an order that can be granted by a judge to stop the Respondent from molesting the Applicant (an associated person) or a relevant child. It can also provide for more specific prohibitions on identified conduct. An "exclusion zone" can be added to the NI NMO to prevent the Respondent from accessing certain locations, such as the area in which the Applicant lives, works, or where their children go to school.

An NI OO is an order that can be granted by a judge to regulate access to and occupation of a property that is (or has been) the shared home of associated persons (i.e., the Applicant and Respondent), including to:

- enforce the Applicant's right to remain in occupation of a property against the Respondent
- require the Respondent to permit the Applicant access to the property
- require the Respondent to permit the Applicant to have peaceful use and enjoyment of the property or part of it
- exclude the Respondent from an area in which the property is included
- require the Respondent to leave the property or part of it
- prevent the Respondent from selling their share in the property (if applicable)

The definition of "associated person" is broadly the same as stated above in England and Wales (but also specifically refers to adopted children).<sup>105</sup>

There is no specific provision in the legislation on NI NMOs and NI OOs to allow for temporary custody of a child following the imposition of an order or to provide for specific child protection orders. As in England and Wales, when considering an NI OO, the court will have regard to all of the circumstances, including the housing needs and resources of each party and any relevant child, and the health, safety or well-being of the parties and any relevant child.<sup>106</sup>

The legislation does not stipulate a time limit for NI NMOs or NI OOs.

## Restraining orders

Similar to England and Wales, the court can grant a restraining order on conviction or acquittal of the Respondent in order to protect the victim from conduct that amounts to harassment or will cause a fear of violence. The order will prohibit the Respondent from doing anything described within it.

There is no specific provision in the legislation on restraining orders to allow for temporary custody of a child following the imposition of an order or to provide for specific child protection orders.

If the Respondent does anything that they are prohibited from doing under the terms of the restraining order, they will be guilty of an offense and liable on conviction on indictment to imprisonment for a term not exceeding five years and/or a fine, and on summary conviction for a term not exceeding six months and/or a fine.<sup>107</sup>

The legislation does not stipulate a time limit, but it is noted that the order is made on conviction or acquittal.

## Specific child protection orders

There are a number of orders that are available in England and Wales, Scotland, and Northern Ireland for the protection of children (which are not restricted to domestic abuse cases). For example:

- **Child assessment orders:** These are available if there is reasonable cause to suspect that the child is suffering or is likely to suffer significant harm and an assessment of the child is required to determine this.<sup>108</sup>
- **Child protection orders/emergency protection orders:** Such an order can be made by the court in order to protect a child by, for example, removing the child to particular accommodation, preventing the child's removal from a hospital, or granting parental responsibility for the child to the applicant.<sup>109</sup>
- **Child arrangement orders:** This is an order that can be used to determine, in the course of family proceedings, with whom and when a child is to live, spend time or otherwise have contact.<sup>110</sup>
- **Care and supervision orders:** This is an order placing the child in the care or supervision of a designated local authority.<sup>111</sup>

## Data on how often civil protection orders are issued

### England and Wales

#### NMOs and OOs

Between January and March 2020, 8,022 applications were made to the family court for domestic violence remedy orders. The majority of these applications (83%) were for NMOs. Applications for NMOs were up 12% compared to the same period in 2019.

Between the same period, 8,716 domestic violence orders were made and 93% of these orders were NMOs, up 9% compared with the equivalent quarter in 2019.<sup>112</sup>

The Metropolitan Police (the police force responsible for London) had 62 recorded reports to police of breaches of NMOs in 2016-17 and 84 in 2017-18.<sup>113</sup>

The North Yorkshire Police recorded:

- 95 breaches of NMOs in 2015/16
- 70 breaches of NMOs in 2016/17
- 61 breaches of NMOs in 2017/2018<sup>114</sup>

The West Midlands police recorded:

- 322 breaches of NMOs in 2017
- 381 breaches in 2018
- 518 breaches in 2019<sup>115</sup>

Between January and March 2020, 17% of the 8,022 applications made to the family court for domestic remedy orders were for OOs. Applications for OOs increased by 8% compared to the same period in 2019.

Of the 8,716 domestic violence orders made by the court between January and March 2020, 7% were OOs, up 1% compared with the equivalent quarter in 2019.<sup>116</sup>

## **Restraining orders**

The Metropolitan Police recorded 136 reports to police of breaches of restraining orders in 2016-17 and 205 in 2017-18.<sup>117</sup>

The North Yorkshire Police recorded 126 breaches of restraining orders in 2015/16; 147 breaches of restraining orders in 2016/17; and 182 breaches of restraining orders in 2017/18.<sup>118</sup>

In 2013, 20,356 restraining orders were issued by the courts in England and Wales; 21,508 were issued in 2014; and 23,057 were issued in 2015.<sup>119</sup>

## **DVPNs and DVPOs**

In England and Wales in the year ending March 2019:

- 4,349 DVPNs were issued
- 5,859 DVPOs were made
- 27,787 NMOs were made (an increase of 22% over the past nine years)<sup>120</sup>

The Metropolitan Police recorded the following statistics:

- 164 crime incidents flagged for DVPN were granted and breached between 1 January 2016 and 31 December 2016
- 138 crime incidents flagged for DVPO were granted and breached between 1 January 2016 and 31 December 2016

## **Scotland**

### **Interdicts**

Civil justice statistics in Scotland were as follows:

- The number of interdicts initiated in 2016-2017 was 265 and in 2017-2018 was 310.

- The number of interdicts disposed of 2016-2017 was 146 and in 2017-2018 was 156.<sup>121</sup>

### **Exclusion orders**

Civil justice statistics show that:

- The number of exclusion orders initiated in 2016-2017 was 10 and in 2017-2018 was eight.
- The number of exclusion orders disposed of 2016-2017 was six and in 2017-2018 was five.<sup>122</sup>

### **Non-harassment orders**

There is no accessible information regarding the statistics for non-harassment orders in Scotland.

## **Northern Ireland**

### **NI NMOs and NI OOs**

In 2018 and 2019, the number of breaches of NI NMOs fell to their lowest levels since the data series began in 2004 to 2005.

Between July 2018 and June 2019, there were 592 breaches of NI NMOs recorded, compared with 717 breaches between July 2019 and June 2020.<sup>123</sup>

There is no equivalent publically available information regarding NI OOs.

### **Restraining orders**

There is no accessible information regarding the frequency with which restraining orders are granted in Northern Ireland.

## **4.2 Steps for receiving a protective order**

### **England and Wales**

#### **NMOs and OOs<sup>124</sup>**

A victim of domestic abuse can apply directly to the court for an NMO or an OO. In order to do this, they will have to complete and send an application form (Form FL401, available to download from the internet) to a civil court (i.e., the local family or county court).<sup>125</sup> The Applicant can use the following link to find out the details of their local court:

<https://courtribunalfinder.service.gov.uk/search/>. Guidance on how to complete the form is included in the form itself.

Alongside the form, a statement must be provided giving details in support of the application. This will include the history of the abuse, as well as any evidence (such as text messages, photos of injuries, etc.) that is considered relevant. The Applicant must sign and date a statement of truth at the bottom of this written statement verifying that the information provided is truthful and stating:

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes



to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

If the Applicant does not want their address or telephone number to be made available to the Respondent, they should not include them in the application form. Instead, the Applicant should complete Form C8 with their confidential contact details to be provided to the court.<sup>126</sup> This form can be downloaded from the UK government's website or can be provided by the local civil court.

Two or three copies of this written statement and the application form must then be provided to the court, along with a draft NMO or OO order.

In emergency cases, the court can grant an interim order.<sup>127</sup> In such cases, the application is made without notice to the Respondent, i.e., they are not provided with a copy of the application after it is filed/before a hearing takes place. The court is likely to allow this in situations where there may be an immediate risk of harm to the Applicant or a relevant child if the order is not made immediately. If the Applicant is applying without notice to the Respondent, they must explain their reasons for this in their written statement accompanying the form.

The court will then arrange a second hearing at a later date to decide whether to grant a final order. The Respondent will attend this second hearing and will have the opportunity to put their case to the court. At the end of the hearing, the court will decide whether or not to grant the final order.

In nonurgent cases, the application will be made on notice to the Respondent. This means that a copy of the application form, witness statement and any notice of hearing or directions set by the court must be provided to ("served on") the Respondent. The Applicant must not serve these documents on the Respondent. Instead, their solicitor should do it or, if they do not have a solicitor, they can request that the court serve the documents on the Respondent.<sup>128</sup>

At the time of writing and in light of the COVID-19 pandemic, it is possible to register online to a digital service through which an application for an NMO or OO can be made (<https://flows.courtnav.org.uk/register>).

## **Restraining orders**

A restraining order will either be made directly by the court of its own volition, or the prosecutor can make an application to the court following the conviction or acquittal of the defendant.

The police will be invited to make representations to the prosecutor regarding restraining orders and will be expected to confirm whether they have taken into account the views of the victim. In cases where the victim does not want a restraining order to be issued, the prosecutor must make the court aware of this, as it is ultimately a matter for the court to decide.

## **DVPNs and DVPOs<sup>129</sup>**

As stated above, a DVPN can only be issued by a police officer of the rank of superintendent or above. The consent of the victim is not required and a DVPN may be issued even where the victim specifically states that it does not want a DVPN, for example in cases where there is evidence of coercive or controlling behavior. The police officer must take into account the involvement of any children (defined as anyone under the age of 18) when deciding whether to issue a DVPN.

The police officer must then apply to the magistrates' court for a DVPO, which extends the protection offered by a DVPN to up to 28 days.

## **New regime: DAPOs<sup>130</sup>**

Whereas DVPNs and DVPOs can only be issued and applied for by the police, the new regime is intended to broaden the application routes to allow victims and specific third parties such as local authorities to make a direct application to the family court, as well as to allow criminal, family and civil courts to make a DAPO during existing proceedings (which do not have to be domestic abuse-related). The intention is for legal aid, i.e., public funding, to be available for victims who directly apply for an order and there will be no fee required.

## **Scotland**

### **Interdict,<sup>131</sup> exclusion order<sup>132</sup> and non-harassment order<sup>133</sup>**

Each of these orders can be applied for directly by the victim by making an application to the sheriff court or the court of session. It is recommended that the Applicant seeks the help of a solicitor, who will assist in preparing a legal document (known as an initial writ), summarizing the facts of the case, including the type of abuse or conduct and why the Respondent is likely to repeat this again.

In most cases, only the Applicant or their lawyer can make the application, i.e., a third party (such as a domestic abuse charity) cannot do it on the victim's behalf.

An application for an exclusion order must be made by the Respondent's spouse, civil partner, cohabitee and/or occupier of the family home. At the time of making the application, the Applicant does not have to be living in the house with the Respondent (for example, if they are seeking shelter elsewhere).

In cases of emergency or where there is an immediate risk to the victim or child, it is possible to apply for an interim interdict or an interim exclusion order, which will be granted as soon as the application is made, prior to any court hearing. As with an interim NMO and OO, the court will then consider (usually at a hearing) whether it is appropriate to put a final interdict or exclusion order in place. The Applicant may be required to attend the court hearing to give evidence at this stage, if the Respondent decides to defend the case.

If an interim exclusion order has not been applied for, the Respondent will have a period of 21 days from when the legal papers are served on it, to tell the court if it wants to defend the action. During this period, no protective steps will be taken. If the Respondent decides to defend the action, there will be a court hearing.

The court process for a non-harassment order can take a long time and it is therefore beneficial to make an application for an interim interdict at the same time to prevent the harassment immediately.

## **Northern Ireland**

### **NI NMOs and NI OOs**

As in England and Wales, the victim can directly apply for an NI NMO and NI OO. The Applicant must make the application using court form F1 (available to download from the internet).<sup>134</sup>

In situations where there is an immediate risk to the victim or relevant child (or where an incident has occurred recently (i.e., within seven days)), the Applicant can make an emergency application for either an NI NMO or an NI OO or both. As in England and Wales, this will mean that the Respondent is not notified of the application before the order is granted. The order will be granted

on a short-term basis to provide immediate protection. A court hearing will subsequently be arranged and both the Applicant and the Respondent will be summoned to attend.

### **Restraining order**

As in England and Wales, this is awarded by the court on conviction or acquittal for an offense. The victim does not directly apply for a restraining order. Please see above for further information.

## **4.3 Judicial discretion**

### **England and Wales**

#### **NMOs and OOs**

An NMO or OO can only be granted with the court's permission and the court (i.e., the judge)<sup>135</sup> retains discretionary powers to make such an order.

In deciding whether to make an interim NMO or OO, without notice to the Respondent, the court will consider:

- any risk of significant and immediate harm to the Applicant or relevant child, from the Respondent
- whether it is likely that the Applicant might be deterred or prevented from making an application if the order is not granted immediately
- whether there is reason to believe that the Respondent is deliberately evading service of the legal papers and the Applicant or relevant child would be seriously prejudiced by any delay this would cause<sup>136</sup>

The court will then subsequently grant the Respondent the opportunity to defend the order at a full hearing. The hearing will be held in private, unless the court orders otherwise.

There are a number of factors that the court is likely to consider at the hearing, including the harm that might be caused to the Applicant or their child if the order is not granted and the impact on their health, safety and well-being.

Specifically in relation to OOs, the court will likely take into consideration the housing situation and financial resources of both parties. If the Applicant is not entitled to occupy the house, but is a cohabitee (or former cohabitee) of the Respondent, the court will likely consider the length of their relationship and the length of time since the relationship ended.

Specifically in relation to NMOs, the court may take into account whether the Applicant has taken any other steps to seek support, other than applying to the court (e.g., calling the police). If they have not done so for cultural reasons, this should be included in their witness statement.<sup>137</sup>

#### **Age limits on obtaining orders**

If the victim is under the age of 16, they cannot apply for an NMO or an OO without the court's permission. The court will grant permission if satisfied that the child has sufficient understanding of the application.<sup>138</sup> If the victim is under the age of 16, then they must apply to the court for permission to make an application for an NMO or an OO. The same form should be used as referred to above — Form FL401.<sup>139</sup>

If the victim is 16 or 17, they should seek the help of someone over the age of 18 to assist them in making the application. This person will be known as a "next friend." They should also make the application in a county court.

### **Restraining orders**

The test that the court will consider when deciding whether to make a restraining order will be whether it is necessary to protect the victim from conduct that will put them in fear of violence. The standard of proof is a civil one, and therefore it must be decided on the balance of probabilities, i.e., the evidence will be assessed on the basis of whether it is more likely than not to have occurred.

The court is entitled to consider any of the evidence presented to it during the course of the criminal trial in order to determine whether a restraining order is necessary either post-conviction or post-acquittal. In addition, both the prosecution and defense may provide additional evidence for the court to consider. It is possible for prosecutors to request a restraining order at the outset, before any evidence has been put forward during the trial. Evidence must be presented by the prosecutor when making this application.

### **Age limits on obtaining restraining orders**

There is no specific provision on restraining orders in the legislation, but it should be noted that the court (rather than the victim) applies for the restraining order.

### **DVPNs and DVPOs**

A DVPN will be issued by a police officer of the rank of superintendent or above. The permission of the court is not required (and therefore the court's discretion is not relevant). When deciding whether to issue a DVPN, the police must have specific regard to:

- the welfare of any children (i.e., anyone under the age of 18), regardless of whether the child is an associated person
- the opinion of the victim
- any representations made by the Respondent
- the opinion of any other person who lives in the premises to which the provision would relate<sup>140</sup>

Consideration should be given to the following:

- what the DVPN will seek to achieve and why this cannot be obtained by other means
- whether the only option to reduce the risk or threat of violence is to remove the Respondent from the address and prevent their re-entry<sup>141</sup>

A magistrates' court will decide whether to issue a DVPO. The court may make a DVPO if it is satisfied on the balance of probabilities that the Respondent has been violent toward, or threatened violence toward, an associated person, and the making of the DVPO is necessary to protect that person. As with a DVPN, the court will take into consideration the welfare of any person under the age of 18, and the opinion of the victim and any other person who lives on the premises to which the provision would relate.<sup>142</sup> The court may decide to issue a DVPO even if the victim does not wish it.<sup>143</sup>

## **Age limits on obtaining DVPNs and DVPOs**

As with restraining orders, the victim does not directly obtain a DVPN or DVPO (as noted above, DVPNs will be issued by police officers and DVPOs by the court). In terms of age limits, it is worth noting that the perpetrator must be over the age of 18.

## **Scotland**

### **Interdicts, exclusion order, non-harassment order**

The court has the power to grant each of these interdicts or orders. The standard of proof is civil, meaning that the court has to decide from the evidence whether it is more likely than not that the Respondent is abusing or harassing the Applicant.

The court will consider the following when deciding upon an interdict:

- whether the behavior to be banned is unlawful
- whether the Respondent is likely to repeat the abusive conduct
- if there is the risk of immediate harm
- whether the behavior can be clearly explained so the Respondent can understand what they are banned from doing
- if the interdict is considered necessary for the Applicant's protection<sup>144</sup>

When granting an exclusion order, the court must be satisfied that it is necessary for the protection of the Applicant or any child of the family from any conduct (including threatened or reasonably apprehended conduct) of the Respondent that would cause harm to the physical or mental health of the Applicant or the child.<sup>145</sup> This is a fairly strict test and it can be difficult to demonstrate without strong evidence.

### **Age limits on obtaining orders in Scotland**

There is nothing in the legislation in relation to interdicts, exclusion orders and non-harassment orders that suggests that there is an age limit on obtaining these orders.

## **Northern Ireland**

### **NI NMOs and NI OOs**

The court has discretionary powers to grant an NI NMO or OO.

When deciding whether to grant an NI NMO, the court will consider the need to secure the health, safety and well-being of the Applicant and any relevant child.

