



Isle of Man

Ellan Vannin

DOMESTIC ABUSE BILL 2019

DOMESTIC ABUSE BILL 2019

Explanatory Memorandum

1. This Bill is promoted by Mr. Malarkey on behalf of the Council of Ministers.
2. Part 1 of the Bill is introductory. *Clauses 1 to 3* provide for the short title of the resulting Act (*Clause 1*), its commencement (*Clause 2*) and the interpretation of certain terms used in the Act (*clause 3*).
3. *Clause 4* sets out the key definition of “domestic abuse”, while *clause 5* defines when two people are “personally connected” for the purposes of the Bill, and *clause 6* provides that two people are to be presumed to be personally connected for the purpose of proceedings under the Act if the process initiating the proceedings states that they are.
4. Part 2 of the Bill contains its main provisions. They are based largely upon provisions from the Domestic Abuse Bill presented to the House of Commons in June 2019 (House of Commons Bill 422 of the 2017-19 Session). Those so derived are identified by the reference “HC Bill 2017-19/422/x” where “x” is the Clause number in the Bill introduced before Parliament. Some other provisions derive from the Serious Crime Act 2015 (of Parliament).
5. *Clause 7* empowers a police officer to give a domestic abuse protection notice if the conditions set out in the clause are met. In the case of a notice being given by a police officer in the rank of constable, a sergeant must have authorised its issue.
6. *Clause 8* sets out the provisions which a domestic abuse protection notice may contain. *Clause 9* sets out the matters which fall to be considered before a notice is given, including the views of the person for whose protection the issue of the notice is being considered, and the person to whom it is to be given.
7. *Clause 10* sets out further requirements in relation to notices, namely that they must be given to the person whose conduct is restricted by the notice (“P”) by a police officer in person, and that the police officer must then ask for an address for the service on P of the application for a domestic abuse prevention order.
8. *Clause 11* provides for the duration of a notice.
9. *Clause 12* deals with the breach of a notice.
10. *Clause 13* empowers a court before which P is brought to remand him or her, in custody or on bail.
11. *Clause 14* defines “domestic abuse prevention order”, and *clause 15* deals with the making of such an order on application. Such an application may be made by –
 - a. a police officer of, or above, the rank of inspector;

- b. a person for whose protection the order is sought;
 - c. a person of a description specified in regulations made by the Department of Home Affairs (referred to below as “the Department”);
or
 - d. a person with the leave of the court to which the application is made.
12. *Clause 15* deals with applications for a domestic abuse protection order in a case where a domestic abuse protection notice has been issued.
 13. *Clause 16* provides for the making of an application for a domestic abuse prevention order where a domestic abuse prevention notice has been given.
 14. *Clause 17* is novel and specifies circumstances in which a domestic abuse protection order may be made by a court in other proceedings
 15. *Clause 18* specifies the conditions to be satisfied before a court makes a domestic abuse protection order under clause 15 or 17. *Clause 19* specifies matters which are to be taken into account before an order is made. *Clause 20* permits a court, where it is just and convenient to do so, to make a domestic abuse protection order without notice. *Clause 21* spells out the provision which can be made by domestic abuse protection orders. *Clause 22* sets out some further provisions about requirements (other than electronic monitoring requirements) which can be imposed by a domestic abuse protection order. *Clause 23* deals with electronic monitoring. *Clause 24* deals with the duration and geographical extent of an order.
 16. *Clause 25* deals with breach of an order, creating an offence punishable with up to 7 years’ custody on information. *Clause 26* establishes a procedure under which a warrant for the arrest of a person who is in breach of domestic abuse protection order granted in the High Court. *The Schedule* makes provision about the remand of a person under this clause.
 17. *Clause 27* imposes on a person subject to a domestic abuse protection order certain requirements to notify the police about the person’s name and whereabouts. *Clause 28* enables the making of regulations to impose notification requirements on a person subject to a domestic abuse protection order to notify the police when leaving the Island of the country or territory to which he is going. Clauses 27 and 28 are supplemented by *clause 29* (which imposes further requirements) and *clause 30* which creates offences in relation to notification requirements. *Clauses 31 and 32* deals with the variation and discharge of domestic abuse protection orders. *Clause 33* deals with appeals in relation to such orders.
 18. Part 3 creates two offences. These are the domestic abuse offence (*clause 34*) and the controlling or coercive behaviour offence where two people are personally connected (*clause 35*). *Clause 36* confers extra-territorial jurisdiction on the Manx courts in respect of offences committed by persons who were habitually resident here at the time of their commission or are UK nationals present in the Island. *Clause 37* creates an exception in relation to a person who has responsibility (within the meaning of section 1 of the *Children and Young Persons*

Act 1966) for a person under 16. *Clause 38* enables a court to convict a person charged with an offence under *clause 34* or *35* of an alternative offence under the *Petty Sessions and Summary Jurisdiction Act 1927* of using provoking language or behaviour tending to a breach of the peace or the offence of harassment, or that of putting someone in fear of violence under the *Protection from Harassment Act 2000* if the offence charged is not made out. The final provisions of this Part (clauses 39 to 41, which together constitute Division 3 of the Part) deal with aggravation of the offences created by Division 1. *Clauses 39 and 40* deal with two sets of circumstances which constitute aggravation of the domestic abuse offence, namely where the victim is under 18 or where the conduct constituting the offence involves a relevant child (i.e. a person under 18). *Clause 41* confers power on the Department by order, subject to Tynwald approval, to amend this Division and make consequential amendments to other provisions.

19. *Clause 42* requires the Department to make regulations about the circumstances in which the police may disclose information about domestic abuse. Such provision is often referred to in England as Clare's Law or, more formally, as a domestic violence disclosure scheme.
20. *Clause 43* imposes a duty on the Department to issue a code of practice about the use of electronic monitoring in the context of domestic abuse protection orders.
21. *Clause 44* empowers the Department to issue guidance to which those having functions under or in connection with the Act must have regard. Finally, *clause 45* makes a consequential amendment to the *Children and Young Persons Act 1966*, *clause 46* makes consequential and minor amendments to the *Land Registration Act 1982*, and *clause 47* repeals an uncommenced amendment to that Act contained in the *Central Registry Act 2018* because it is superseded by the provision made by *clause 46*.
22. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



Ellan Vannin

DOMESTIC ABUSE BILL 2019

Index

Section	Page
PART 1 – INTRODUCTION	9
1 Short title.....	9
2 Commencement.....	9
3 Interpretation.....	9
4 Definition of “domestic abuse”.....	10
5 Definition of “personally connected”.....	12
6 Presumption that persons are personally connected.....	13
PART 2 – DOMESTIC ABUSE	13
DIVISION 1 – DOMESTIC ABUSE PROTECTION NOTICES	13
7 Power to give a domestic abuse prevention notice.....	13
8 Provision that may be made by notice.....	14
9 Matters to be considered before giving a notice.....	14
10 Further requirements in relation to notices.....	15
11 Duration of notice.....	15
12 Breach of notice.....	16
13 Remand of person arrested for breach of notice.....	16
DIVISION 2 – DOMESTIC ABUSE PROTECTION ORDERS	17
14 Meaning of “domestic abuse protection order”.....	17
15 Domestic abuse protection orders on application.....	17
16 Applications where domestic abuse protection notice has been given.....	18
17 Domestic abuse protection orders otherwise than on application.....	19
18 Conditions for making an order.....	20
19 Matters to be considered before making an order.....	20
20 Making of orders without notice.....	21
21 Provision that may be made by orders.....	22
22 Further provision about requirements that may be imposed by orders.....	23
23 Further provision about electronic monitoring requirements.....	24
24 Duration and geographical application of orders.....	25
25 Breach of order.....	25
26 Arrest for breach of order.....	26
27 Notification requirements.....	27

28	Notification requirements: travel outside the Island	28
29	Further provision about notification under section 27 or 28.....	28
30	Offences relating to notification	29
31	Variation and discharge of orders	29
32	Variation and discharge: supplementary.....	31
33	Appeals.....	31
PART 3 – ABUSIVE BEHAVIOUR: OFFENCES		33
DIVISION 1 – OFFENCES		33
34	The domestic abuse offence	33
35	The controlling or coercive behaviour offence.....	34
DIVISION 2 – PROCEDURAL PROVISIONS		35
36	Behaviour occurring outside the Island	35
37	Exception for persons having responsibility for children	35
38	Conviction of alternative offence	36
DIVISION 3 – AGGRAVATION		36
39	Aggravation of offence where victim is under 18.....	36
40	Aggravation of offence where child is otherwise involved	37
41	Power to amend Division.....	38
PART 4 – CLOSING PROVISIONS		38
DIVISION 1 – GUIDANCE		38
42	Regulations about the disclosure of information by the Constabulary	38
43	Data from electronic monitoring: code of practice	38
44	Guidance.....	39
DIVISION 2 – CONSEQUENTIAL AND MINOR AMENDMENTS		39
45	Children and Young Persons Act 1966 amended	39
46	Consequential and minor amendments to the Land Registration Act 1982	39
47	Repeal of amendment contained in Central Registry Act 2018	40
SCHEDULE		41
FURTHER PROVISION ABOUT REMAND UNDER SECTION 26		41