When deciding whether to grant an NI OO, it will consider a number of factors, including:

- the housing needs and financial resources of the Applicant and Respondent, and any relevant child
- the likely impact of granting (or not granting) the order on the health, safety or well-being of the parties and of any relevant child
- the conduct of the parties to each other

- the length of time that has elapsed since the end of the relationship (if applicable) or since they stopped living together
- whether there are children involved, who are both parties' responsibility

If the Applicant or relevant child is likely to suffer significant harm because of the Respondent's conduct, then an OO should be made (although the court should balance this harm against any harm likely to be caused to the Respondent<sup>146</sup> or relevant child by the order being made).

### **Restraining orders**

The court will make a restraining order of its own volition at the conclusion of criminal proceedings or if they are asked to consider it by the prosecution. The police can also include a recommendation to the prosecution at the outset.

The court will make a restraining order on the acquittal of the Respondent if it considers it necessary to do so to protect a person from harassment.

### **Age limits on obtaining orders in NI**

There is nothing in the legislation in relation to NI NMOs and NI OOs, and restraining orders, which suggests that there is an age limit on who can obtain the orders.

## **4.4 Restitution and remedies available to victims**

### **Harassment**

#### **Scotland**

In Scotland, the Applicant can ask the court to grant it damages, as part of the court action for a non-harassment order. If the court finds in favor of the Applicant, it will order that the Respondent pay to the Applicant an amount of damages to reflect the level of harassment experienced by the Applicant. The Respondent could be liable to cover any expenses incurred by the Applicant, such as loss of earnings if the Applicant had to take time off work, or compensation for any injuries suffered as a result of the harassment.

#### **England, Wales and Northern Ireland**

Similarly, in England, Wales and Northern Ireland, a civil application can be brought for damages caused by harassment.<sup>147</sup> It is an offense for an individual to pursue a course of conduct that amounts to harassment of another individual and that they know or ought to know amounts to harassment. A victim of this behavior can bring a claim in civil proceedings against the perpetrator.

If this claim is successful, the Applicant may be awarded damages for (among other things) anxiety caused by the harassment and any financial loss arising from it.

In addition, the court may award an injunction against the Respondent to restrain them from doing anything that amounts to harassment. A breach of this injunction is an offense and the Respondent can be liable for conviction on indictment to imprisonment for up to five years and/or a fine and on summary conviction to imprisonment for up to six months and/or a fine.

## Violent crime

Finally, the Criminal Injuries Compensation Scheme is available to individuals in Great Britain (i.e., England, Scotland and Wales).<sup>148</sup> In England and Wales, a victim may be eligible for compensation if they are a victim of violent crime; a close relative has died because of a crime; or they witnessed a serious crime, intervened and were seriously injured.

In Northern Ireland, a victim of crime may be able to claim for loss of earnings or earning capacity if they have been off work or incapacitated for longer than 28 weeks.

Following amendments to legislation that came into force on 9 June 2020, victims may now be able to make a claim for compensation under the Criminal Injuries Compensation Scheme for historic crimes that occurred in Northern Ireland between 1 March 1969 and 30 June 1988, for which they were previously denied (or discouraged from applying for) due to the 'same household' rule.<sup>149</sup> Victims need to make a claim within two years of 9 June 2020<sup>150</sup> and still need to meet the eligibility criteria set out under the scheme.

Further information on the Criminal Injuries Compensation Scheme is in Section 2 of this guide.

# 5 Prosecutorial considerations

## 5.1 Police procedures

### 5.1.1 When do the police get involved in domestic disputes or legal actions?

The police get involved in domestic disputes or legal actions in a number of situations, described below.

#### **Following a complaint by the victim, someone known to the victim or a member of the public**

Police are most likely to get involved in domestic disputes following receipt of a complaint from a victim. Police will also respond to complaints from concerned third parties (e.g., friends, families, colleagues or neighbors). In an emergency situation or if the victim is in immediate danger, victims or anyone concerned about the victim's well-being should call 999.<sup>151</sup> In a nonemergency situation, victims and others are able to call 101 or go to a police station to report the incident.

If an individual is in an emergency situation and needs police help, but can't speak, there is an option to press 55 as part of the "Make Yourself Heard" initiative.<sup>152</sup> This will allow the operator to know that the call is genuine and they can then proceed to communicate by asking simple yes or no questions to ascertain what help is required.

If the police arrest and charge a perpetrator, they will decide whether to keep them in custody or release them on bail. If released on bail, there will usually be conditions attached to their bail to protect the victim from future violence and abuse, e.g., not contacting or going within a specific distance from the victim, not living at a particular address, etc. The CPS (the principal public agency that prosecutes criminal cases that have been investigated by the police and other investigative organizations in England and Wales) will make the final decision on whether the perpetrator is prosecuted. In Scotland, the equivalent body is the Crown Office & Procurator Fiscal Service (COPFS) and in Northern Ireland it is the Public Prosecution Service (PPS).

#### **Proactively**

##### **Flag**

Following a complaint, the police are able to put a "flag" on the victim's telephone number or home address so that swift action will be taken in the future. In the event of a future report (even if not related to domestic violence), the flag will appear on the record so that it is possible for the police to track any pattern in the reporting and consider if there is a potential issue.

##### **DASH Risk Assessment**

The Domestic Abuse, Stalking and Harassment and Honour-Based Violence (DASH) Risk Identification, Assessment and Management Model<sup>153</sup> was implemented across all police services in the UK in March 2009. The aim of this model is to change the police's reactive approach into a proactive approach, whereby the police have the information and tools to understand potentially fatal domestic violence situations at the initial visit (and therefore, possibly prevent them from occurring). 'The First Time, Right Time' approach underpins the DASH model.

The DASH checklist is employed in the Model and contains a list of indicators of high-risk domestic abuse. The checklist encourages the police to consider who is at risk, the context of the behavior



and how other risk factors interact with each other. Training is provided to police so that they can better understand domestic violence situations. The checklist also aims to assist police in identifying particularly high-risk abuse and dangerous perpetrators that should be referred for consideration by a Multi-Agency Risk Assessment Centre.

## **DVPNS and DVPOs**

If there has been a threat of or actual abuse, the police can issue a DVPN<sup>154</sup> and then apply to the magistrates' court for a DVPO<sup>155</sup> to prevent further violence. A DVPN can be issued by a member of the police force (not below the rank of superintendent) against a person over the age of 18 if they have reasonable grounds for believing that:

1. the person has been violent toward, or threatened violence against, an associated person
2. the DVPN is necessary to protect that associated person from the violence, or threat of violence<sup>156</sup>

DVPOs may be used following certain domestic violence incidents and prevent someone from contacting their partner for 48 hours. On top of this initial 48 hours, the police may also apply to a magistrates' court for an extension of this order for an additional 14 or 28 days. They are used to provide 'breathing space' for victims and, when it is thought appropriate, they can be obtained without the victim's consent. Further information about DVPNs and DVPOs is available in Section 4 of this report.

## **Domestic Violence Disclosure Scheme<sup>157</sup>**

The Domestic Violence Disclosure Scheme (DVDS), also known as Clare's Law, provides the public with a formal way of requesting information about an individual's past, when their current partner or another person wants to know whether the individual has a record of domestic abuse offenses against former partners.

The following people can exercise their right to ask for information under the DVDS:

### **Potential person at risk<sup>158</sup>**

A person potentially at risk can make a request about their partner. Such a request will trigger a search for previous convictions or relevant information. Checks are carried out through the Police National Computer, the Police National Database, ViSOR<sup>159</sup> and local intelligence systems. If those checks reveal a record of abusive offenses or other information substantiating concerns that the subject of the enquiry poses a risk, the police have discretion as to whether and how to share that information with the enquirer (though the police will act immediately if at any point they consider the individual to be at risk and in need of protection from harm). In the event that the records reveal a risk, the police can use their discretion to let another person (other than the victim) know the information, for example in the event that the police believe another person is best placed to protect the victim, such as a parent or agency worker. Requests can be made directly to the police either in a police station or by calling 101. Police are obliged to ensure that there is a private venue to discuss such requests.

### **Friends and family**

Friends and family may also request the same disclosure if they believe someone to be at risk of domestic violence. Any information shared must only be used for the purpose of safeguarding the potential victim. Though friends and family can make a request, the information may not be shared with them if the police feel that it is more appropriate to share information directly with the person at risk. The police may also share that information with a person deemed best able to safeguard the potential victim, such as a parent or agency worker.

## 5.1.2 What circumstances affect law firm involvement?

Victims of domestic abuse have rights under both civil and criminal law. Civil law claims are primarily aimed at protection (or compensation). Examples of civil law claims are applications to the family proceedings court or the county court for an injunction and are usually made through the victim's solicitor. Criminal law is primarily aimed at punishing the offender. The police and CPS initiate this process, but criminal cases themselves are heard either in the magistrate's court or the crown court.<sup>160</sup>

There is no requirement for victims to seek legal representation or advice from a solicitor. Individuals may make applications and attend court themselves, in which case they are known as "litigants in person" and act for themselves in any proceedings. However, it is advisable for victims to seek the advice of a qualified solicitor. To find contact details of a lawyer, the victim can contact the Law Society (to find a solicitor), the Bar Council (to find a barrister) or Citizens Advice.<sup>161</sup>

Victims of domestic abuse can also apply for legal aid if they cannot afford to pay legal costs. However, the legal aid solicitor or civil legal adviser will need to see evidence before deciding whether the victim will be eligible for legal aid.<sup>162</sup>

Advice may be needed from a solicitor in family law to get property back or make the victim the legal owner of their home, decide whom any children will live with and how to end a marriage. A local advice agency, such as a law center or Citizens Advice will be able to find a solicitor who is experienced in this area of law. Practitioners should make a client aware that if there is an immediate or imminent risk of harm to the applicant, the police must take steps to safeguard the applicant and any other relevant people (in these circumstances, it is unlikely that confidentiality can be maintained).

## 5.2 Standard of proof

### 5.2.1 Is proof required by any legal means? Is proof beyond reasonable doubt required?

The domestic violence offenses detailed in Section 1 fall into both the criminal law system and the civil law system in the United Kingdom. The key difference between these two systems is that the criminal courts apply a stricter burden of proof, in that a case will need to be proved "beyond reasonable doubt,"<sup>163</sup> whereas in civil proceedings the court will arrive at its decision on the "balance of probabilities,"<sup>164</sup> i.e., depending on whether it considers that something is more likely than not to have occurred.

### 5.2.2 Are there any requirements for evidence and documents?

It is important that efforts aimed at gathering evidence to build a robust prosecution case are not focused solely on the evidence of the victim. The stronger the overall case, the less likely it is to be contested or, if it is, that the prosecution will need to call upon the victim to give evidence. The starting point to build cases is therefore to build a case whereby the prosecution does not need to rely on the victim. However, prosecutors should ensure that the views of the victim are balanced with this approach and that the victim is not overlooked during proceedings.<sup>165</sup> Police and prosecutors should actively use the Joint Evidence Checklist<sup>166</sup> at Annex A to the CPS Domestic Abuse Guidelines for Prosecutors to gather evidence and build cases, maximizing all opportunities and to ensure that a full history of offending behavior has been captured to assist in keeping the victim safe from any further harm.

The Joint Evidence Checklist should not be seen by the police as an exhaustive list of evidential opportunities to explore. Police — and where necessary — prosecutors, should consider how

supporting evidence could be captured (particularly in cases where controlling or coercive behavior has been more prevalent, and equally where the victim has indicated that they are not willing to support a prosecution). The investigation of this material should always be undertaken with the intention of assisting in keeping a victim safe.

A similar approach applies in Scotland and the COPFS has indicated through a joint protocol with Police Scotland<sup>167</sup> that the police will ensure that all possible lines of enquiry are rigorously pursued and all available evidence is secured. In Northern Ireland, the PPS has published a Policy for Prosecuting Cases of Domestic Violence,<sup>168</sup> in which the PPS has indicated that police will gather all available evidence to initially report the case to the PPS, who will then consider all evidence to make decisions. The PPS specifically acknowledges that domestic violence nearly always takes place in private and that the victim may be the only witness to it, though they will try to gather any other evidence that will allow the prosecution to proceed.

### **5.2.3 Is the standard of proof different for *ex parte* orders?**

In domestic violence cases, an *ex parte* (or "without notice") order can give the victim immediate protection from the perpetrator, especially where the victim is fearful as to how the perpetrator may react when served with a copy of the victim's application.<sup>169</sup> The standard of proof is not different for *ex parte* orders (the court will apply the civil standard of balance of probabilities), but a victim and their solicitors each have special obligations when making a without notice application, reflecting the fact that they are asking the court to make an order without first hearing from the respondent.

Rule 10.2(4) of the Family Procedure Rules 2010 provides that when applying without notice, the applicant must state in their witness statement the reasons why notice was not given to the respondent.<sup>170</sup> Moreover, the case of *Re S (A Child) (Family Division: Without Notice Orders)*<sup>171</sup> makes clear that those who seek *ex parte* relief are under a duty to make full and frank disclosure of all relevant facts known to them. This duty extends to all relevant matters, whether of fact or of law. Section 4 of this guidance addresses in detail the various orders that can be made to protect a victim of domestic violence.

## **5.3 Affirmative defenses**

### **5.3.1 Are affirmative defenses available to the accused?**

Yes. An affirmative defense is a defense based on facts other than those that support the victim's claim. A successful affirmative defense would excuse the defendant from civil or criminal liability, wholly or partly, even if the allegations in the complaint are true.<sup>172</sup>

By way of example, it is a complete defense to offenses such as common assault, battery, assault occasioning actual bodily harm and grievous harm or wounding to use self-defense. The defense of insanity is also available as a defense to criminal charges.

### **5.3.2 Is willful intent required?**

Willful intent is not required for the majority of domestic violence offenses, as the elements that make up these offenses are largely objective, though consideration would need to be given on a case-by-case basis.

### **5.3.3 Are false accusations punishable for the victim?**

Yes. False allegations of domestic abuse are dealt with by the offenses of perverting the course of justice and wasting police time.<sup>173</sup>

The CPS guidance in respect of false allegations of rape and/or domestic abuse provides guidance in respect of charging decisions in relation to a person who has made an allegation of rape or domestic abuse and one of the following situations apply:

- It is suggested that their allegation is false.
- They have retracted their allegation.
- They have withdrawn a retraction (a "double retraction").

Prosecutions for these offenses in the situations above are extremely rare: a report carried out by the CPS in 2013 found that over a period of 17 months there were 111,891 prosecutions for domestic violence and only six for making false allegations of domestic violence.<sup>174</sup> Moreover, prosecutions for these offenses will be complex and require sensitive handling. On the one hand, victims of domestic abuse making truthful allegations require the support of the criminal justice system. They should not be deterred from reporting their allegations. Nor should they be criminalized for merely retracting an allegation because true allegations can be retracted for a broad range of reasons. Very often such allegations are made by a person who is vulnerable or in the context of a relationship, often with a protracted and complicated history, all of which is bound to have a bearing on the issues in the case. On the other hand, false allegations of rape and/or domestic abuse can have a serious adverse impact on the person accused. This is why these cases must be examined thoroughly by suitably experienced prosecutors who should strike the right balance between ensuring genuine victims are believed and not criminalized, whilst recognizing the need to protect the innocent from false allegations.<sup>175</sup>

The CPS guidance lists core considerations, including that the prosecutor must disregard myths and stereotypes associated with victims of domestic abuse (e.g., that they will always resist and fight their attacker/would always receive injuries), which should play no part in the decision-making process.

As with all offenses, prosecutors must apply the two stages of the full code test: (1) the evidential stage; and (2) the public interest stage (explained in further detail in Section 2) when considering whether to pursue charges of perverting the course of justice and/or wasting police time.

### **5.3.4 How is consent discussed in the law?**

Whether consent can be used as a defense depends on the specific crime(s) being charged. The general rule is that consent is not a valid legal defense for wounding and actual bodily harm.<sup>176</sup> The current draft of the Bill provides that consent to serious harm for sexual gratification will not be a defense in most circumstances. However and as discussed in Section 1, in the past some defendants accused of murdering a woman have successfully used the "rough sex" defense, i.e., argued that the victim consented to rough sex, resulting in lesser charges of manslaughter, a lighter sentence than manslaughter being imposed or the woman's death not being investigated as a crime.<sup>177</sup>

### **5.3.5 Is self-defense or insanity a defense?**

#### **Self-defense**

Yes, please see "affirmative defenses" section above: self-defense is available as a defense to offenses involving the use of force.

A victim of domestic violence might use force against their abuser or react in such a way that would cause their actions to also be classed as either a civil or criminal offense. The classification of this behavior as self-defense is being considered in the Bill by the UK parliament.<sup>178</sup>

The amendment proposed by the Bill to Section 76 of the Criminal Justice and Immigration Act 2008, would make it easier for those who act in response to domestic abuse to establish they were acting in self-defense, providing them with equivalent protection to those acting in response to an intruder in their home. However, until that amendment becomes law, a victim who uses force against their abusive partner or former partner may have challenges successfully asserting "self-defense," especially if a jury concludes that the response was disproportionate.

## Insanity

Yes, please see section on "affirmative defenses" above.