Ellan Vannin

DOMESTIC ABUSE BILL 2019

1 **A BILL** to make fresh provision about domestic abuse; to make consequential
 2 and minor amendments to the *Land Registration Act 1982* and for connected
 3 purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and
 consent of the Council and Keys in Tynwald assembled, and by the authority of the
 same, as follows:—

4 **PART 1 – INTRODUCTION**

5 **1 Short title**

6 The short title of this Act is the Domestic Abuse Bill 2019.

7 **2 Commencement**

8 (1) This Act comes into operation on such day or days as the Department
 9 may by order appoint.

10 (2) An order under subsection (1) may include such consequential,
 11 incidental, supplemental, transitional and transitory provision as appears
 12 to the Department to be necessary or expedient.

13 **3 Interpretation**

14 LC CP 15 Draft Bill /clause 49

15 (1) In this Act—

16 “**the controlling or coercive behaviour offence**” has the meaning given by
 17 section 34(1);

18 “**the Department**” means the Department of Home Affairs;

19 “**domestic abuse protection notice**” has the meaning given by section 7(2);

20 “**domestic abuse protection order**” has the meaning given by section 14(1)

21 “**electronic monitoring requirement**” has the meaning given by section 21(6);

22 “**family proceedings**” means—

- 1 (a) proceedings in the High Court under any inherent jurisdiction of
2 that Court in relation to wardship, maintenance or the upbringing
3 of children,
4 (b) proceedings under Part 1, 2, 4 or 5 of the *Children and Young*
5 *Persons Act 2001*;
6 (c) proceedings under the *Adoption Act 1984*;
7 (d) proceedings under Part 1, 2, 3, 4 or 5 of the *Matrimonial Proceedings*
8 *Act 2003*; and
9 (e) proceedings under Chapter 2 or 3 of Part 2, or under Chapter 2 of
10 Part 3 of the *Civil Partnership Act 2011*;

11 **“home address”**, in relation to a person, means—

- 12 (a) the address of the person’s sole or main residence in the Island, or
13 (b) if the person has no such residence, the address or location of a
14 place in the Island where the person can regularly be found;

15 **“police officer”** means a person serving in the office of constable in the Isle of
16 Man Constabulary (and any reference to a sergeant or inspector is
17 accordingly to be construed as a reference to such a person holding the
18 relevant rank in the Constabulary);

19 **“relative”**, in relation to a person, means—

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

28 and includes, in relation to a person (“A”) who is cohabiting or has
29 cohabited with another person (“B”), any person who would fall within
30 paragraph (a) or (b) if A and B were (or had been) married to each other;

31 **“requirement”**, in relation to a domestic abuse protection order, is to be read in
32 accordance with section 21.

33 (2) See also—

- 34 (a) section 4 (definition of “domestic abuse”); and
35 (b) section 5 (definition of “personally connected”).

36 **4 Definition of “domestic abuse”**

37 HC Bill 2017-19/422/1

38 (1) This section defines what is meant by **“domestic abuse”** in this Act.