Insanity is also known as insane automatism. The defense of insanity relates to the mental condition of the accused. The defense of insanity will arise where the accused is found to have been insane at the time the offense was allegedly committed. The defense will be raised at trial and, if successful, will result in a special verdict of "not guilty by reason of insanity."<sup>179</sup> The elements of the defense were set out in the M'Naghten Rules.<sup>180</sup>

If the defense of insanity succeeds in the magistrates' court, the defendant will be entitled to a complete acquittal. Alternatively, the magistrates' court can decline to try the issue of insanity (i.e., without convicting the accused) where it appears to the court that the accused may be dealt with under the Mental Health Act 1983 ("**MHA 1983**") by way of a hospital or guardianship order, provided the conditions of Section 37, MHA 1983 are met,<sup>181</sup> which are the following:

1. The court is satisfied that the accused did the act or made the omission charged.
2. The court is satisfied, on the written or oral evidence of two registered medical practitioners (one of whom must be approved under the MHA 1983) that the accused is suffering from a mental disorder that would, upon conviction warrant a hospital order or guardianship order.
3. The court is of the opinion — having regard to all the circumstances, including the other available methods of dealing with an accused — that the most suitable method of disposing of the case is by means of a hospital or guardianship order.

In the crown court, before a jury can return the special verdict of not guilty by reason of insanity, the prosecution must first prove beyond reasonable doubt that the defendant 'did the act or made the omission' charged. If the prosecution fail to prove this, the defendant is entitled to be acquitted whether or not they were insane at the time of the alleged offense.<sup>182</sup> If the prosecution proves that the defendant 'did the act or made the omission' charged, a verdict of not guilty by reason of insanity can only be returned by the jury if the court has heard the evidence of two registered medical practitioners, one of whom must be approved.<sup>183</sup> If the jury returns a verdict of not guilty by reason of insanity, a judge can deal with the defendant by imposing:

1. a hospital order;
2. a supervision order; or
3. an absolute discharge.<sup>184</sup>

Insanity must be distinguished from unfitness to plead. An accused can be found unfit to plead if at the time of trial, he/she is found to lack sufficient intellect to comprehend the course of criminal proceedings. For example, a defendant will be unfit to plead if he/she is incapable of understanding the charge(s) and the pleas open to them, or of following the evidence. In this case the trial will not proceed.

## 5.4 Witness status

### 5.4.1 What is a witness's duty to testify honestly and completely?

A witness will be required to take an oath or affirmation before they give evidence in court. This means they will either need to swear to tell the truth on the holy book of their religion or they can make an affirmation to tell the truth.

When making a witness statement, a witness will have to verify their witness statement by making a statement of truth and signing the statement. The witness statement is the equivalent of the oral evidence that the witness would give if called. The statement of truth is a declaration that:

- it is true to the best of their knowledge and belief
- the witness knows that if it is introduced in evidence, then it would be an offense to have willfully stated in it anything that the witness<sup>185</sup> knew to be false or did not believe to be true

### 5.4.2 Who may abstain from testifying in certain situations? What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

Witnesses will normally give evidence on a voluntary basis. If the victim decides to withdraw their support from the prosecution of a case, this does not automatically mean that the case will be stopped. In the context of domestic abuse cases, a victim might withdraw their support for the case against their perpetrator for a number of reasons, including for example:

- fear of other offenses being committed (including online) or risk of further harm
- fear of seeing the perpetrator in person in court
- pressure from the perpetrator or their family/associates
- fear of repercussions, i.e., from the perpetrator's peers, or potentially gang members if either the victim or the perpetrator is involved in a gang
- pressure from family members or members of the community not to pursue external (to the community) legal action
- fear of public shaming
- a wish to be reconciled with the perpetrator
- fear that children will be removed and placed into care, or other possible impacts on children (i.e., financial repercussions such as child maintenance or financial benefits)
- feelings of responsibility by the victim for the perpetrator's criminal record
- agreement by the perpetrator to drop any custody applications for the withdrawal of their complaint
- embarrassment
- fear of not being believed or their issues not being properly understood or that the criminal justice system favors the offender
- feeling isolated or vulnerable
- fears relating to a victim's immigration status
- fear of being 'outed' about their sexual orientation or gender identity
- fear of HIV status or other very sensitive information being revealed

- where the victim is involved in prostitution, fear that any previous contact with the police means their domestic abuse complaint will not be taken seriously
- lack of engagement and communication from criminal justice agencies

If a victim withdraws their support for whatever reason, it is important for the prosecutors to understand why they have done so before deciding what further action to take. The police should contact the victim in order to take a statement to provide to the prosecutors, explaining the victim's reasons for withdrawing their support for a case.

If the victim has withdrawn their evidence and the prosecutors decide to continue with the case, they should consider the following (in the order listed below):<sup>186</sup>

- whether there is other evidence (i.e., CCTV, 999 tape recordings, etc.), other than the evidence of the victim, which may be used
- whether any statements were made by the victim (or witness) to a third party that are so directly linked to the events occurring at the same time that it is unlikely they were distorted or concocted
- an application to admit the victim's statement as 'hearsay' evidence, especially if there is evidence that the victim has withdrawn their evidence due to reasons of fear (i.e., fear for their own or dependents' safety)<sup>187</sup>
- an application to introduce other evidence as 'hearsay' if it would be in the interests of justice to do so (i.e., third-party witness statements from neighbors or support representatives assisting the victim)<sup>188</sup>

Only once all of the above options have been exhausted should the prosecution consider summoning a witness to give evidence, that is, formally requiring the witness to attend court and give evidence. The decision must not be taken lightly and consideration should be given to all the specific facts of the case and the potential impact on the victim. An application can be considered where the victim is reluctant to attend court but where the case can only continue with their evidence.

Prosecutors must be satisfied that in compelling a victim to give evidence, this will not endanger the victim, any children or other dependents, and they should also assess whether summoning the victim as a witness is appropriate. A witness summons is issued by the court and means that the victim must attend court to give evidence.<sup>189</sup> Prosecutors should consider the impact on the victim, such as whether the victim might in fact prefer having a formal summons to justify their attendance at court.

If the victim is the spouse or civil partner of the perpetrator, they can still be compelled to give evidence where the case involves an allegation against the perpetrator of:

- violence against their spouse/civil partner
- violence against a person who was at the time of the incident under the age of 16
- sexual offenses against a person who was at the time of the incident under the age of 16
- attempting, conspiring or aiding and abetting, counselling or procuring to commit any of the above offenses<sup>190</sup>

### 5.4.3 What is the impact of domestic violence on witnesses who are children?

Children and young people may witness domestic abuse in different ways: by being present when the domestic abuse takes place; or being caught in the middle of an incident (for example, in trying to prevent any violence); by being in another room but being able to hear the domestic abuse taking place; by seeing physical injuries on the victim after an incidence of violence; or by being forced to take part in verbally abusing a victim.

The mental and physical well-being of a child or young person is likely to be seriously impacted where they have witnessed domestic abuse. This experience can have serious impacts on a child or young person's behavior, which may last into adulthood. Children and young people will respond to witnessing abuse in different ways and some possible effects include: becoming anxious or depressed; difficulty sleeping; nightmares or flashbacks; being easily startled; physical symptoms such as tummy aches or starting to wet the bed; temper tantrums and developing problems at school; behaving younger than their age; becoming aggressive or internalizing distress; withdrawing from people; and lower self-esteem or self-worth. Older children may also begin to play truant, start to use alcohol or drugs, begin to self-harm, or they may develop an eating disorder. There is also a well-established link between experiences of family violence (including domestic violence) and participation in youth offending.<sup>191</sup>

Children and young people who witness domestic abuse are also being emotionally abused themselves. Legislation recognizes that children might have suffered or be at risk of suffering "significant harm" as a result of having witnessed domestic abuse.<sup>192</sup> "Harm" means the "ill treatment or the impairment of the health or development [of the child] including, for example, impairment suffered from seeing or hearing the ill-treatment of another."<sup>193</sup> Whether the harm is regarded as "significant" will be determined by comparing a child's health and development with what might reasonably be expected of a similar child.<sup>194</sup>

### 5.4.4 Can children be called upon to testify?

Yes — children can give witness evidence in court and can be compelled to testify as a witness. Whilst there is no lower age limit in relation to children or young people being able to give evidence, the child or young person should be able to give understandable evidence, i.e., they must be able to understand the questions raised to them and be able to give replies in response to these questions that can be understood.<sup>195</sup>

Child witnesses (i.e., individuals under the age of 18) are automatically eligible to apply for special measures<sup>196</sup> to assist in giving evidence. In considering this, the court only needs to be satisfied that the granting of any special measures is likely to maximize the quality of the witness's evidence before granting an application. Special measures that may be available include: examination of the witness through an intermediary (both in court and also at the police interview); giving evidence "in private" (i.e., by clearing the courtroom of members of the public); the removal of wigs and gowns by judges and lawyers; giving evidence in court from behind a screen; the use of video-recorded evidence as the witness's primary evidence; giving evidence via video link; the use of pre-trial video-recorded cross-examination; and the provision of communication aids (such as an interpreter, computer or other device). As a result of the Young Witness Initiative, the CPS, police and Her Majesty's Courts and Tribunal Services have agreed to fast-track cases where a witness involved is under the age of 10.

Applications to compel a child to testify as a witness (i.e., by way of witness summons) can be made.<sup>197</sup> However, special consideration should be given to their welfare and safeguarding within the criminal justice system. The CPS recommends that in a domestic abuse context, witness summoning a child or young person should only be done in very limited and exceptional cases and prosecutors should discuss whether this is an appropriate course of action to take with their chief crown prosecutor before making an application. Compelling a child or young person to give



evidence may mean they are put in a position where they have to give evidence in support of one parent or family member against another. Prosecutors should consider: the nature and seriousness of the case; the usefulness of the material evidence provided by the child or young person; the age and maturity of the child (if they have the mental understanding to give evidence); if giving evidence will be detrimental to the child and young person's welfare or safety; and any repercussions should the child fail to comply with the summons request.

#### 5.4.5 What is the effect of a child victim on the charges against the offender?

Men, women and children can be victims of domestic abuse, but in both the current government guidance and the new proposed legislative definition of "domestic abuse" (under the Bill) the incident or pattern of incidents must have taken place between those aged 16 or over. However, the Bill also provides that any reference in it to a victim of domestic abuse includes a reference to a child (a person under 18 years) who sees, hears or experiences the effects of the abuse and is related to the victim and perpetrator.<sup>198</sup>

All domestic abuse cases should be recorded on the CPS case management system (CMS) and flagged as 'vulnerable/intimidated victim.' Where the victim (or witness) is a child or young person, the CPS should also flag this (a flag must specifically be selected on CMS if the victim (or witness) is aged 10 or below) as prosecutors should be alerted to this fact. For the purposes of the CPS, where the victim is under the age of 18, cases are flagged as both domestic abuse and child abuse.

In addition to the domestic abuse offenses listed in Section 1 of this guidance, if the victim is under the age of 18 then the following child abuse offenses may also be relevant to consider:

- **Sexual offenses against children.** This encompasses several possible offenses against children:
  - **Rape.**<sup>199</sup> The rape of a child under the age of 13 is a separate rape offense. As with rape (see Section 5.5 below for more details), the maximum penalty is life imprisonment, but the starting point for charging an offender will be a higher custodial sentence where the victim is a child. An abuse of trust (such as will often be present in the case of domestic abuse) will be an indicative factor of a higher degree of culpability (i.e., the blame or responsibility for fault placed on the perpetrator when considering sentencing). The starting point for a single offense of rape by a single offender is 8 years' custody where the victim is aged 13 or over but under 16, or, 10 years' custody where the victim is under 13 (as opposed to a starting point of five years if the victim is over the age of 16). The starting point for a rape accompanied by an aggravating factor is 10 years' custody for a victim aged 13 or over but under 16, or, 13 years' custody where the victim is under 13 (as opposed to eight years for a victim over the age of 16).
  - **Sexual assault.**<sup>200</sup> The sexual assault of a child under the age of 13 is a separate offense to sexual assault (see Section 5.5 for more details). As with rape above, an abuse of trust will be indicative of a higher degree of culpability. The starting point for more serious sexual assault offenses of children under the age of 13 is six years' custody, as opposed to four years for sexual assault. The maximum sentence is 14 years' imprisonment.
  - **Sexual exploitation.** This includes the offenses of causing or inciting the sexual exploitation of a child,<sup>201</sup> controlling a child in relation to sexual exploitation<sup>202</sup> and/or arranging or facilitating sexual exploitation of a child.<sup>203</sup> The maximum penalty is life imprisonment and the offense ranges depending on the age of the victim.

- **Causing or allowing death or serious physical harm to a child (or vulnerable adult).**<sup>204</sup> This offense imposes a duty on members of a household (over the age of 16) to take reasonable steps to protect children (or vulnerable adults) within that household from the foreseeable risk of serious physical harm from other members of the household. The offender is equally liable to conviction whether they were the actual perpetrator of the act that caused the victim's death or serious physical harm, or whether they simply failed to protect the victim from the foreseeable risk. Where death of the victim occurs, the offense carries a maximum sentence of 14 years' imprisonment, or fine, or both. For serious physical harm, the offense carries a maximum sentence of 10 years' imprisonment, or fine, or both. The offense of infanticide<sup>205</sup> may also be relevant here, where a woman causes the death of child under 12 months old in circumstances where her mind was disturbed by reason of her not having recovered from the effects of giving birth to the child.
- **Willful assault, ill-treatment, neglect, abandonment or exposure of, or causing or procuring the assault ill-treatment, neglect, abandonment or exposure of a child.**<sup>206</sup> This offense covers a variety of conduct that either separately or together amounts to child cruelty under the four generally accepted categories of: assault and ill-treatment; failure to protect; neglect; and abandonment. The behavior required to establish ill-treatment may be nonphysical (i.e., isolation, humiliation, bullying). Convictions for this offense will make clear on the perpetrator's record that the offense involved a child victim. Some circumstances may merit both a charge under this offense and a charge for assault. The offense carries penalties of either a maximum penalty of 10 years' imprisonment (if tried on indictment, i.e., in the Crown Court) or, six months' imprisonment or an unlimited fine or both (if tried on summary conviction, i.e., in the Magistrates' Court). Reasonable punishment<sup>207</sup> is not a defense to these offenses.
- **Child abduction.**<sup>208</sup> It is an offense if any person connected with<sup>209</sup> a child under the age of 16 takes or sends a child outside of the UK without the appropriate consent. It is also an offense for a person not connected with a child to unlawfully take or detain a child under the age of 16. The maximum penalty is seven years' imprisonment and where there is a high level of harm and a high level of culpability, the sentence should be five to seven years (following trial). The common law offense of kidnapping (i.e., the taking or carrying away of one person by another, by force or fraud, without the consent of the person being carried away and without lawful excuse) may also be relevant to consider.
- Other relevant offenses may include: destruction of a fetus capable of being born alive (i.e., in circumstances where a pregnant woman is attacked by a person intending to do her grievous bodily harm and the child, subsequently born prematurely, dies as a result of the attack); nonaccidental head injuries (formerly known as Shaken Baby Syndrome); and the unlawful procurement of an abortion.

The impact on children living in an abusive household (i.e., not necessarily as victims of domestic abuse) must always be taken into consideration by prosecutors both in determining the public interest when considering whether to proceed with a prosecution and as this may increase the seriousness of the offense and the final decision on charges.

## 5.5 Penalties and sentencing; penalty enhancements

### 5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses? Are there criminal penalties?

The penalty applicable and sentencing considerations for domestic abuse will vary depending on the actual offense committed, due to the range of possible offenses that may constitute domestic abuse. The fact that a perpetrator is a first-time domestic violence offender may be a relevant mitigating factor, as explained further below.

A domestic abuse offense may lead to charges for assault, but prosecutors should also consider any other available charges that may constitute domestic abuse, such as witness intimidation, perverting the course of justice, criminal damage; and malicious communications (see Section 1 of this guidance for a list of possible domestic abuse offenses).

In respect of offenses that have specific sentencing guidelines,<sup>210</sup> the court hearing the case should consider these guidelines when determining the penalty to be imposed on the perpetrator. Where there are no specific sentencing guidelines in place, the relevant Sentencing Council's general guideline and overarching principles ("**General Guideline**") should be applied.<sup>211</sup> For example, the Sentencing Council has produced sentencing guidelines for the offense of sexual assault (under Section 3 of the Sexual Offenses Act 2003). These guidelines allow the court to first consider the harm suffered by the victim and the culpability of the perpetrator in order to establish a starting point for sentencing. The starting point for sexual assault where the victim has suffered a high degree of harm and the perpetrator has a high degree of culpability will be four years' imprisonment; where the victim has suffered a low level of harm and the perpetrator has a low degree of culpability, the starting point will be a high-level community order. In some offenses, listed in the table below (including rape, sexual assault, and causing/inciting/controlling prostitution for gain), the presence of an abuse of trust will indicate a higher degree of culpability for the perpetrator.

#### Aggravating and mitigating factors

Once the starting point has been established, the court will then consider any aggravating or mitigating factors in order to arrive at an appropriate penalty. In some of the offenses listed in the table below, the existence of any previous convictions will be a statutory aggravating factor. The lack of any previous convictions (i.e., where the perpetrator is a first-time offender) and remorse shown may be taken into account for mitigation purposes when sentencing the perpetrator. Previous good character and/or exemplary conduct may also be taken into consideration at mitigation, but the more serious the offense the less weight will be given to this. Where previous good character and/or exemplary conduct has been used to facilitate the offense, this instead may become an aggravating factor when considering sentencing.

Prosecutors have a duty to assist the court in sentencing and should draw attention to the aggravating factors in domestic abuse, including the abuse of trust in a domestic setting and the vulnerability of the victims. The court should also consider the Sentencing Council's guidelines on domestic abuse,<sup>212</sup> which contain principles relevant to the sentencing of cases involving domestic abuse.

Restraining orders should also be considered for a domestic abuse offense and they are available regardless of whether the perpetrator is acquitted or convicted of the underlying offense. The CPS recommends that the victim is consulted before an application for a restraining order is made, as it may be difficult to enforce if the victim would like to continue contact with the perpetrator. Further details on restraining orders can be found in Sections 2 and 4 of this guidance.