- 1 (2) Behaviour of a person (“A”) towards another person (“B”) is "domestic
2 abuse" if—
- 3 (a) A and B are each aged 16 or over and are personally connected to
4 each other, and
- 5 (b) the behaviour is abusive.
- 6 (3) Behaviour is “**abusive**” of B if it consists of any of the following —
- 7 (a) physical or sexual abuse;
- 8 (b) violent or threatening behaviour;
- 9 (c) controlling or coercive behaviour;
- 10 (d) economic abuse (see subsection (5));
- 11 (e) psychological, emotional or other abuse (see subsection (6));
- 12 and it does not matter whether the behaviour consists of a single incident
13 or a course of conduct.
- 14 (4) In subsection (3)(b) the reference to violent behaviour includes both
15 sexual and physical violence;
- 16 (5) “**Economic abuse**” means any behaviour that has a substantial adverse
17 effect on B's ability to—
- 18 (a) acquire, use or maintain money or other property, or
- 19 (b) obtain goods or services.
- 20 (6) The following are examples of abuse falling within subsection (3)(e)—
- 21 (a) making B dependent upon, or subordinate to, A;
- 22 (b) isolating B from friends, family members or other sources of social
23 interaction and support;
- 24 (c) controlling or regulating B’s day-to-day activities;
- 25 (d) depriving B of, or restricting B’s freedom of action;
- 26 (e) making B feel frightened, humiliated, degraded, punished or
27 intimidated.
- 28 (7) For the sake of clarity, behaviour can be abusive of B as a result of
29 subsection (3)(e) whether or not the behaviour actually causes B to
30 experience any of the relevant effects in subsection, (6) but this does not
31 prevent evidence from being adduced, in proceedings for an offence
32 under section 34 or 35, about any effects which B actually experienced.
- 33 (8) None of the paragraphs of subsection (3), (5) or (6)(as the case requires) is
34 to be taken to limit the meaning of any other paragraph of that
35 subsection.
- 36 (9) For the purposes of this Act —
- 37 (a) A’s behaviour may be behaviour “**towards**” B despite the fact that
38 it consists of behaviour directed at another person (for example,
39 B’s child); and

(b) references to A's being abusive towards another are to be read in the light of this section.

In paragraph (a) "child" means a person under the age of 18.

(10) For the meaning of "personally connected" see section 5.

5 Definition of "personally connected"

LC CP15/Draft Bill/2 and P1996/27/63 and drafting.

(1) For the purpose of this Act two people are "**personally connected**" to each other if any of the following applies—

(a) they are, or have been, married to each other;

(b) they are, or have been, civil partners of each other;

(c) they have agreed to marry one another (whether or not the agreement has been terminated);

(d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);

(e) they are, or have been, in an intimate personal relationship with each other;

(f) there is a child in relation to whom they each have a parental relationship (see subsection (2));

(g) they are relatives; or

(h) one has been fostered with the other (whether under the service established under section 24A of the *Children and Young Persons Act 2001* or under a private fostering arrangement within Part 7 of that Act).

(2) For subsection (1)(f) a person ("A") has a parental relationship in relation to a child if—

(a) A is a parent or guardian of the child, or

(b) A has, or has had, parental responsibility for the child, or would have had such responsibility had A been married to a person with whom A lived.

(3) In this section—

"child" means a person under the age of 18 years;

"civil partnership agreement" has the meaning given by section 71 of the *Civil Partnership Act 2011*;

"parental responsibility" has the same meaning as in the *Children and Young Persons Act 2001*.

(4) Section 6 makes further provision about proving that persons are personally connected to each other.

6 **Presumption that persons are personally connected**

S2018/5/7 and drafting

- (1) In proceedings for an offence under this Act, the matter of two persons being personally connected is to be taken as established by virtue of its being stated in the complaint or the information alleging the offence, unless the matter is challenged in accordance with subsection (2).
- (2) The matter must be challenged –
 - (a) before a plea is entered, or
 - (b) in the case of a matter to be tried on information, before an indication of plea is taken,unless the court in which the offence is tried grants permission for a later challenge.

PART 2 – DOMESTIC ABUSE

DIVISION 1 – DOMESTIC ABUSE PROTECTION NOTICES

7 **Power to give a domestic abuse prevention notice**

HC Bill 422/19

- (1) A police officer may give a domestic abuse protection notice to a person (“P”) if conditions A, B and (if appropriate) C are met.
- (2) A “**domestic abuse protection notice**” is a notice prohibiting P from being abusive towards a person aged 16 or over to whom P is personally connected.

Section 8 contains further details about the provision that may be made by such notices.
- (3) Condition A is that the police officer has reasonable grounds for believing that P has been abusive towards a person aged 16 or over to whom P is personally connected.
- (4) Condition B is that the police officer has reasonable grounds for believing that it is necessary to give the notice to protect that person from domestic abuse, or the risk of domestic abuse, carried out by P.
- (5) Condition C is that if the police officer is below the rank of sergeant, before giving the notice, the police officer must obtain the consent of a police officer of, or above, the rank of sergeant.
- (6) It does not matter whether the abusive behaviour referred to in subsection (3) took place in the Island or elsewhere.
- (7) A domestic abuse protection notice may not be given to a person who is under the age of 16.