Examples of domestic abuse offenses and the maximum penalties available

Offense	Maximum penalties <sup>213</sup>	Relevant legislation
Using violence to secure entry	6 months' imprisonment and/or fine	Criminal Law Act 1977, s 6 (1)
Witness intimidation	6 months' imprisonment and/or fine (summary); 5 years' imprisonment (indictment)	Criminal Justice and Public Order Act 1994, s 51
Perverting the course of justice	Life imprisonment and/or fine	Common law offense
Common assault	6 months' imprisonment	Criminal Justice Act 1988, s 39
Actual bodily harm	5 years' imprisonment	Offences Against the Persons Act 1861, s 47
Grievous bodily harm/wounding	Life imprisonment	Offences Against the Person Act 1861, ss 18 and 20
Murder	Mandatory life sentence	Common law offense
Manslaughter	Life imprisonment	Common law offense
Improper use of public telecommunication systems	6 months' imprisonment and/or fine	Communications Act 2003, s 127
Malicious communications	1 to 2 years' imprisonment and/or fine	Malicious Communications Act 1988, s 1
Harassment/stalking	6 months' imprisonment and/or fine	Protection from Harassment Act 1997, ss 1-2A, 4A
Threats to kill	10 years' imprisonment	Offences Against the Person Act 1861, s 16
Threatening behavior	6 months' imprisonment and/or fine	Public Order Act 1986, s 5
Criminal damage	Life imprisonment (i.e., for arson or where intent/reckless to endanger life)	Criminal Damage Act 1971, s 1
Threatening to cause criminal damage	10 years' imprisonment	Criminal Damage Act 1971, s 2
False imprisonment	Life imprisonment and/or fine	Common law offense
Blackmail	14 years' imprisonment	Theft Act 1968, s 21 (1)
Forced marriage	7 years' imprisonment	Anti-Social Behaviour, Crime and Policing Act 2014, s 121

Offense	Maximum penalties <sup>213</sup>	Relevant legislation
Rape	Life imprisonment	Sexual Offenses Act 2003, s 1
Sexual assault	10 years' imprisonment	Sexual Offenses Act 2003, s 3
Causing or inciting/controlling prostitution for gain	7 years' imprisonment	Sexual Offenses Act 2003, ss 52-53
Using intimate relationship to force someone into prostitution for gain (i.e., trafficking people for sexual exploitation)	14 years' imprisonment	Modern Slavery Act 2015, s 2 Historically: Sexual Offenses Act 2003, s 59A
Female Genital Mutilation	14 years' imprisonment and/or fine (conviction on indictment) or six months and/or fine (on summary conviction)	Female Genital Mutilation Act 2003, ss 1-4
Administering poison	10 years' imprisonment	Offences Against the Person Act 1861, ss 23 and 24

### 5.5.2 What is the result of a violation of an existing order for protection?

The effect of the perpetrator violating an order for protection will be dependent on the type of order violated. Further details on possible criminal and civil orders are in Section 2, but below is a summary of the orders available in England and Wales and the effect of a breach:

- Restraining order: prohibits the perpetrator from doing certain things, such as contacting the victim or visiting their home or place of work. Restraining orders can take effect for a specific period or until a further order is made and breach is a criminal offense,<sup>214</sup> punishable by up to five years in prison and/or fine.
- DVPOs: different from restraining orders, prohibit the perpetrator from having contact with the victim and from returning to their home for up to 28 days. A breach of a DVPO is not a criminal offense.
- NMO: prevents the perpetrator from using or threatening violence, intimidating, harassing or pestering the victim. Breach of an NMO is a criminal offense<sup>215</sup> punishable by up to five years in prison and/or fine.
- OO: excludes the perpetrator from the home shared with the victim. It is not a criminal offense to breach an OO, but if there is a power of arrest attached to the order, the police will be able to arrest the perpetrator for any breach.

See Section 4 for more detail about these orders and those available in Scotland and Northern Ireland.

### 5.5.3 What fines and other penalties are imposed besides incarceration and liberty restriction?

As well as incarceration and restrictions on liberty, perpetrators found guilty of an offense may also be liable to community service orders or fines. The exact nature and/or amount of these will be

dependent on the specific offense committed, the degree of harm and culpability and any relevant aggravating or mitigating factors to be considered.

Community service orders will be considered as either "low" (offenses that only just cross the community order threshold), "medium" (offenses clearly within the community order band) or "high" (offenses only just below the community order threshold). Suitable requirements include rehabilitative requirements, unpaid work, curfew requirements, exclusion requirement, prohibited activity requirement and/or attendance center requirement.

Where a fine is imposed on the perpetrator, the court should consider either the specific sentencing guidelines for an offense or the General Guideline. The fine must also reflect the seriousness of the offense and the financial circumstances of the perpetrator.<sup>216</sup> The fine should meet the objectives of punishment, deterrence and the removal of gain derived through the commission of the offense and will be imposed as a percentage of the perpetrator's relevant weekly income.<sup>217</sup>

## 5.6 Post-release restrictions

### 5.6.1 Does the law notify the victim of the offender's release from custody?

#### England and Wales

In England and Wales, victims of violent and/or sexual crimes where the perpetrator is sentenced to 12 months or more in prison will be asked if they would like to join the Victim Contact Scheme (VCS). Victims who join the VCS will be given a victim liaison officer who will inform them of:

- how long the perpetrator will be in prison, if there are any changes to their sentence, and when they are due to be released
- when a perpetrator is up for parole and how to make a victim statement at the parole hearing
- how to apply for a license condition, in order to stop the perpetrator from certain activities once released, such as contacting the victim
- how to challenge a parole decision if the Parole Board decides the perpetrator may be released

Victims who are not asked to join the VCS can make a request to join it by emailing the VCS (at [vcenquiries@justice.gov.uk](mailto:vcenquiries@justice.gov.uk)).

#### Scotland

In Scotland, the Victim Notification Scheme (VNS) is managed by the Scottish Prison Service and grants victims the right to receive information about the offender's progression in prison and eventual release, where they have been sentenced to 18 months or more. Victims can register for the VNS through the Scottish Prison Service.<sup>218</sup>

#### Northern Ireland

In Northern Ireland, victims can receive information about the offender through the Prisoner Release Victim Information Scheme (PRVIS), where the offender is serving a prison sentence of six months or more. Victims can receive information on when the offender is expected to be released and any conditions of their release. For life sentences, the victim can also receive information on when the offender is being considered for release and the minimum number of

years they must serve. Victims can also receive information on perpetrators who have not been given a prison sentence, but are supervised in the community by the Probation Board for Northern Ireland (PBNI). Victims can apply to register with the both the PRVIS and PBNI via an online registration form.<sup>219</sup>

## 6 Special issues

### 6.1 Battered woman syndrome

#### 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered woman syndrome is accepted by courts in certain jurisdictions to show battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

Neither battered woman syndrome, nor domestic abuse,<sup>220</sup> are affirmative defenses under UK law. However, they have been raised in various cases with the aim of supporting a defense of duress<sup>221</sup> or, in murder/manslaughter cases, a defense of loss of control or diminished responsibility.<sup>222</sup> Further detail about these defenses is set out below.

#### Duress

In England, Wales and Northern Ireland, duress is a defense at common law to all crimes except murder and attempted murder.<sup>223</sup> There is no definitive statement of the scope of the defense, but the court of appeal has set out the following two elements of duress:<sup>224</sup>

- the defendant was impelled to act because, as a result of what they reasonably believed the coercer had said or done, they had a good cause to fear death or serious injury
- a sober person of reasonable firmness, sharing the defendant's characteristics, would have responded in the same way

All of the authorities recognizing duress as a defense have involved threats of death or grievous bodily harm. Furthermore, in *R v Quayle* [2005] 1 All ER 988, it was held that "an imminent danger of physical injury" was required. It is clear that a threat of serious psychological injury will not suffice.<sup>225</sup>

The defense of duress does not exist in Scotland. In Scotland, coercion is a defense at common law to all crimes except murder and attempted murder. The elements of the defense were set out in *Thomson v HM Advocate* as being where:<sup>226</sup>

- following threats, there is an immediate danger of violence, in whatever form it takes
- there is an inability to resist or avoid that immediate danger

#### Loss of control

In England, Wales and Northern Ireland, loss of control is a partial defense to murder. If successful, the partial defense reduces the offense to an act of voluntary manslaughter rather than murder.<sup>227</sup> There are three components to the defense:

- (a) the defendant's acts and omissions in doing or being a party to the killing resulted from their loss of self-control
- (b) the loss of self-control had a qualifying trigger (broadly defined as the defendant's fear of serious violence, circumstances of an extremely grave character that caused



the defendant to have a justifiable sense of being seriously wronged, or a combination of these)<sup>228</sup>

- (c) that a person of the same sex and age, with a normal degree of tolerance and self-restraint and in the circumstances as the defendant, might have reacted in the same or in a similar way

The law specifically notes that it does not matter whether the loss of control was sudden.<sup>229</sup> Sexual infidelity does not constitute a "qualifying trigger."<sup>230</sup>

The defense of loss of control does not exist in Scotland. In Scotland, provocation is a partial defense to murder. If successful, the partial defense reduces the offense to culpable homicide on the grounds of provocation, rather than murder. The defense applies (in relation to provocation taking the form of violence (and not solely verbal provocation))<sup>231</sup> where there is a loss of control and a reasonably proportionate relationship between the conduct amounting to the provocation and the actions of the accused.<sup>232</sup> Loss of control based on sexual infidelity can also constitute provocation in Scotland.<sup>233</sup>

### **Diminished responsibility**

In England, Wales and Northern Ireland, diminished responsibility is a partial defense to murder. If successful, the partial defense reduces the offense to an act of voluntary manslaughter rather than murder.<sup>234</sup> There are four components to the defense.<sup>235</sup>

- (a) The defendant was suffering from an abnormality of mental functioning (meaning a state of mind so different from that of ordinary human beings that a reasonable person would term it abnormal).<sup>236</sup>
- (b) It had arisen from a recognized medical condition (which can be found in the World Health Organisation's International Classification of Diseases (ICD-10) and the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). Note that the DSM-IV includes "battered woman syndrome" as an off-shoot of post-traumatic stress disorder).<sup>237</sup>
- (c) It had substantially impaired their ability either to understand the nature of their conduct or to form a rational judgement or to exercise self-control (or any combination).
- (d) It provided an explanation for their acts and omissions in doing or being a party to the killing.

In Scotland, diminished responsibility is a partial defense to murder. If successful, the partial defense reduces the offense to culpable homicide on the grounds of diminished responsibility, rather than murder. The defense applies where the defendant's ability to determine or control conduct was, at the time of the conduct, substantially impaired by reason of abnormality of mind (including mental disorder).<sup>238</sup>

## **6.2 Domestic violence in the workplace**

### **6.2.1 Can courts issue orders to protect employees suffering from domestic violence?**

We have found no court orders that are specifically available in relation to employees.<sup>239</sup>

However, other forms of civil orders are available to victims of domestic abuse that an employee may be able to utilize (including, for example in England and Wales, DVPNs and DVPOs,

injunctions, NMOs, restraining orders and criminal behavior orders; in Scotland interdicts and non-harassment orders. See Section 4 for more detail).<sup>240</sup>

## 6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

If a person voluntarily leaves paid employment without having "good reason," the state benefits that they may be entitled to could be "sanctioned." There are three levels of sanctions: lower, intermediate and higher level. Leaving a job without good reason attracts a higher level sanction, meaning that state benefits may be stopped for 13 to 26 weeks.<sup>241</sup> The exact length of sanction will depend on whether the claimant has had earlier sanctions.

"Good reason" is not defined in legislation. The government's advice to decision-making staff in relation to benefit payment, states that decision-makers should, "take into account all relevant information about the claimant's individual circumstances and their reasons for any failures when considering whether to sanction a claimant." Benefit claimants may have to provide information and evidence to show "good reason."

The government's advice to decision-making staff specifically notes that where a benefit claimant is the victim of domestic violence, this may be treated as contributing to a "good reason."<sup>242</sup> The guidance provides that, "claimants who are forced to leave employment because of threatened or actual domestic violence from an estranged family member are to be treated as having good reason for so doing." This would be where keeping a job would represent a risk to a person's safety, for example because:

- (a) the estranged spouse, partner, or family member would know where they work and could inflict harm on them; or
- (b) retaining a job would be likely to expose the claimant to the area or place their estranged family member resides, works or habitually travels to or visits.

Where a benefit claimant has been the recent victim of domestic violence, any "work-related requirements"<sup>243</sup> (e.g., attending work-focused interviews, work preparation, work search and work availability) imposed on them in order to qualify for state benefit, may be eased provided that certain conditions are met.<sup>244</sup>

These conditions include that the Claimant must:

- (a) make a notification that domestic violence has been inflicted on or threatened against them during the past six months
- (b) as at the date of the notification, not live with the person who inflicted or threatened the domestic violence on them
- (c) provide evidence that:
  - (i) their circumstances are consistent with having had domestic violence inflicted or threatened against them in the past six months
  - (ii) they made contact with a person acting in an official capacity (e.g., a health care professional, police officer, registered social worker or the claimant's employer) regarding the incident during the six-month period

The 13-week period will run from the date the notification at (a) above is made.

### 6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

There are no specific provisions under UK employment law for family members of domestic violence victims. Family members may, however, have the right to take reasonable leave under the "time off for dependents" provisions described below, which could be utilized by the family members of domestic abuse victims.

An employee has the statutory right to take a reasonable amount of unpaid time off in order to take action that is necessary, such as:

- (a) to provide assistance on an occasion when a dependent falls ill or is injured or assaulted
- (b) to make arrangements for the provision of care for a dependent who is ill or injured
- (c) because of the unexpected disruption or termination of arrangements for the care of a dependent<sup>245</sup>

The following definitions apply to the above:

- (a) "Employee" is someone who works under an employment contract (i.e., not workers who are not employees or the self-employed).<sup>246</sup> The right applies to all employees with no requirements as to length of service. It also does not matter if the employee works full-time or part-time or on a permanent or temporary basis.
- (b) "Reasonable amount of time off" is not defined or limited and will depend on the nature of the incident and the employee's individual circumstances.<sup>247</sup>
- (c) "Action that is necessary" will depend on the facts of the case. In determining whether action is necessary, factors to be taken into account may include, "the nature of the incident which has occurred, the closeness of the relationship between the employee and the particular dependant and the extent to which anyone else was available to help out."<sup>248</sup>
- (d) "Illness, injury or assault" includes mental<sup>249</sup> or physical illnesses that do not have to be life-threatening or need full-time care.<sup>250</sup>
- (e) "Dependent" means a spouse, child, parent, person who lives in the same household as the employee (other than employees, tenants, lodgers or boarders) or persons who reasonably rely on the employee for such assistance/to make such arrangements.<sup>251</sup>

The employee must tell their employer the reason for their absence as soon as reasonably practicable. Where this is prior to the absence, the employee must also tell the employer how long they expect to be absent.

To the extent that leave cannot be taken pursuant to the statutory right mentioned above, it may be possible for the employee to agree unpaid or annual leave with the employer, although this is at the discretion of the employer.

## 6.3 Immigration

### 6.3.1 Does the law include provisions which are intended to prevent abusers who are UK citizens or permanent residents from using immigration laws to perpetrate domestic violence against their spouse?

There are specific provisions to allow a person to apply for settlement (or "indefinite leave to remain") if they are in the UK on a temporary visa as the partner of a British citizen or person settled in the UK and their relationship has ended because of domestic violence.<sup>252</sup>

The requirements to be met to be granted indefinite leave to remain in the UK as a victim of domestic violence are set out in the "Immigration Rules Appendix FM: family members" ("**Immigration Rules**").<sup>253</sup> Broadly, the applicant must:

- (a) be in the UK
- (b) meet the suitability requirements set out in Section S-IRL of the Immigration Rules (an application may be refused if, for example, the applicant has got a criminal record, provided false or incomplete information to the Home Office or broken immigration law)
- (c) meet the eligibility requirements set out in Section E-DVILR of the Immigration Rules (which broadly require that the applicant: (i) was previously granted leave as the partner of a British citizen or person settled in the UK;<sup>254</sup> and (ii) proves that they were the victim of domestic violence and that their relationship has ended as a result)<sup>255</sup>
- (d) make a valid application for indefinite leave to remain as a victim of domestic abuse

As set out at para c(ii) above, an applicant must prove that they were the victim of domestic violence and that their relationship has ended as a result. The Immigration Rules do not specify what evidence or documents should be submitted with an application to prove domestic violence. Home Office policy states that:

All evidence submitted must be considered and a conclusion drawn as to whether there is sufficient evidence to demonstrate that, on the balance of probabilities, the breakdown of the relationship was as a result of domestic violence.<sup>256</sup>

Home Office policy also includes a table setting out the type of evidence that may be produced, listing the value of such evidence and any additional information that would be required. The list includes:

- (a) criminal conviction/police caution (conclusive)
- (b) DVPO /forced marriage protection order (strong)
- (c) arrest/police report of attendance at domestic violence incident/medical report from UK hospital or GP confirming injuries or condition consistent with domestic violence (moderate)
- (d) letter or statement from official source (such as an advice agency or refuge)/statement from applicant (weak)

There are also provisions to help a person who is in the UK on a temporary visa as the partner of a British citizen or person settled in the UK where the relationship has ended because of domestic violence and they have no money to support themselves. The "destitution domestic violence concession" offers domestic abuse victims three months' leave outside the Immigration Rules with the ability to apply for access to public funds. This provides the opportunity to gain a temporary

immigration status independent of the abuser and to fund safe accommodation, where victims of domestic abuse may consider applying for indefinite leave to remain or deciding to return to their country of origin.