Note: section 15(3) and section 16 make further provision about domestic abuse protection orders where a domestic abuse protection notice has been given.

8 Provision that may be made by notice

2017-19 HC Bill 422/20

- (1) A domestic abuse protection notice may provide that the person to whom the notice is given (“P”)—
- (a) may not contact the person for whose protection the notice is given;
 - (b) may not come within a specified distance of any premises in the Island in which that person lives.
- (2) If P lives in premises in the Island and the person for whose protection the notice is given also lives in those premises, the notice may also contain provision—
- (a) prohibiting P from evicting or excluding that person from the premises;
 - (b) prohibiting P from entering the premises;
 - (c) requiring P to leave the premises;
 - (d) prohibiting P from taking any step or any specified step which would prevent the person for whose protection the notice is given from occupying the premises (for example, by P surrendering the tenancy of the premises).
- (3) In this section “specified” means specified in the notice.

9 Matters to be considered before giving a notice

2017-19 HC Bill 422/21

- (1) Before giving a domestic abuse protection notice to a person (“P”), a police officer must, among other things, consider the following—
- (a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the giving of the notice (whether or not that person is a person to whom P is personally connected);
 - (b) the opinion of the person for whose protection the notice would be given about the giving of the notice;
 - (c) any representations made by P about the giving of the notice;
 - (d) in a case where the notice includes provision relating to premises lived in by P and the person for whose protection the notice would be given, the opinion of any relevant occupant about the giving of the notice.
- (2) In subsection (1)(d) “relevant occupant” means a person other than P or the person for whose protection the notice would be given—

- 1 (a) who lives in the premises; and
- 2 (b) who is personally connected to —
- 3 (i) the person for whose protection the notice would be given;
- 4 or
- 5 (ii) if P also lives in the premises, P.
- 6 (3) The officer must take reasonable steps to discover the opinions
- 7 mentioned in subsection (1).
- 8 (4) It is not necessary for the person for whose protection a domestic abuse
- 9 protection notice is given to consent to the giving of the notice.

10 Further requirements in relation to notices

HC Bill 2017-19/422/22(1) to (4)

- 12 (1) A domestic abuse protection notice must be given in writing.
- 13 (2) A domestic abuse protection notice given to a person (“P”) must state—
- 14 (a) the grounds on which it has been given,
- 15 (b) that a police officer may arrest P without warrant if the police
- 16 officer has reasonable grounds for believing that P is in breach of
- 17 the notice,
- 18 (c) that an application under section 15 for a domestic abuse
- 19 protection order will be heard by a court of summary jurisdiction
- 20 within 14 days of the day on which the domestic abuse protection
- 21 notice is given, and that a notice of the hearing will be given to P,
- 22 (d) that the notice continues in effect until that application has been
- 23 determined or withdrawn, and
- 24 (e) the provision that a court of summary jurisdiction may include in
- 25 a domestic abuse protection order.
- 26 (3) The notice must be served on P personally by a police officer.
- 27 (4) On serving the notice on P, the police officer must ask P for an address at
- 28 which P may be given the notice of the hearing of the application for the
- 29 domestic abuse protection order.

11 Duration of notice

Drafting

A domestic abuse protection notice remains in operation until the earliest of the following to occur—

- 34 (a) a police officer notifies a court of summary jurisdiction that the
- 35 application for a domestic abuse protection order is no longer
- 36 being sought;
- 37 (b) a court of summary jurisdiction makes a domestic abuse
- 38 protection order on the application (see section 16);

- 1 (c) a court of summary jurisdiction dismisses the application for such
2 an order; or
- 3 (d) unless a court of summary jurisdiction has adjourned an
4 application for a domestic abuse protection order, a period of 14
5 days has elapsed since the service of the notice.

6 **12 Breach of notice**

7 HC Bill 2017-19/422/23(1), (2) (4) and (6) and drafting (the Note)

- 8 (1) A person commits an offence if the person—
- 9 (a) does anything which a domestic abuse protection notice prohibits
10 the person from doing; or
- 11 (b) omits to do anything which the person is required to do under
12 such a notice.

13 This subsection is subject to any other provision of this Act making more
14 specific provision for conduct in relation a domestic abuse protection
15 notice to be an offence.

16 *Maximum penalty (summary) 12 months' custody, a level 5 fine or both.*

- 17 (2) Without prejudice to subsection (1), if a police officer has reasonable
18 grounds for believing that a person is in breach of a domestic abuse
19 protection notice, the police officer may arrest the person without
20 warrant.
- 21 (3) A person arrested by virtue of subsection (2) must be held in custody and
22 brought before a court of summary jurisdiction—
- 23 (a) before the end of the period of 24 hours beginning with the time
24 of the arrest, or
- 25 (b) if earlier, at the hearing of the application for a domestic abuse
26 protection order against the person (see section 15(3)).
- 27 (4) If the person is brought before the court as mentioned in subsection
28 (3)(a), the court may remand the person.

29 For power to remand a person brought before the court as mentioned in
30 subsection (3)(b), see section 16(8).

31 *Note: under section 49 of the Interpretation Act 2015 non-working days are*
32 *to be disregarded in computing a period of time of 6 days or less.*

33 **13 Remand of person arrested for breach of notice**

34 LC CP15/Draft Bill/23 (and see also clause 27 ibid)

- 35 (1) This section applies where under section 12(4) a court of summary
36 jurisdiction remands a person who has been given a domestic abuse
37 protection notice.

- 1 (2) In the application of section 84(4) of the *Summary Jurisdiction Act 1989* to
 2 such a remand, the reference to the “other party” is to be read as a
 3 reference to the police officer who gave the notice.
- 4 (3) If the court has reason to suspect that a medical report will be required,
 5 the power to remand a person may be exercised for the purpose of
 6 enabling a medical examination to take place and a report to be made.
- 7 (4) If the person is remanded in custody for that purpose, the adjournment
 8 may not be for more than 3 weeks at a time.
- 9 (5) If the person is remanded on bail for that purpose, the adjournment may
 10 not be for more than 4 weeks at a time.
- 11 (6) If the court has reason to suspect that the person is suffering from mental
 12 disorder within the meaning of the *Mental Health Act 1998*, the court has
 13 the same power to make an order under section 23 of the *Summary
 14 Jurisdiction Act 1989* (remand to hospital for medical reports) as it has
 15 under that section in the case of a person charged with an offence
 16 punishable with imprisonment.
- 17 (7) The court may, when remanding the person on bail, require the person to
 18 comply, before release on bail or later, with any requirements that appear
 19 to the court to be necessary to secure that the person does not interfere
 20 with witnesses or otherwise obstruct the course of justice.

21 DIVISION 2 – DOMESTIC ABUSE PROTECTION ORDERS

22 14 Meaning of “domestic abuse protection order”

23 HC Bill 2017-19/422/24

- 24 (1) In this Part a “**domestic abuse protection order**” means an order which,
 25 for the purpose of preventing a person (“P”) from being abusive towards
 26 a person aged 16 or over to whom P is personally connected –
- 27 (a) prohibits P from doing things described in the order, or
 28 (b) requires P to do things described in the order.
- 29 (2) A domestic abuse protection order may be made –
- 30 (a) on application (see section 15), or
 31 (b) in the course of certain proceedings (see section 17).
- 32 (3) Section 18 sets out the conditions for making a domestic abuse protection
 33 order.

34 15 Domestic abuse protection orders on application

35 HC Bill 2017-19/422/25 and drafting

- 36 (1) A court may make a domestic abuse protection order under this section
 37 against a person (“P”) on an application made to it in accordance with
 38 this section, if section 18 is satisfied.

- (2) An application for an order under this section may be made by—
- (a) the person for whose protection the order is sought;
 - (b) a police officer of or above the rank of inspector (but subject to subsection (3));
 - (c) a person specified in regulations made by the Department; or
 - (d) any other person with the leave of the court to which the application is to be made.

Tynwald procedure for regulations under paragraph (c) – approval required,

- (3) Where P is given a domestic abuse protection notice under section 7, a police officer must apply for a domestic abuse protection order against P.

But an application under this subsection may be made only if it has been authorised in writing by a police officer of, or above, the rank of inspector.

For further provision about such applications, see section 16.

- (4) An application for an order under this section must be made by complaint to a court of summary jurisdiction, unless subsection (5) applies.

- (5) In a case where—

- (a) P, and the person for whose protection the order is sought, are parties to any family or civil proceedings, and
- (b) the court would have power to make a domestic abuse protection order under section 17 in those proceedings without an application being made,

an application for an order under this section may be made in those proceedings by the person for whose protection the order is sought.