### **6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?**

We have found no specific provisions for immigration remedies to be granted as a result of a domestic abuse victim's cooperation with law enforcement.<sup>257</sup> From a practical perspective, law enforcement's involvement may provide helpful evidence in forming part of a case to apply for leave to remain in the UK (see above for more detail), but there is no guarantee.

### **6.3.3 Does domestic violence law discuss asylum accessibility?**

The rules allowing a victim of domestic violence to apply for settlement (or "indefinite leave to remain") in the UK do not apply to people seeking asylum in the UK.

The Home Office has published guidance for responding to reports of domestic abuse from asylum seekers.<sup>258</sup> The guidance recognizes that, "asylum seekers who are victims of domestic abuse may be in a particularly vulnerable position, as their immigration status is uncertain whilst they are awaiting a decision on their asylum claim." The guidance explains what caseworkers and Home Office accommodation providers must do in situations where an asylum seeker reports an incident of domestic abuse whilst their asylum claim is being considered. The guidance also applies to victims who have been refused asylum if they are eligible for asylum support.

The guidance prioritizes providing safe accommodation for a person who is the subject of a report of domestic abuse and any children. It also prioritizes providing appropriate support for the victim and any children.

In June 2019, the House of Lords, House of Commons Joint Committee published a report that criticized the Bill for failing to include additional protection for migrant women with uncertain immigration status.

In particular, it noted that:

- the sharing of information between public authorities (i.e., police forces and the Home Office for immigration control) can act to deter some victims of domestic abuse with uncertain immigration status from coming forward
- the provisions under the Immigration and Asylum Act 1999 barring individuals from having recourse to public funds can prevent some victims of domestic abuse with uncertain immigration status from accessing refuges and other support services

The Joint Committee's report contained arguments that this was not compliant with the requirements of Article 4, paragraph 3 of the Istanbul Convention, which requires protection to be provided without discrimination on any ground, including migrant and refugee status.<sup>259</sup>

The Home Office published a review of findings in response to the Joint Committee report in July 2020. The Home Office concluded that further evidence was needed before policy decisions could be made.<sup>260</sup> No immediate amendments to the Bill to address the protection afforded to migrant women with uncertain immigration status are therefore expected.

## 6.4 Armed forces

### 6.4.1 Can a victim seek a military protective order if the abuser is in active military?

No. However, victims from within the military community can access local civilian support services. In addition, there are several Forces-specific helplines and advice lines available, including the Naval Service Family and People Support (NS FPS); Army Welfare Service; RAF Soldiers, Sailors and Airmen and Families Association (SSAFA) support; Forcesline; Chaplaincy support; Families Federation; HIVE Information Centres; and Charity Support.<sup>261</sup>

A Practitioner's Handbook has also been published by the Armed Forces in relation to domestic abuse.<sup>262</sup> This handbook highlights two potential remedies available in terms of protective orders:

1. The DVDS, also known as Clare's Law, provides the public a formal way of requesting information about a partner's past. Under this Scheme, if a person has a history of violence, the police can disclose information in order to protect people at risk of harm.
2. The police can apply for DVPNs and DVPOs to prevent further violence between partners. These orders may be used following certain domestic violence incidents, and prevent someone from contacting their partner for 48 hours. On top of this 48 hours, the police may also apply for an extension of this order from a magistrates' court for an additional 14 or 28 days. They are used to create breathing space for victims and, when it is thought appropriate, can be applied without the victim's consent.

Further information about the DVDS is available in Section 5 of this report. Further information about DVPNs and DVPOs is available in Section 4.

In terms of service personnel who are stationed overseas, the current draft of the Bill will extend the jurisdiction of the UK courts so that, where appropriate, UK nationals and residents who commit certain violent and sexual offenses outside the UK may be brought to trial in the UK.

The Bill will extend the jurisdiction of the courts:

- in England and Wales, to relevant offenses committed outside the UK by a UK national or a person habitually resident in England or Wales
- in Northern Ireland, to relevant offenses committed outside the UK by a UK national or a person habitually resident in Northern Ireland
- in Scotland to relevant offenses committed outside the UK by a UK national or a person habitually resident in Scotland

Changes introduced under the Bill for armed forces personnel, include:

- (a) provisions requiring a senior police officer who issues a DAPN to a person, to also make reasonable efforts to inform such person's commanding officer, if that person is in the armed forces
- (b) that any breach of a protection order by an armed forces member, will mean that the issuing of a prior protection notice will also be admissible as evidence should charges be brought against that person
- (c) that an armed forces member, who is convicted, cautioned or charged with a domestic abuse offense, would not be able to cross-examine a witness who is the victim in person (or alleged victim)

In addition, it is proposed under the Bill that where a DAPN is served on a member of the armed forces (in practice, this is likely to be by the Ministry of Defense Police), and the notice prohibits the perpetrator from entering — or requires them to leave — service accommodation, the senior officer giving the notice must make reasonable efforts to inform the perpetrator's commanding officer that the DAPN has been issued. The definition of service accommodation in the Armed Forces Act 2006 includes any building or part of a building that is occupied for the purposes of any of Her Majesty's forces but is provided for the exclusive use of a person subject to service law, or of such a person and members of his or her family, as living accommodation.<sup>263</sup>

Further protections and immigration assistance may be available to spouses of service personnel who are not UK nationals/do not have the right to reside in the UK without their spouse to allow them to apply for indefinite leave to remain in cases of domestic abuse. Further information about immigration law protections in relation to domestic abuse, are available in Section 6.3 above.

## 6.5 Child custody and child/spousal support

### 6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

Following criticism and complaints, reforms were introduced into the family courts in January 2017.<sup>264</sup> These reforms, introduced as amendments to existing court procedural rules (known as **practice direction 12J**<sup>265</sup> of the court procedural rules), include a requirement that all the judiciary have further training on domestic violence and act to ensure women and children are protected.

The revisions to practice direction 12J signaled a marked departure from prior versions of practice direction 12J.

Before this revision to the practice direction, in 1984, and for the subsequent 40 or so years, the common view held by the courts was:<sup>266</sup>

For a long time now it has been accepted by everybody who has much experience in these sad cases of broken unions of parents that, save in exceptional circumstances, it is of very real importance in the interests of a child's emotional health as he or she grows up that there should be contact with the noncustodial parent.

Although the new practice direction 12J is a step toward ensuring greater consistency and protection of victims, research by Queen Mary School of Law and Women's Aid has made a number of recommendations as to how practice direction 12J could be further strengthened, given concerns that it is not being properly implemented or that the judiciary is not being properly trained:<sup>267</sup>

**Improved use and awareness of Practice Direction 12J – Child Arrangements and Contact Orders: Domestic Abuse and Harm** To maximise the impact of the recently revised guidance, the Judicial College, the Magistrates Association and HMCTS [Her Majesty's Courts and Tribunals Service] should continue with and expand their current educational provisions to ensure that all family court professionals have specialist training on what the guidance means in practice. This training should incorporate the links and overlaps between the practice direction and human rights. **Create a national oversight group for the implementation of Practice Direction 12J** The Ministry of Justice should create a mechanism for oversight of the judiciary in child contact cases involving domestic abuse. This could be an independent, national oversight group overseeing and advising upon the implementation of Practice Direction 12J.

## 6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

The court can consider the testimony of the other spouse as well as the testimony of children. When determining custody, the court must conduct a fact-finding hearing or other hearing of the facts where domestic abuse is alleged. Through this hearing, the court can ensure that the allegations are properly put and responded to by each party. The fact-finding hearing or other hearing can be an inquisitorial (or investigative) process, which at all times must protect the interests of all involved. As either party is capable of lying, the court is trying through these fact-finding hearings to look through a mere "he said-she said" to arrive at what the actual facts are. At the fact-finding hearing or other hearing:

- each party can be asked to identify what questions they wish to ask of the other party, and to set out or confirm in sworn evidence their version of the disputed key facts (currently the parties may question one another directly, which has led to concerns of unfairness, intimidation, threats of violence and other abuses with regards to domestic violence cases, for example, where a victim is being questioned directly by their abuser. Note: the Bill will seek to re-balance and address such confrontational approaches by not allowing the cross-examination of victims by their abusers).
- the judge should be prepared, where necessary and appropriate, to conduct the questioning of the witnesses on behalf of the parties, focusing on the key issues in the case

According to para. 35-37 of practice direction 12J,<sup>268</sup> the court must take the following factors into account when deciding child arrangement orders where domestic violence or abuse has occurred:

The court should ensure that any order for contact between the child and the perpetrator will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.

1. Where domestic abuse is established, the court should apply the welfare checklist with reference to the domestic abuse that has occurred as well as any expert risk assessment. The court should in each instance, consider:
  - (a) any harm that the child and the parent with whom the child is living has suffered as a consequence of that domestic abuse
  - (b) any harm that the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made
2. The court should make an order for contact only if:
  - (a) it is satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact
  - (b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent

Practice direction 12J also requires that the court should further consider:

- the effect of the domestic abuse on the child and on the arrangements for where the child is living
- the effect of the domestic abuse on the child and its effect on the child's relationship with the parents
- whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent



- the likely behavior during contact of the abusive parent and its effect on the child
- the capacity of the parents to understand the effect of past domestic abuse and the potential for future domestic abuse

See Section 5.4 for further information about child witnesses in court.

## **6.6 Housing rights of domestic violence victims**

### **6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?**

The law does not include any provisions that specifically protect victims of domestic violence from eviction by landlords.

If the victim of domestic violence is a spouse or a civil partner to their abuser, they may have home rights under Section 30 of the Family Law Act 1996 (FLA) if their abuser is entitled to occupy a property by virtue of a beneficial estate, interest or contract, or an enactment giving the right of occupation (Section 30(1), FLA). Specifically, Section 30(2) of the FLA grants someone who has home rights protection from eviction or from being excluded from the property they occupy.<sup>269</sup>

In particular, under home rights,<sup>270</sup> the nonowning spouse or civil partner has the right to:

- occupy the matrimonial home and not to be excluded, except by court order
- (if not occupying the home), obtain a court order to regain entry and to live there
- register rights of occupation as a charge on the property
- occupy the home as if s/he were the owner
- pay the mortgage or other outgoings that are to be treated as if paid by the owner. This gives a right to pay the mortgage, but does not mean that the nonowning spouse or civil partner can be held legally liable for the owner's arrears, unless a court order has been made transferring liability
- apply to be joined in any mortgage possession proceedings taken against the spouse
- be notified by the lender of any possession action, provided that matrimonial home rights have been registered
- apply for an order to provide that the matrimonial home rights are not brought to an end by death or termination of the marriage

### **6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?**

There is no legal right to terminate a lease early due to domestic violence. Tenants can terminate residential tenancies only in the following situations:

- exercising a break clause in the tenancy agreement
- after negotiating a surrender with landlord
- assigning to a new tenant or sublet to a subtenant
- expiry of fixed term<sup>271</sup>

However, this does not preclude victims of domestic violence from leaving the property in which they live and seeking housing assistance from local authorities. Local authorities in England have certain legal duties under Part VII of the Housing Act 1996 (HA) to those who apply to the local authority as being homeless. Furthermore, the Homelessness Reduction Act 2017 (HRA) places duties on local authorities to prevent homelessness at an early stage.

The HA stipulates that a person will not be treated as having accommodation unless it is accommodation that it would be reasonable for them to occupy.<sup>272</sup> Under the HA, it is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic violence.<sup>273</sup> The law therefore recognizes that victims of domestic violence have extremely limited housing options. The Homelessness Code 2018 ("**Code**") also provides further guidance on how victims of domestic violence should be treated by housing authorities:

Following an application for assistance under Part 7 of the 1996 Act [the HA], whether an applicant is threatened with homelessness or is actually homeless will be a matter for the housing authority to assess taking into account all of the relevant circumstances. For example, a person at risk of domestic violence or abuse may be threatened with homelessness because a perpetrator is soon to be released from custody (and so the person is likely to become homeless within 56 days); but would be actually homeless if the perpetrator was in the community and presented a risk to them at their home (and so it is not reasonable for the person to continue to occupy the accommodation).<sup>274</sup>

The Code also offers guidance as to how authorities can manage the challenging realities of assisting victims of domestic violence. For example, the Code states that it is essential that housing authorities do not approach the alleged perpetrator, since this could generate further violence and abuse.<sup>275</sup>

### **6.6.3 Can an order exclude the abuser from the residence?**

Yes, there are various types of orders that victims or landlords can apply for to bar perpetrators from entering the home of a victim.

Victims can apply for an OO under Sections 35-38 FLA if they satisfy certain criteria (a victim must have a right to occupy the property, be a former spouse or civil partner of the perpetrator or be a cohabitant or former cohabitant).<sup>276</sup> An OO can last for up to six months and gives a victim the right to occupy a property. OOs can also exclude a perpetrator from the area around the home and make practical arrangements regarding the payment of rent. If the court is satisfied that the perpetrator has used or threatened violence against the victim or a relevant child, a power of arrest can be attached to the order under Section 47 FLA. The effect of a power of arrest is that a perpetrator can be arrested without a warrant if they breach the order. If a power of arrest is not attached to an OO, a victim can apply to the relevant judicial authority (e.g., the police) for the issue of a warrant of arrest if the order is breached.

Victims can also apply for NMOs under Section 42 FLA, which prohibits a perpetrator from molesting them or a relevant child. An NMO can include a term that forbids the perpetrator from going to, entering or attempting to enter the victim's home at a specified address and prohibits them from coming within a specific number of meters of it. Stay away or zonal orders can also be issued as part of an NMO, which prohibits the perpetrator from going to, entering (or attempting to enter) a defined area. Under Section 42(5) FLA, when deciding whether to grant an NMO, the court will consider all the circumstances, including the need to secure the health, safety and well-being of the applicant or a relevant child. There is no statutory definition of molestation, but the court has typically found the following to be qualifying:

- (a) acts and threats of violence
- (b) hanging posters around railings of the victim's workplace

- (c) searching through the victim's handbag
- (d) sending aggressive letters to the victim
- (e) sending nude photographs of the victim to newspapers

The duration of an NMO is at the discretion of the judge and could be made for a practically indefinite period, although they are commonly made for between three months and a year. A breach of an NMO without a reasonable excuse is a criminal offense, and the police can therefore intervene while a breach is happening. The perpetrator would also be guilty of contempt of court, the effect of which is that a person may be fined, stripped of particular assets or imprisoned.<sup>277</sup>

DVPOs and DVPNs were introduced in March 2014 under Sections 24-23 of the Crime and Security Act 2020 and have been described in detail elsewhere in this report (e.g., Section 4), but also offer protection for victims against their abusers.

Certain social landlords can also apply for an injunction prohibiting anti-social behavior under Section 153 HA. The landlord must be a local authority, a housing action trust or a private registered provider of social housing to apply for an injunction. Section 153 injunctions can be applied for where immediate action is required to stop violence, threats of violence or serious damage to property. In a domestic violence situation, landlords may apply for an antisocial behavior injunction (ASBI) under Section 153A. An application for an ASBI can be made to prevent an individual engaging in housing-related conduct capable of causing nuisance or annoyance. The individual engaging in the conduct does not need to be a tenant, and the ASBI could be used against perpetrators of domestic violence. However, injunctions sought under Section 153 should not be the first port of call as they do not necessarily have the aim of tackling domestic violence and they require the landlord to act rather than the victim.<sup>278</sup>

It is worth noting that, although various mechanisms exist to exclude perpetrators from the residence, these injunctions do not necessarily guarantee the safety of the victim. Paragraph 21.30 of the Code includes the following word of caution for housing authorities:

Housing authorities should recognise that injunctions ordering a person not to molest (non-molestation orders), or not to live in the home or enter the surrounding area (occupation orders) may not be effective in deterring some perpetrators from carrying out further violence, abuse or incursions, and applicants may not have confidence in their effectiveness. Consequently, applicants should not be expected to return home on the strength of an injunction. To ensure applicants who have experienced actual or threatened violence get the support they need, authorities should inform them of appropriate specialist organisations in the area as well as agencies offering counselling and support.<sup>279</sup>

#### **6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?**

There do not appear to be any legal provisions that forbid abusers to alienate or mortgage property in his/her name if it is the family domicile. Sections 54-56 FLA would govern the ability of a property owner to mortgage their property where the property is deemed to be a family home. Under Section 54(3) FLA, an individual with home rights under Section 30 FLA, or who has by virtue of an OO been given the right to occupy, does not have any greater right against a mortgagee to occupy the property than the property owner.