- (6) Where an application is made to a court of summary jurisdiction in accordance with this section—

- (a) the court may adjourn the hearing of the application;
- (b) on the hearing of the application, section 59 of the *Summary Jurisdiction Act 1989* (summons to witness and warrant for arrest) does not apply in relation to the person for whose protection the order is sought, unless the person has given oral or written evidence in the course of the proceedings.

16 Applications where domestic abuse protection notice has been given

HC Bill 2017-19/422/26 and drafting (time limits)

- (1) This section applies where, as a result of a person (“P”) being given a domestic abuse protection notice under section 7, a police officer is

- 1 required by section 15(3) to apply for a domestic abuse protection order
2 against P.
- 3 (2) The application must be heard by a court of summary jurisdiction within
4 14 days of the notice being given to P.
- 5 (3) P must be given a notice of the hearing of the application.
- 6 (4) The notice under subsection (3) is to be treated as having been given if it
7 has been left at the address given by P under section 10(4).
- 8 (5) But if the notice has not been given because P did not give an address
9 under section 10(4), the court may hear the application if satisfied that a
10 police officer has made reasonable efforts to give P the notice.
- 11 (6) If the court adjourns the hearing of the application—
- 12 (a) subject to paragraph (b), the notice continues in effect until the
13 application has been determined or withdrawn; but
- 14 (b) the court may vary the terms of prohibitions and restrictions
15 contained in the notice and if it does so, from that time the notice
16 as varied is to be treated as substituted for the original notice.
- 17 (7) If the court exercises the powers in subsection (6)(b) it must cause a
18 document containing the terms of the notice as varied to be served on P
19 in the same way as the original notice.
- 20 (8) If—
- 21 (a) P is brought before the court at the hearing of the application as a
22 result of P’s arrest by virtue of section 12(1) (arrest for breach of
23 domestic abuse protection notice), and
- 24 (b) the court adjourns the hearing,
25 the court may remand P.
- 26 (9) Section 13 applies in relation to a remand under subsection (8) as it
27 applies in relation to a remand under section 12(4), but as if the reference
28 in section 13(2) to the police officer who gave the notice were a reference
29 to the police officer who applied for the order.

30 **17 Domestic abuse protection orders otherwise than on application**

31 HC Bill/ 2017-19/422/28 (omitting subsection (4))

- 32 (1) A court may make a domestic abuse protection order under this section
33 in any of the cases set out below if section 18 is satisfied.
- 34 (2) The High Court or a court of summary jurisdiction may make a domestic
35 abuse protection order against a person (“P”) in any family proceedings
36 to which both P and the person for whose protection the order would be
37 made are parties.

- 1 (3) Where a person (“P”) has been convicted of an offence, the court dealing
2 with P for that offence may (as well as sentencing P or dealing with P in
3 any other way) make a domestic abuse protection order against P.
- 4 (4) A court by or before which a person is acquitted of an offence may make
5 a domestic abuse protection order against the person.
- 6 (5) Where the Staff of Government Division allows a person’s appeal against
7 conviction, it may make a domestic abuse protection order against the
8 person.
- 9 (6) The High Court may make a domestic abuse protection order against a
10 person (“P”) in any relevant proceedings to which both P and the person
11 for whose protection the order would be made are parties.
- 12 (7) But a court may make a domestic abuse protection order under this
13 section only if satisfied that it is in the interests of justice to do so.
- 14 (8) In subsection (6) “relevant proceedings” means proceedings of a
15 description specified in an order made by the Department after
16 consulting the Deemsters.
- 17 Tynwald procedure for an order under this subsection – approval
18 required.

19 **18 Conditions for making an order**

20 HC Bill 2017-19/422/29

- 21 (1) The court may make a domestic abuse protection order under section 15
22 or 17 against a person (“P”) if conditions A and B are met.
- 23 (2) Condition A is that the court is satisfied that P has been abusive towards
24 a person aged 16 or over to whom P is personally connected.
- 25 (3) Condition B is that the order is necessary and proportionate to protect
26 that person from domestic abuse, or the risk of domestic abuse, carried
27 out by P.
- 28 (4) It does not matter –
29 (a) whether the abusive behaviour referred to in subsection (2) took
30 place in the Island or elsewhere, or
31 (b) whether it took place before or after the coming into force of this
32 section.
- 33 (5) A domestic abuse protection order may not be made against a person
34 who is under the age of 16.