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## Endnotes

- <sup>1</sup> BBC News, "'Rough sex' defence will be banned, says justice minister," <<https://www.bbc.com/news/uk-politics-53064086>>, accessed 31 August 2020.
- <sup>2</sup> Section 65 of the draft Bill provides that consent to serious harm for sexual gratification will not be a defense in most circumstances.
- <sup>3</sup> No judgment available, case reported in: <<https://www.theguardian.com/uk-news/2017/jul/28/stalker-jailed-manslaughter-former-partner-killed-herself-nicholas-allen-justene-reece>>, accessed 6 September 2020; and <<https://www.bbc.com/news/uk-40758095>> accessed 6 September 2020.
- <sup>4</sup> For a full list of criminal offenses that may be relevant for domestic abuse, see Section 1.
- <sup>5</sup> The Crown Prosecution Service (CPS) is the authority responsible for prosecuting crimes in England and Wales. The CPS prosecutes criminal cases that have been investigated either by the police or by other investigative organisations, and takes decisions independently of the police or government. The CPS is responsible for: (i) deciding which cases should be prosecuted; (ii) determining the appropriate charges in complex cases and advising the police early on in investigations; (iii) preparing cases and presenting them at court; and (iv) providing assistance, information and support to both victims and witnesses. CPS lawyers must follow the Code for Crown Prosecutors and, when charging someone, they must be satisfied that there is both sufficient evidence for a realistic prospect of conviction and that prosecuting is in the public interest.
- <sup>6</sup> CPS, "Domestic abuse Guidelines for Prosecutors" (dated 28 April 2020), Annex C <<https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors#a02>> accessed 17 August 2020.
- <sup>7</sup> The first reading of the Domestic Abuse Bill in the House of Lords took place on 7 July 2020; a date for the second reading is yet to be set. UK Parliament, "Domestic Abuse Bill 2019-21: Progress of the Bill" <<https://services.parliament.uk/bills/2019-21/domesticabuse.html>> accessed 25 August 2020.
- <sup>8</sup> Section 1, Domestic Abuse Bill 2019-2021.
- <sup>9</sup> For emergency situations, the police should be contacted either by dialling 999 or by textphoning 0800 112 999. Calls are free of charge.
- <sup>10</sup> Rights of Women, "Reporting an offence to the police: A guide to criminal/police investigations" <<https://rightsofwomen.org.uk/wp-content/uploads/2014/10/Reporting-an-offence-to-the-police-A-guide-to-criminal-investigations.pdf>> accessed 26 August 2020.
- <sup>11</sup> *Ibid.* For nonemergency situations, reports can be made to the police by calling 101 or by visiting the front desk of the victim's local police station. Anonymous reports can also be made through CrimeStoppers <<https://crimestoppers-uk.org/keeping-safe/personal-safety/domestic-abuse>>. The UK government has also provided contact details of several organisations who can provide further help: <<https://www.gov.uk/report-domestic-abuse>>.
- <sup>12</sup> Rights of Women, "From Report to Court" <<https://rightsofwomen.org.uk/wp-content/uploads/2019/03/From-Report-to-Court-2018.pdf>> accessed on 26 August 2020.
- <sup>13</sup> An ABE Video is more commonly made for victims of sexual violence, who make a statement by video recording talking to a specifically trained police officer.
- <sup>14</sup> CPS, "Achieving Best Evidence in Criminal Proceedings" (March 2011) <[https://www.cps.gov.uk/sites/default/files/documents/legal\\_guidance/best\\_evidence\\_in\\_criminal\\_proceedings.pdf](https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf)> accessed 25 August 2020.
- <sup>15</sup> CPS, "Domestic Violence: Frequently Asked Question" <[https://www.cps.gov.uk/sites/default/files/documents/publications/DV\\_FAQ\\_leaflet\\_accessible\\_2011.pdf](https://www.cps.gov.uk/sites/default/files/documents/publications/DV_FAQ_leaflet_accessible_2011.pdf)> accessed on 25 August 2020.
- <sup>16</sup> CPS, Victims and Witnesses, CPS Commitments to Support <<https://www.cps.gov.uk/legal-guidance/victims-and-witnesses-cps-commitments-support>> accessed 25 August 2020
- <sup>17</sup> CPS, "Domestic Violence: Frequently Asked Question" <[https://www.cps.gov.uk/sites/default/files/documents/publications/DV\\_FAQ\\_leaflet\\_accessible\\_2011.pdf](https://www.cps.gov.uk/sites/default/files/documents/publications/DV_FAQ_leaflet_accessible_2011.pdf)> accessed on 25 August 2020.
- <sup>18</sup> Women's Aid, "Police and the Criminal Prosecution Process" <<https://www.womensaid.org.uk/the-survivors-handbook/police-and-the-cps/>> accessed 25 August 2020.
- <sup>19</sup> Sections 5(5) and (6), Protection from Harassment Act 1997.
- <sup>20</sup> CPS, "Restraining Orders" <<https://www.cps.gov.uk/legal-guidance/restraining-orders-section-5-protection-harassment-act-1997>> accessed 25 August 2020.
- <sup>21</sup> Refuge, "Legal Help" <<https://www.refuge.org.uk/legal-help/>> accessed on 25 August 2020.
- <sup>22</sup> Further details on the eligibility requirements for claiming compensation can be found on the UK gov.uk website <<https://www.gov.uk/claim-compensation-criminal-injury>>.
- <sup>23</sup> Further details on the eligibility requirements for claiming compensation can be found on the nidirect.gov website <<https://www.nidirect.gov.uk/articles/claiming-criminal-injuries-sustained-april-2009>>.
- <sup>24</sup> The legislation preventing victims that lived in the same household as their abuser was amended in 1988, but was not made retrospective to include victims who would otherwise have been eligible since the scheme was introduced on 1 March 1969. The court of appeal in Northern Ireland found in their judgment of 23 November 2018 that the pre-1988 same household rule amounted to unlawful discrimination and constituted a breach of the appellant's human rights.
- <sup>25</sup> Rights of Women, "Domestic Violence Injunctions" <<https://rightsofwomen.org.uk/get-information/violence-against-women-and-international-law/domestic-violence-injunctions/>> accessed 26 August 2020.
- <sup>26</sup> CPS, "Stalking and Harassment" (dated 23 May 2018) <<https://www.cps.gov.uk/legal-guidance/stalking-and-harassment>> accessed 26 August 2020.

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- <sup>27</sup> Citizens Advice, "Taking action about harassment" <<https://www.citizensadvice.org.uk/law-and-courts/discrimination/taking-action-about-discrimination/taking-action-about-harassment/>> accessed 26 August 2020.
- <sup>28</sup> Birchall, J. and Choudhry, S. (2018) "What about my right not to be abused?" Domestic abuse, human rights and the family courts" Bristol: Women's Aid, pg. 11 <<https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2018/05/Domestic-abuse-human-rights-and-the-family-courts-report.pdf>> accessed 7 September 2020.
- <sup>29</sup> Human Rights Watch, "UK Failing Domestic Abuse Victims in Pandemic" (dated 8 June 2020) <<https://www.hrw.org/news/2020/06/08/uk-failing-domestic-abuse-victims-pandemic>> accessed 31 August 2020 and Women's Aid, "Briefing for Report Stage and Third Reading of the Domestic Abuse Bill," July 2020 <<https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2020/07/Women27s-Aid-Briefing-for-Domestic-Abuse-Bill-Report-Stage-and-Third-Reading.pdf>> accessed 31 August 2020.
- <sup>30</sup> Section 1(1), Preventing and Combating Violence Against Women and Domestic Violence (ratification of convention) Act 2017.
- <sup>31</sup> Section 1(3), Preventing and Combating Violence Against Women and Domestic Violence (ratification of convention) Act 2017.
- <sup>32</sup> The Home Office, "Ratification of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence (Istanbul Convention) – 2019 Report on Progress" (dated October 2019) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/843509/CCS0919132732-001\\_Istanbul\\_Convention\\_2019\\_Report\\_Option\\_A\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843509/CCS0919132732-001_Istanbul_Convention_2019_Report_Option_A_Web_Accessible.pdf)> accessed 5 August 2020.
- <sup>33</sup> This is required in accordance with Section 2 of the Preventing and Combating Violence Against Women and Domestic Violence (ratification of convention) Act 2017.
- <sup>34</sup> The Home Office "Ratification of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence (Istanbul Convention) – 2019 Report on Progress" (dated October 2019) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/843509/CCS0919132732-001\\_Istanbul\\_Convention\\_2019\\_Report\\_Option\\_A\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843509/CCS0919132732-001_Istanbul_Convention_2019_Report_Option_A_Web_Accessible.pdf)> accessed 6 August 2020.
- <sup>35</sup> Article 4(3) of the Istanbul Convention.
- <sup>36</sup> As the proposed definition of "domestic abuse" in Section 1 of the Bill will include reference to behavior that consists of psychological abuse.
- <sup>37</sup> For England and Wales: by way of Section 76, Serious Crime Act 2015, which contains an offense of controlling or coercive behavior in an intimate or family relationship, which amounts to extreme emotional or psychological abuse; for Scotland: by way of Section 1, Domestic Abuse (Scotland) Act 2018, which contains an offense where a person is abusive to their partner (or ex-partner) and causes them to suffer (or are reckless that they might suffer) psychological harm.
- <sup>38</sup> As detailed in the 2019 Report on Progress. "The Home Office Ratification of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence (Istanbul Convention) – 2019 Report on Progress" (dated October 2019) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/843509/CCS0919132732-001\\_Istanbul\\_Convention\\_2019\\_Report\\_Option\\_A\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843509/CCS0919132732-001_Istanbul_Convention_2019_Report_Option_A_Web_Accessible.pdf)> accessed 6 August 2020.
- <sup>39</sup> UK government, "Ending Violence against Women and Girls 2016-2020: Strategy Refresh" (dated March 2019) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/783596/VAWG\\_Strategy\\_Refresh\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783596/VAWG_Strategy_Refresh_Web_Accessible.pdf)> accessed 26 August 2020.
- <sup>40</sup> UK government, "Ending Violence Against Women and Girls 2016-2020: Progress Update" (dated March 2019) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/783190/VAWG\\_Progress\\_Update\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783190/VAWG_Progress_Update_Web_Accessible.pdf)> accessed 4 September 2020.
- <sup>41</sup> United Nations: Human Rights, "Status of Ratification Interactive Dashboard" <<https://indicators.ohchr.org/>> accessed 26 August 2020.
- <sup>42</sup> Equality and Human Rights Commission, "Convention on the Elimination of Discrimination against Women (CEDAW)" <<https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/convention-elimination-discrimination>> accessed on 4 September 2020.
- <sup>43</sup> Article 18 of the 1979 Convention requires State Parties to submit a report to the Secretary-General of the UN a report on the legal, judicial, administrative or other measures that they have adopted to give effect to the provisions of the convention, and on the progress made in this respect.
- <sup>44</sup> United Nations: Human Rights, "Convention on the Elimination of All Forms of Discrimination against Women" New York, 18 December 1979 <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>> accessed on 4 September 2020.
- <sup>45</sup> UK government, "United Nations Convention on the Elimination of all forms of Discrimination Against Women United Kingdom's Eighth Periodic Report 2011 - 2017" (received by CEDAW 16 November 2017) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/698249/UN\\_convention\\_on\\_the\\_elimination\\_of\\_all\\_forms\\_of\\_discrimination\\_against\\_women\\_8th.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698249/UN_convention_on_the_elimination_of_all_forms_of_discrimination_against_women_8th.pdf)> accessed 4 September 2020.
- <sup>46</sup> CEDAW, "Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland" (dated 14 March 2019) <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW/C/GBR/CO/8&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW/C/GBR/CO/8&Lang=En)> accessed 4 September 2020.
- <sup>47</sup> Paragraph 13 of the 2019 Recommendations.
- <sup>48</sup> Paragraph 21(a) of the 2019 Recommendations.
- <sup>49</sup> Paragraph 21(b) of the 2019 Recommendations.
- <sup>50</sup> Paragraph 25(b) of the 2019 Recommendations.
- <sup>51</sup> UK government, "Transforming the Response to Domestic Abuse Consultation Response and Draft Bill" (dated January 2019) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/772202/CCS1218158068-Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772202/CCS1218158068-Web_Accessible.pdf)> accessed 4 September 2020.
- <sup>52</sup> Scottish government, "Brexit: social and equality impacts" (dated 26 January 2020) <<https://www.gov.scot/publications/social-equality-impacts-brexit/pages/15/>> accessed 4 September 2020.
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- <sup>53</sup> Ministry of Justice, Domestic Abuse Policy Framework, <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/877643/domestic-abuse-pf.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877643/domestic-abuse-pf.pdf)> accessed 4 September 2020.
- <sup>54</sup> Protection from Harassment Act 1997, <<https://www.legislation.gov.uk/ukpga/1997/40/section/2A>> accessed 4 September 2020.
- <sup>55</sup> Protection from Harassment Act 1997, <<https://www.legislation.gov.uk/ukpga/1997/40/section/1>> accessed 4 September 2020.
- <sup>56</sup> Victims of Crime (The Code of Practice) - CPS Legal Guidance, <<https://www.cps.gov.uk/legal-guidance/victims-crime-code-practice-cps-legal-guidance>> accessed 4 September 2020.
- <sup>57</sup> Sexual Offences Act 2003, <<https://www.legislation.gov.uk/ukpga/2003/42/contents>> accessed 4 September 2020.
- <sup>58</sup> Domestic Abuse (Scotland) Act 2018, <<https://www.legislation.gov.uk/asp/2018/5/part/1/enacted>> accessed 4 September 2020.
- <sup>59</sup> Criminal Justice and Licensing (Scotland) Act 2010, <<https://www.legislation.gov.uk/asp/2010/13/contents>> accessed 4 September 2020.
- <sup>60</sup> Protection from Harassment Act 1997, <<https://www.legislation.gov.uk/ukpga/1997/40/crossheading/scotland>> accessed 4 September 2020.
- <sup>61</sup> Victims' Code for Scotland, <<https://www.mygov.scot/victims-code-for-scotland/victims-code-scotland.pdf?inline=true>> accessed 4 September 2020.
- <sup>62</sup> Sexual Offences (Scotland) Act 2009, <<https://www.legislation.gov.uk/asp/2009/9/introduction>> accessed 4 September 2020.
- <sup>63</sup> Police Service of Northern Ireland, "Harassment and Stalking," <<https://www.psn.police.uk/crime/domestic-abuse/harassment-and-stalking/>> accessed 4 September 2020.
- <sup>64</sup> The Victims and Survivors (Northern Ireland) Order 2006, <<https://www.legislation.gov.uk/nisi/2006/2953/article/3>> accessed 4 September 2020.
- <sup>65</sup> Public Prosecution Service for Northern Ireland, "Sexual Offences (Offence Description and Legislation)" accessed 4 September 2020 <<https://www.ppsni.gov.uk/sites/ppsn/files/publications/Sexual%20Offences%20Offence%20Description%20and%20Legislation.pdf>> accessed 4 September 2020.
- <sup>66</sup> Family Law Act 1996, Section 42.
- <sup>67</sup> Family Law Act 1996, Section 33 to Section 40.
- <sup>68</sup> Domestic Violence, Crime and Victims Act 2004, Section 12.
- <sup>69</sup> Crime and Security Act 2010, Section 27.
- <sup>70</sup> Family Law Act 1996, Section 42(1)(b)\_.
- <sup>71</sup> A "relevant child" is defined as: any child who is living with or might reasonably be expected to live with either party to the proceedings; any child in relation to whom an order under the Adoption Act 1976, the Adoption and Children Act 2002 or the Children Act 1989 is in question in the proceedings; and any other child whose interests the court considers relevant.
- <sup>72</sup> Family Law Act 1996, s 62(3) and s 62(4). Further information can be found in the guidance to Form FL401: (<https://www.gov.uk/government/publications/form-fl401-application-for-a-non-molestation-order-occupation-order>)
- <sup>73</sup> Family Law Act 1996, ss 33, 35, 36, 37, and 38
- <sup>74</sup> Domestic Violence, Crime and Victims Act 2004, s 12
- <sup>75</sup> However, if the order is made on acquittal, the harassment must lead to fear of violence.
- <sup>76</sup> <https://www.cps.gov.uk/legal-guidance/restraining-orders-section-5-protection-harassment-act-1997>
- <sup>77</sup> Crime and Security Act 2010, Section 24.
- <sup>78</sup> Crime and Security Act 2010, Section 24(9).
- <sup>79</sup> Crime and Security Act 2010, Section 27.
- <sup>80</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/575363/DVPO\\_guidance\\_FINAL\\_3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575363/DVPO_guidance_FINAL_3.pdf)
- <sup>81</sup> Domestic Abuse Protection Notices/Orders factsheet <<https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-protection-notice-orders-factsheet>>
- <sup>82</sup> See Domestic Abuse Bill 2019, Section 78, for a summary of the extent of the Bill's application across the United Kingdom.
- <sup>83</sup> [https://scotland.shelter.org.uk/get\\_advice/advice\\_topics/families\\_and\\_households/domestic\\_abuse/taking\\_legal\\_action/interdicts\\_for\\_domestic\\_abuse](https://scotland.shelter.org.uk/get_advice/advice_topics/families_and_households/domestic_abuse/taking_legal_action/interdicts_for_domestic_abuse)
- <sup>84</sup> Matrimonial Homes (Family Protection) (Scotland) Act 1981, Section 14.
- <sup>85</sup> Matrimonial Homes (Family Protection) (Scotland) Act 1981, Section 14(2).
- <sup>86</sup> Civil Partnership Act 2004, Section 113.
- <sup>87</sup> Matrimonial Homes (Family Protection) (Scotland) Act 1981, Section 18A.
- <sup>88</sup> Domestic Abuse (Scotland) Act 2011, Section 3(1).
- <sup>89</sup> Domestic Abuse (Scotland) Act 2011, Section 3(2).
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- <sup>90</sup> Domestic Abuse (Scotland) Act 2011, Section 2.
- <sup>91</sup> Protection from Abuse (Scotland) Act 2001, Section 4.
- <sup>92</sup> Protection from Abuse (Scotland) Act 2001, Section 1A.
- <sup>93</sup> Protection from Abuse (Scotland) Act 2001, Section 2.
- <sup>94</sup> Matrimonial Homes (Family Protection) (Scotland) Act 1981, Section 4 and Section 18(3); Civil Partnership Act 2004, Section 104.
- <sup>95</sup> Protection from Harassment Act 1997, Section 8A.
- <sup>96</sup> Protection from Harassment Act 1997, Section 9.
- <sup>97</sup> Protection from Harassment Act 1997, Section 9(1).
- <sup>98</sup> Criminal Procedure (Scotland) Act 1995, Section 234AZA(3).
- <sup>99</sup> Criminal Procedure Scotland Act 1995, Section 234AZA.
- <sup>100</sup> Domestic Abuse (Scotland) Act 2018, paragraph 9, schedule 1
- <sup>101</sup> Protection from Harassment Act 1997, Section 10.
- <sup>102</sup> Family Homes and Domestic Violence (Northern Ireland) Order 1998, Article 20.
- <sup>103</sup> Family Homes and Domestic Violence (Northern Ireland) Order 1998, Articles 11 to 19.
- <sup>104</sup> Protection from Harassment (Northern Ireland) Order 1997, Articles 7 and 7A.
- <sup>105</sup> Family Homes and Domestic Violence (Northern Ireland) Order 1998, Article 3.
- <sup>106</sup> Family Homes and Domestic Violence (Northern Ireland) Order 1998, Section 11.
- <sup>107</sup> Protection from Harassment (Northern Ireland) Order 1997, Article 6.
- <sup>108</sup> Children Act 1989, Section 43 (England & Wales), Children's Hearings (Scotland) Act 2011, Section 35 (Scotland), Children (Northern Ireland) Order 1995, Section 62.
- <sup>109</sup> Children Act 1989, Section 44 (England & Wales), Children's Hearings (Scotland) Act 2011, Section 37 (Scotland), Children (Northern Ireland) Order 1995, Section 63.
- <sup>110</sup> Children Act 1989, Section 8.
- <sup>111</sup> Children Act 1989, Section 31 (England & Wales), Children (Northern Ireland) Order 1995, Section 50 (Northern Ireland).
- <sup>112</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/897071/FCSQ\\_bulletin\\_January\\_to\\_March\\_2020\\_final\\_V2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/897071/FCSQ_bulletin_January_to_March_2020_final_V2.pdf)
- <sup>113</sup> [https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/disclosure\\_2019/january\\_2019/information-rights-unit--reports-of-breaches-of-non-molestation-or-restraining-order-in-201617-and-201718](https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/disclosure_2019/january_2019/information-rights-unit--reports-of-breaches-of-non-molestation-or-restraining-order-in-201617-and-201718)
- <sup>114</sup> <https://northyorkshire.police.uk/access-to-information/foi-disclosure-log/non-molestation-orders-domestic-violence-protection-orders-136-2018-19/>
- <sup>115</sup> [https://foi.west-midlands.police.uk/wp-content/uploads/2020/03/2679\\_ATTACHMENT\\_.pdf](https://foi.west-midlands.police.uk/wp-content/uploads/2020/03/2679_ATTACHMENT_.pdf)
- <sup>116</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/897071/FCSQ\\_bulletin\\_January\\_to\\_March\\_2020\\_final\\_V2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/897071/FCSQ_bulletin_January_to_March_2020_final_V2.pdf)
- <sup>117</sup> [https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/disclosure\\_2019/january\\_2019/information-rights-unit--reports-of-breaches-of-non-molestation-or-restraining-order-in-201617-and-201718](https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/disclosure_2019/january_2019/information-rights-unit--reports-of-breaches-of-non-molestation-or-restraining-order-in-201617-and-201718)
- <sup>118</sup> <https://northyorkshire.police.uk/access-to-information/foi-disclosure-log/non-molestation-orders-domestic-violence-protection-orders-136-2018-19/>
- <sup>119</sup> <https://questions-statements.parliament.uk/written-questions/detail/2017-02-20/64617>
- <sup>120</sup> <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-protection-notices-orders-factsheet>
- <sup>121</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/04/civil-justice-statistics-scotland-2017-18/documents/civil-justice-statistics-scotland-2017-18/civil-justice-statistics-scotland-2017-18/govscot%3Adocument/civil-justice-statistics-scotland-2017-18.pdf>
- <sup>122</sup> Ibid
- <sup>123</sup> [https://www.psnl.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2020-21/q1/domestic-abuse-bulletin-jun\\_-20.pdf](https://www.psnl.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2020-21/q1/domestic-abuse-bulletin-jun_-20.pdf)
- <sup>124</sup> <https://www.refuge.org.uk/legal-help/>;  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/717671/fl700-eng.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717671/fl700-eng.pdf)
- <sup>125</sup> <https://www.gov.uk/government/publications/form-fl401-application-for-a-non-molestation-order-occupation-order>
- <sup>126</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/792761/c8-eng.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792761/c8-eng.pdf)
- <sup>127</sup> Family Law Act 1996, Section 45.
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<sup>128</sup>Family Procedure Rules 2010, rule 10.

<sup>129</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/575363/DVPO\\_guidance\\_FINAL\\_3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575363/DVPO_guidance_FINAL_3.pdf)

<sup>130</sup> Domestic Abuse Protection Notices/Orders factsheet <<https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-protection-notice-orders-factsheet>>

<sup>131</sup>

[https://scotland.shelter.org.uk/get\\_advice/advice\\_topics/families\\_and\\_households/domestic\\_abuse/taking\\_legal\\_action/interdicts\\_for\\_domestic\\_abuse#:~:text=How%20do%20I%20get%20an,don't%20do%20it%20yourself](https://scotland.shelter.org.uk/get_advice/advice_topics/families_and_households/domestic_abuse/taking_legal_action/interdicts_for_domestic_abuse#:~:text=How%20do%20I%20get%20an,don't%20do%20it%20yourself).

<sup>132</sup> <https://www.scottishwomensrightscentre.org.uk/resources/Exclusion-Orders-guide-final-.pdf> [Note: if hyperlink does not work, copy and paste the address into your browser].

<sup>133</sup> <https://www.scottishwomensrightscentre.org.uk/resources/SWR-008-Legal-Guide-A5-Folded-WEB.pdf> [Note: if hyperlink does not work, copy and paste the address into your browser].

<sup>134</sup> [https://www.justice-ni.gov.uk/sites/default/files/publications/justice/p\\_uf\\_F1\\_NMO\\_OCCUP.pdf](https://www.justice-ni.gov.uk/sites/default/files/publications/justice/p_uf_F1_NMO_OCCUP.pdf)

<sup>135</sup> Note that all references in this section to the "court" should be read as references to the judge.

<sup>136</sup> Family Law Act 1996, Section 45(2).

<sup>137</sup>

[https://uk.practicallaw.thomsonreuters.com/Document/I4c2a1620518a11e498db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Default\)&firstPage=true#co\\_anchor\\_a86328](https://uk.practicallaw.thomsonreuters.com/Document/I4c2a1620518a11e498db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Default)&firstPage=true#co_anchor_a86328);

[https://uk.practicallaw.thomsonreuters.com/Document/I4c2a3b2c518a11e498db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Default\)#co\\_anchor\\_a259539](https://uk.practicallaw.thomsonreuters.com/Document/I4c2a3b2c518a11e498db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Default)#co_anchor_a259539)

<sup>138</sup> Family Law Act 1996, Section 43.

<sup>139</sup> <https://www.gov.uk/government/publications/form-fl401-application-for-a-non-molestation-order-occupation-order>

<sup>140</sup> Crime and Security Act 2010, Section 24(3).

<sup>141</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/575363/DVPO\\_guidance\\_FINAL\\_3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575363/DVPO_guidance_FINAL_3.pdf)

<sup>142</sup> Crime and Security Act, Section 28(4).

<sup>143</sup> Crime and Security Act, Section 28(5).

<sup>144</sup>

[https://scotland.shelter.org.uk/get\\_advice/advice\\_topics/families\\_and\\_households/domestic\\_abuse/taking\\_legal\\_action/interdicts\\_for\\_domestic\\_abuse](https://scotland.shelter.org.uk/get_advice/advice_topics/families_and_households/domestic_abuse/taking_legal_action/interdicts_for_domestic_abuse)

<sup>145</sup> Civil Partnership Act 2004, Section 104.

<sup>146</sup> Family Homes and Domestic Violence (Northern Ireland) Order 1998, Article 11(7).

<sup>147</sup> Protection from Harassment Act 1997, Section 3; Protection from Harassment (Northern Ireland) Order 1997, Article 5.

<sup>148</sup> <https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide>; <https://www.justice-ni.gov.uk/topics/justice-and-law/compensation-services#toc-0>

<sup>149</sup> The 'same household' rule prevented claims where the injuries had been inflicted on victims living in the same household as their perpetrator.

<sup>150</sup> Further details on the eligibility requirements for claiming compensation can be found on the nidirect.gov website <<https://www.nidirect.gov.uk/articles/claiming-criminal-injuries-sustained-april-2009>>.

<sup>151</sup> UK Government, "Report Domestic Abuse" <<https://www.gov.uk/report-domestic-abuse>> Accessed 20 July 2020.

<sup>152</sup> Independent Office for Police Conduct, "Silent Solution Guide" <[https://www.policeconduct.gov.uk/sites/default/files/Documents/research-learning/Silent\\_solution\\_guide.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/research-learning/Silent_solution_guide.pdf)> Accessed 21 July 2020.

<sup>153</sup> Dash Risk Model, Introduction <<https://www.dashriskchecklist.co.uk/>> Accessed 24 July 2020.

<sup>154</sup> UK government, Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs) guidance <<https://www.gov.uk/government/publications/domestic-violence-protection-orders/domestic-violence-protection-notice-dvpns-and-domestic-violence-protection-orders-dvpos-guidance-sections-24-33-crime-and-security-act-2010>> Accessed 29 July 2020.

<sup>155</sup> *ibid.*

<sup>156</sup> Crime and Security Act 2010, Section 24.

<sup>157</sup> Home Office, Domestic Violence Disclosure Scheme (DVDS) Guidance <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/575361/DVDS\\_guidance\\_FINAL\\_v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575361/DVDS_guidance_FINAL_v3.pdf)> Accessed 26 July 2020.

<sup>158</sup> Practical Law Family, Alternative methods of protection for domestic violence and abuse victims <<https://uk.practicallaw.thomsonreuters.com/Document/Ib73e2c6b156711e89bf099c0ee06c731/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad7401600000173483a74eb1bb5ce47%3FNav%3DKN>>

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- OWHOW\_UK%26fragmentIdentifier%3D1b73e2c6b156711e89bf099c0ee06c731%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=3b9c019cb14b520c219552054db4d635&list=KNOWHOW\_UK&rank=4&sessionScopeld=cf8c13642a15b5c641463348617ad352d85c4893fdd606b9e07c4cde8b32824a&originationContext=Search+Result&transitionType=SearchItem&contextData=%28sc.Search%29&comp=pluk> Accessed 20 July 2020.
- <sup>159</sup> ViSOR is the Dangerous Persons Database. This is used as a management tool by UK law enforcement and a wide range of other agencies, to share information and contribute to the risk management of offenders.
- <sup>160</sup> Women's Aid, "Your Legal Rights" < <https://www.womensaid.org.uk/the-survivors-handbook/your-legal-rights/> > Accessed 3 September 2020.
- <sup>161</sup> Rights of Women, "Family Court proceedings: where can I get advice and support?" < <https://rightsofwomen.org.uk/get-information/family-law/family-court-proceedings-can-get-advice-support/> > Accessed 3 September 2020.
- <sup>162</sup> GOV.UK, Legal Aid, "Domestic abuse or violence" < <https://www.gov.uk/legal-aid/domestic-abuse-or-violence> > Accessed 3 September 2020.
- <sup>163</sup> *Woolmington v DPP* [1935] UKHL 1.
- <sup>164</sup> *Miller v Minister of Pensions* [1947] 2 All ER 372.
- <sup>165</sup> CPS, "Gathering of evidence and case building" < <https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors>> accessed 24 August 2020.
- <sup>166</sup> CPS, Joint Evidence Checklist < <https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors#a90>> accessed 24 August 2020.
- <sup>167</sup> COPFS, Joint Protocol between Police Scotland and the COPFS in partnership challenging domestic abuse < <https://www.copfs.gov.uk/images/Documents/Our%20Priorities/Domestic%20abuse/Joint%20Domestic%20Abuse%20Protocol.pdf>> Accessed 24 August 2020.
- <sup>168</sup> PPS, Policy for Prosecuting Cases of Domestic Violence < <https://www.ppsni.gov.uk/sites/ppnsni/files/publications/PPS%20Domestic%20Violence%20Policy.pdf>> Accessed 24 August 2020.
- <sup>169</sup> UK government, "Get an injunction if you've been the victim of domestic abuse" < <https://www.gov.uk/injunction-domestic-violence>> accessed 22 August 2020.
- <sup>170</sup> <https://www.legislation.gov.uk/ukxi/2010/2955/article/10.2/made>
- <sup>171</sup> Re S (A Child) (Family Division: Without Notice Orders) [2001] 1 WLR.
- <sup>172</sup> Practical Law, Affirmative Defence < [https://uk.practicallaw.thomsonreuters.com/6-518-1993?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/6-518-1993?transitionType=Default&contextData=(sc.Default)&firstPage=true)> Accessed 24 August 2020.
- <sup>173</sup> CPS, False Allegations of Rape and/or Domestic Abuse, see: Guidance for Charging Perverting the Course of Justice and Wasting Police Time in Cases Involving Allegedly False Allegations of Rape and/or Domestic Abuse <<https://www.cps.gov.uk/legal-guidance/false-allegations-rape-andor-domestic-abuse-see-guidance-charging-perverting-course>> accessed 25 August 2020.
- <sup>174</sup> Charging Perverting The Course Of Justice And Wasting Police Time In Cases Involving Allegedly False Rape And Domestic Violence Allegations < [https://www.cps.gov.uk/sites/default/files/documents/legal\\_guidance/perverting-course-of-justice-march-2013.pdf](https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/perverting-course-of-justice-march-2013.pdf) > Accessed 3 September 2020.
- <sup>175</sup> *ibid*
- <sup>176</sup> *R v Brown* [1993] UKHL 19, [1994] 1 AC 212
- <sup>177</sup> BBC News, "'Rough sex' defence will be banned, says justice minister" <https://www.bbc.com/news/uk-politics-53064086>, accessed 31 August 2020.
- <sup>178</sup> UK Parliament, "Domestic Abuse Bill 2019-2021" < <https://services.parliament.uk/bills/2019-21/domesticabuse.html>> accessed 26 August 2020.
- <sup>179</sup> Practical Law, "Insanity" < [https://uk.practicallaw.thomsonreuters.com/Document/I4819cd59d50d11e79bef99c0ee06c731/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad74035000017435b7f4910baeddea%3FNav%3DKNOWHOW\\_UK%26fragmentIdentifier%3DI4819cd59d50d11e79bef99c0ee06c731%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=7b4d988106a7bff0330f2c0e6f89063a&list=KNOWHOW\\_UK&rank=1&sessionScopeld=5c4c4aefda14974051cb60eeaf57b1f73f0698833b2ba97b747961baf900c97&originationContext=Search%20Result&transitionType=SearchItem&contextData=\(sc.Search\)&comp=pluk&navId=031442912C69CE040370351F091071A1](https://uk.practicallaw.thomsonreuters.com/Document/I4819cd59d50d11e79bef99c0ee06c731/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad74035000017435b7f4910baeddea%3FNav%3DKNOWHOW_UK%26fragmentIdentifier%3DI4819cd59d50d11e79bef99c0ee06c731%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=7b4d988106a7bff0330f2c0e6f89063a&list=KNOWHOW_UK&rank=1&sessionScopeld=5c4c4aefda14974051cb60eeaf57b1f73f0698833b2ba97b747961baf900c97&originationContext=Search%20Result&transitionType=SearchItem&contextData=(sc.Search)&comp=pluk&navId=031442912C69CE040370351F091071A1)> accessed 24 August 2020
- <sup>180</sup> *M'Naghten* [1843] UKHL J16.
- <sup>181</sup> *R (on application of Singh) v Stratford Magistrates' Court* [2007] EWHC 1582 (Admin).
- <sup>182</sup> The Trial of Lunatics Act 1883, Section 2(1).
- <sup>183</sup> The Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, Section 1(1).
- <sup>184</sup> *Ibid*, Section 5.
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- <sup>185</sup> Criminal Procedure Rules, Part 16.2, < <http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015>> accessed 6 September 2020.
- <sup>186</sup> Domestic Abuse Guidelines for Prosecutors < <https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors>> accessed 6 September 2020.
- <sup>187</sup> Criminal Justice Act 2003, Section 116 (2) (e).
- <sup>188</sup> Criminal Justice Act 2003, Section 114 (1) (d).
- <sup>189</sup> Serious Organised Crime and Police Act 2005, Section 169.
- <sup>190</sup> Police and Criminal Evidence Act 1984, Section 80 (2A).
- <sup>191</sup> Local government Association, "The relationship between family violence and youth offending," June 2018 < [https://www.local.gov.uk/sites/default/files/documents/15%2034%20-%20The%20relationship%20between%20family%20violence%20and%20youth%20offending-V4\\_1.pdf](https://www.local.gov.uk/sites/default/files/documents/15%2034%20-%20The%20relationship%20between%20family%20violence%20and%20youth%20offending-V4_1.pdf)> accessed 6 September 2020.
- <sup>192</sup> The legislation recognizes this in relation to care and supervision orders. A local authority or authorized person can apply to the court for a care and supervision order and the court can make an order placing a child in the care of the designated local authority where (amongst other conditions) it is satisfied that the child concerned is "suffering, or is likely to suffer, significant harm."
- <sup>193</sup> Children Act 1989, Section 31 and Adoption and Children Act 2002, Section 120 for England and Wales; The Children (Northern Ireland) Order 1995, Article 2 and Family Homes and Domestic Violence (Northern Ireland) Order 1998, Section 28 for Northern Ireland; The Scottish government, "National Guidance for Child Protection in Scotland" (2014), 13 for Scotland.
- <sup>194</sup> Children Act 1989, s 31 (10) for England and Wales; The Children (Northern Ireland) Order 1995, s 50(3) for Northern Ireland; The Scottish government, "National Guidance for Child Protection in Scotland" (2014), 13 for Scotland.
- <sup>195</sup> Youth Justice and Criminal Evidence Act 1999, Section 53.
- <sup>196</sup> A special measures direction is available under Section 18 of the Youth Justice and Criminal Evidence Act 1999.
- <sup>197</sup> Magistrates' Court Act 1980, Section 97.
- <sup>198</sup> Domestic Abuse Bill 2019-2021, Section 3 < <https://publications.parliament.uk/pa/bills/lbill/58-01/124/5801124.pdf>> accessed 3 September 2020.
- <sup>199</sup> Sexual Offences Act 2003, Section 5.
- <sup>200</sup> Sexual Offences Act 2003, Section 7.
- <sup>201</sup> Sexual Offences Act 2003, Section 48.
- <sup>202</sup> Sexual Offences Act 2003, Section 49.
- <sup>203</sup> Sexual Offences Act 2003, Section 50.
- <sup>204</sup> Domestic Violence, Crime and Victims Act 2004 (as amended), s 5. The offense is triable on indictment only.
- <sup>205</sup> Infanticide Act 1938, Section 1.
- <sup>206</sup> Children and Young Persons Act 1933 (as amended), Section 1.
- <sup>207</sup> As per Children Act 2004, Section 58.
- <sup>208</sup> Child Abduction Act 1984, Sections 1 and 2.
- <sup>209</sup> "Connected with" is defined in the Child Abduction Act 1984, Section 2, to include a parent, guardian or any person who has custody of the child.
- <sup>210</sup> As available from the Sentencing Council for England and Wales, either for the magistrates' court or the crown court (as applicable). Sentencing guidelines for Northern Ireland are available from Judiciary NI and for Scotland are available from the Scottish Sentencing Council.
- <sup>211</sup> Sentencing Council, "General guideline: overarching principles" (effective from 1 October 2019) < <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/general-guideline-overarching-principles/> > accessed 3 August 2020.
- <sup>212</sup> Sentencing Council, "Domestic Abuse" (effective from 24 May 2018) < <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/domestic-abuse/> > accessed on 3 August 2020.
- <sup>213</sup> Maximum penalty as stated either in the relevant legislation or in the relevant Sentencing Council sentencing guidelines (available here <<https://www.sentencingcouncil.org.uk/>>). The maximum penalty may vary in Northern Ireland and/or Scotland. Sentencing guidelines for Northern Ireland are available from Judiciary NI (<[https://judiciaryni.uk/?\\_sm\\_au\\_=iVV4TS5t4STQ4tH5KkM6NKsW8f6TG](https://judiciaryni.uk/?_sm_au_=iVV4TS5t4STQ4tH5KkM6NKsW8f6TG)>) and for Scotland are available from the Scottish Sentencing Council (<<https://www.scottishsentencingcouncil.org.uk/sentencing-guidelines/>>).
- <sup>214</sup> Protection from Harassment Act 1997, Sections 5 (5) and (6).
- <sup>215</sup> Family Law Act 1996, Section 42A.
- <sup>216</sup> Criminal Justice Act 2003, Section 164.
- <sup>217</sup> General Guidelines: Fines < <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/> > accessed on 3 September 2020.
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- <sup>218</sup> Victims can contact the Victim Information and Advice at the Crown Office and Procurator Fiscal Service. Further information on how to get in contact is available at:  
<<https://www.sps.gov.uk/PeopleAffectedbyCrime/VictimNotificationScheme/How-to-Register.aspx>>.
- <sup>219</sup> The online registration form can be found at: <<https://www.pbni.org.uk/what-we-do/victim-information-scheme/victim-information-scheme-online-registration-form/>>.
- <sup>220</sup> In particular, note that, although coercive or controlling behavior was introduced as a standalone offense in England and Wales pursuant to Serious Crime Act 2015 and in Scotland pursuant to Domestic Abuse (Scotland) Act 2018, there is no corresponding defense. Note that the offense has not yet been introduced in Northern Ireland; however, The Domestic Abuse and Family Proceedings Bill 2020 was introduced to the Northern Ireland Assembly in March 2020.
- <sup>221</sup> For example, in relation to England, Wales and Northern Ireland see *Hasan* [2005] UKHL 22, *R v GAC* [2013] EWA Crim 1472. Note comments in relation to the defense of coercion and provocation in Scotland. We have not been able to find any specific cases where domestic abuse has been raised with the aim of supporting a defense of coercion.
- <sup>222</sup> For example, in relation to England, Wales and Northern Ireland, see *R v Ahluwalia* [1992] 4 AER 889, *R v Thornton* [1996] 1 WLR 1174, *R v Charlton* [2003] EWCA Crim 415; in relation to Scotland see *Graham v Her Majesty's Advocate* [2013] HCJAC 149, *Galbraith v Her Majesty's Advocate* (No.2) [2002] JC 1; *Drury v Her Majesty's Advocate* Appeal No: C76/99.
- <sup>223</sup> CPS "Defences - Duress and Necessity" <<https://www.cps.gov.uk/legal-guidance/defences-duress-and-necessity>> (accessed August 2020).
- <sup>224</sup> CPS "Defences - Duress and Necessity" <<https://www.cps.gov.uk/legal-guidance/defences-duress-and-necessity>> (accessed August 2020) see *R v Graham* [1974] Cr.App.R. 235.
- <sup>225</sup> *R v Baker* [1997] Crim LR. 497.
- <sup>226</sup> *Thomson v HM Advocate* 1983 S.L.T. 541.
- <sup>227</sup> Section 54(7) Coroners and Justice Act 2009.
- <sup>228</sup> Section 55 Coroners and Justice Act 2009.
- <sup>229</sup> Section 54(2) Coroners and Justice Act 2009.
- <sup>230</sup> Section 55 Coroners and Justice Act 2009.
- <sup>231</sup> *Drury v Her Majesty's Advocate* Appeal No: C76/99
- <sup>232</sup> *Gillon v Her Majesty's Advocate* [2006] HCJAC 61
- <sup>233</sup> See, for example, *Drury v Her Majesty's Advocate* Appeal No: C76/99.
- <sup>234</sup> Section 2(3) Homicide Act 1957.
- <sup>235</sup> Section 2 Homicide Act 1957.
- <sup>236</sup> *R v Byrne* [1960] 2 QB 396.
- <sup>237</sup> CPS 'Homicide: Murder and Manslaughter' <<https://www.cps.gov.uk/legal-guidance/homicide-murder-and-manslaughter#:~:text=Partial%20defences%2C%20are%20different%20to,pursuance%20of%20a%20suicide%20pac t.>> (accessed August 2020).
- <sup>238</sup> Section 51B Criminal Procedure (Scotland) Act 1995.
- <sup>239</sup> In particular, we have looked at the following resources:
- Employment Rights Act 1996
  - Domestic Abuse Bill 2019-21
  - CPS "Domestic Abuse Guidelines for Prosecutors" <<https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors>> accessed September 2020
  - CPS 'Sentencing - Ancillary Orders' <<https://www.cps.gov.uk/legal-guidance/sentencing-ancillary-orders>> accessed September 2020.
- <sup>240</sup> CPS "Domestic Abuse Guidelines for Prosecutors" <<https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors>> accessed September 2020.
- Also note that the Domestic Abuse Bill 2019-2021 includes new routes to allow victims and specific third parties to apply for orders against perpetrators of domestic abuse.
- <sup>241</sup> Department for Work & Pensions "Jobseeker's Allowance sanctions: how to keep your benefit payment" <<https://www.gov.uk/government/publications/jobseekers-allowance-sanctions-leaflet/jobseekers-allowance-sanctions-how-to-keep-your-benefit-payment>> accessed August 2020.
- UK government "Advice for decision making: staff guide Chapter K3 - Higher Level Sanctions" <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/864951/admk3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864951/admk3.pdf)> accessed August 2020.
- <sup>242</sup> UK government "Advice for decision making: staff guide Chapter K2 – Good reason" <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/843716/admk2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843716/admk2.pdf)> accessed August 2020.
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- <sup>243</sup> See UK government "Advice for decision making: staff guide Chapter J3 - Work-related requirements" <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/878192/admj3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878192/admj3.pdf)> accessed August 2020.
- <sup>244</sup> Section 98 The Universal Credit Regulations 2013. See also UK government "Advice for decision making: staff guide Chapter J3 - Work-related requirements" <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/878192/admj3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878192/admj3.pdf)> accessed August 2020.
- <sup>245</sup> Section 57A(1) Employment Rights Act 1996, which extends to England and Wales and Scotland. Identical language is included at s85A The Employment Rights (Northern Ireland) Order 1996, which is relevant to Northern Ireland. Only relevant provisions copied above.
- <sup>246</sup> Section 230 Employment Rights Act 1996. Identical language is included at Section 3 The Employment Rights (Northern Ireland) Order 1996.
- <sup>247</sup> *Qua v John Morrison Solicitors* [2003] IRLR 184, in relation to Section 57A Employment Rights Act 1996.
- <sup>248</sup> *Qua v John Morrison Solicitors* [2003] IRLR 184.
- <sup>249</sup> Section 57A(6) Employment Rights Act 1996; s85A(6) The Employment Rights (Northern Ireland) Order 1996
- <sup>250</sup> UK government "Time off for family and dependants" <<https://www.gov.uk/time-off-for-dependants>> accessed August 2020. See also NI government "Time off for dependants (compassionate leave)" <<https://www.nidirect.gov.uk/articles/time-dependants-compassionate-leave#:~:text=You%20have%20the%20right%20to,for%20taking%20it%20are%20genuine>> accessed August 2020.
- <sup>251</sup> Section 57A(3)-(5) Employment Rights Act 1996; Section 85A(3)-(5) The Employment Rights (Northern Ireland) Order 1996
- <sup>252</sup> Note: Immigration is a matter reserved to the UK government and handled by the Home Office. The Immigration Rules and Home Office Policy therefore apply to England, Wales, Scotland and Northern Ireland.
- <sup>253</sup> "Immigration Rules Appendix FM: family members - Victim of domestic abuse" <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-fm-family-members>
- <sup>254</sup> Note: the provisions also apply to partners of members of HM Forces who have served for at least four years.
- <sup>255</sup> Note: the domestic violence does not need to have been perpetrated by their partner. It must be shown that the relationship broke down as a result of such domestic violence.
- <sup>256</sup> Home Office "Victims of domestic violence and abuse" Version 14.0 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/680977/victims-of-domestic-violence-v14.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/680977/victims-of-domestic-violence-v14.pdf)
- <sup>257</sup> In particular, we have looked at the following resources:  
CPS "Domestic Abuse Guidelines for Prosecutors" <<https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors>> accessed September 2020  
CPS 'SOCPA Agreements: Note for those representing assisting offenders' <<https://www.cps.gov.uk/legal-guidance/socpa-agreements-note-those-representing-assisting-offenders>> accessed September 2020. Note that the Serious Organised Crime and Police Act 2005 established a statutory framework to regulate agreements made with offenders who have offered to assist the investigation or prosecution of offenses committed by others. We would not expect this framework to be relevant in this situation. In particular we note that the framework requires that the victim of domestic violence has committed an offense (a list of the most commonly prosecuted immigration offenses is provided at CPS "Immigration Offences legal guidance - Annex Tables of Immigration Offences" <<https://www.cps.gov.uk/sites/default/files/documents/publications/Immigration-Offences-Annex.pdf>> accessed September 2020).
- <sup>258</sup> Home Office "Domestic abuse: responding to reports of domestic abuse from asylum seekers" Version 1.0 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/817667/domestic-abuse-asylum-support-v1.0.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817667/domestic-abuse-asylum-support-v1.0.pdf)
- <sup>259</sup> House of Lords House of Commons Joint Committee on the Draft Domestic Abuse Bill 'Draft Domestic Abuse Bill' <<https://publications.parliament.uk/pa/jt201719/jtselect/jtddab/2075/2075.pdf>> accessed 3 September 2020.
- <sup>260</sup> Home Office "Migrant Victims of Domestic Abuse - Review Findings" July 2020 <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/897472/Migrant\\_Victims\\_of\\_Domestic\\_Abuse\\_-\\_Review\\_Findings\\_v.3\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/897472/Migrant_Victims_of_Domestic_Abuse_-_Review_Findings_v.3_FINAL.pdf)> accessed 3 September 2020.
- <sup>261</sup> <https://www.gov.uk/government/publications/armed-forces-domestic-abuse-where-to-get-help/armed-forces-domestic-abuse-where-to-get-help#information-for-victims> (accessed on 4 August 2020).
- <sup>262</sup> Domestic Abuse: Guidance and Support for the Armed Forces Community, A Handbook for Civilian Support Services, May 2020 <<https://www.gov.uk/government/publications/armed-forces-domestic-abuse-a-handbook-for-civilian-support-services/armed-forces-domestic-abuse-a-handbook-for-civilian-support-services>> (accessed on 4 August 2020).
- <sup>263</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/772202/CCS1218158068-Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772202/CCS1218158068-Web_Accessible.pdf) (accessed 28 August 2020).
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- <sup>264</sup> <https://www.theguardian.com/society/2017/jan/20/uk-judges-change-court-rules-on-child-contact-for-violent-fathers-domestic-abuse> (accessed 7 August 2020).
- <sup>265</sup> [https://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12j](https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j) (accessed 7 August 2020).
- <sup>266</sup> Re B (A Minor) (Access) [1984] 1 FLR 648, 649.
- <sup>267</sup> Women's Aid and Queen Mary University School of Law, "'What about my right not to be abused?' Domestic abuse, human rights and the family courts," May 2018, p7.
- <sup>268</sup> [https://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12j](https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j) (accessed 7 August 2020).
- <sup>269</sup> <https://www.legislation.gov.uk/ukpga/1996/27/section/30> (accessed 8 August 2020).
- <sup>270</sup> [https://england.shelter.org.uk/legal/relationship\\_breakdown/marriedcivil\\_partners\\_sole\\_owner/rights\\_to\\_occupy\\_the\\_home#1](https://england.shelter.org.uk/legal/relationship_breakdown/marriedcivil_partners_sole_owner/rights_to_occupy_the_home#1) (accessed 28 August 2020).
- <sup>271</sup> [https://uk.practicallaw.thomsonreuters.com/2-503-9275?originationContext=document&transitionType=DocumentItem&contextData=\(sc.Default\)&navId=3BA52144FCFCB4F02A3E4E2A5B30F022&comp=pluk#co\\_anchor\\_a502993](https://uk.practicallaw.thomsonreuters.com/2-503-9275?originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&navId=3BA52144FCFCB4F02A3E4E2A5B30F022&comp=pluk#co_anchor_a502993) (accessed 8 August 2020).
- <sup>272</sup> Housing Act 1996, section 175 (3).
- <sup>273</sup> Housing Act 1996, section 171(1).
- <sup>274</sup> Homelessness Code 2018, paragraph 21.25.
- <sup>275</sup> Homelessness Code 2018, paragraph 21.21.
- <sup>276</sup> [https://uk.practicallaw.thomsonreuters.com/Document/l4c2a3b2c518a11e498db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://uk.practicallaw.thomsonreuters.com/Document/l4c2a3b2c518a11e498db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) (accessed 7 August 2020).
- <sup>277</sup> [https://uk.practicallaw.thomsonreuters.com/Document/l4c2a1620518a11e498db8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad7401600000173d732978aae781247%3FNav%3DKNOWHOW\\_UK%26fragmentIdentifier%3Dl4c2a1620518a11e498db8b09b4f043e0%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=23c3de74f19d86dd32e3d6447765b364&list=KNOWHOW\\_UK&rank=1&sessionScopelId=1aafeec5b12608bb5d0454436b562e37c0065f876193d41bacfe0f7850aa578&originationContext=Search+Result&transitionType=SearchItem&contextData=%28sc.Search%29&comp=pluk#co\\_anchor\\_a86328](https://uk.practicallaw.thomsonreuters.com/Document/l4c2a1620518a11e498db8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad7401600000173d732978aae781247%3FNav%3DKNOWHOW_UK%26fragmentIdentifier%3Dl4c2a1620518a11e498db8b09b4f043e0%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=23c3de74f19d86dd32e3d6447765b364&list=KNOWHOW_UK&rank=1&sessionScopelId=1aafeec5b12608bb5d0454436b562e37c0065f876193d41bacfe0f7850aa578&originationContext=Search+Result&transitionType=SearchItem&contextData=%28sc.Search%29&comp=pluk#co_anchor_a86328)
- <sup>278</sup> [https://uk.practicallaw.thomsonreuters.com/Document/lfd6f1386dd3b11e398db8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad7401600000173d74ae999ae781b6f%3FNav%3DKNOWHOW\\_TOPIC\\_UK%26fragmentIdentifier%3Dlfd6f1386dd3b11e398db8b09b4f043e0%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Default%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=3fb1a096fb7912bc4382e5749d93061c&list=KNOWHOW\\_TOPIC\\_UK&rank=42&sessionScopelId=1aafeec5b12608bb5d0454436b562e37c0065f876193d41bacfe0f7850aa578&originationContext=Search%20Result&transitionType=SearchItem&contextData=\(sc.Default\)&comp=pluk&navId=7C720F85A48574BF0F40D61D57E4BAB4](https://uk.practicallaw.thomsonreuters.com/Document/lfd6f1386dd3b11e398db8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad7401600000173d74ae999ae781b6f%3FNav%3DKNOWHOW_TOPIC_UK%26fragmentIdentifier%3Dlfd6f1386dd3b11e398db8b09b4f043e0%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Default%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=3fb1a096fb7912bc4382e5749d93061c&list=KNOWHOW_TOPIC_UK&rank=42&sessionScopelId=1aafeec5b12608bb5d0454436b562e37c0065f876193d41bacfe0f7850aa578&originationContext=Search%20Result&transitionType=SearchItem&contextData=(sc.Default)&comp=pluk&navId=7C720F85A48574BF0F40D61D57E4BAB4) (accessed 10 August 2020).
- <sup>279</sup> Homelessness Code, paragraph 21.30.

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