35 **19 Matters to be considered before making an order**

36 HC Bill 2017-19/422/30

- 37 (1) Before making a domestic abuse protection order against a person (“P”),
38 the court must, among other things, consider the following –

- 1 (a) the welfare of any person under the age of 18 whose interests the
2 court considers relevant to the making of the order (whether or
3 not that person is a person to whom P is personally connected);
- 4 (b) any opinion of the person for whose protection the order would
5 be made—
6 (i) which relates to the making of the order, and
7 (ii) of which the court is made aware;
- 8 (c) in a case where the order includes provision relating to premises
9 lived in by the person for whose protection the order would be
10 made, any opinion of a relevant occupant of which the court is
11 made aware.
- 12 (2) In subsection (1)(c) “relevant occupant” means a person other than P or
13 the person for whose protection the order is made—
14 (a) who lives in the premises; and
15 (b) who is personally connected to —
16 (i) the person for whose protection the order would be made;
17 or
18 (ii) if P also lives in the premises, P.
- 19 (3) It is not necessary for the person for whose protection a domestic abuse
20 protection order is made to consent to the making of the order.

21 **20 Making of orders without notice**

22 HC 2017-19/Bill 422/31

- 23 (1) A court may, in any case where it is just and convenient to do so, make a
24 domestic abuse protection order against a person (“P”) even though P
25 has not been given such notice of the proceedings as would otherwise be
26 required by rules of court.
- 27 (2) Subsection (1) does not apply in relation to the making of an order under
28 section 15 on an application made in accordance with subsection (3) of
29 that section (see instead section 16(3) to (5)).
- 30 (3) In deciding whether to exercise its powers under subsection (1), the court
31 must have regard to all the circumstances, including—
32 (a) any risk that, if the order is not made immediately, P will cause
33 significant harm to the person for whose protection the order
34 would be made,
35 (b) in a case where an application for the order has been made,
36 whether it is likely that the person making the application will be
37 deterred or prevented from pursuing the application if an order is
38 not made immediately, and
39 (c) whether there is reason to believe that—

(i) P is aware of the proceedings but is deliberately evading service, and

(ii) the delay involved in effecting substituted service will cause serious prejudice to the person for whose protection the order would be made.

(4) If a court makes an order against a person by virtue of subsection (1), it must give the person an opportunity to make representations about the order—

(a) as soon as just and convenient, and

(b) at a hearing of which notice has been given to all the parties in accordance with rules of court.

21 Provision that may be made by orders

HC Bill 2017-19/422/32

(1) A court may by a domestic abuse protection order impose any requirements that the court considers necessary to protect the person for whose protection the order is made from domestic abuse or the risk of domestic abuse.

Here “**requirement**” includes any prohibition or restriction.

(2) The court must, in particular, consider what requirements (if any) may be necessary to protect the person for whose protection the order is made from different kinds of abusive behaviour.

(3) Subsections (4) to (6) contain examples of the type of provision that may be made under subsection (1), but they do not limit the type of provision that may be so made.

(4) A domestic abuse protection order may provide that the person against whom a domestic abuse protection order is made (“P”) —

(a) may not contact the person for whose protection it is made;

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

Here “**specified**” means specified in the order.

(5) If P lives in premises where the person for whose protection the order is made also lives, the order may contain provision—

(a) prohibiting P from evicting or excluding that person from the premises;

(b) prohibiting P from entering the premises;

(c) requiring P to leave the premises.

(6) A domestic abuse protection order may require P to submit to electronic monitoring of P’s compliance with other requirements imposed by the order.

1 In this Part a requirement imposed by virtue of this subsection is referred
2 to as an “**electronic monitoring requirement**”.

3 (7) Sections 22 and 23 contain further provision about the requirements that
4 may be imposed by a domestic abuse protection order.

5 **22 Further provision about requirements that may be imposed by orders**

6 LC CP15/Draft Bill/32

7 (1) Requirements imposed on a person by a domestic abuse protection order
8 must, so far as practicable, be such as to avoid—

9 (a) conflict with the person’s religious beliefs;

10 (b) interference with any times at which the person normally works
11 or attends an educational establishment;

12 (c) conflict with the requirements of any other court order or
13 injunction to which the person may be subject.

14 (2) A domestic abuse protection order that imposes a requirement to do
15 something on a person (“P”) must specify the person who is to be
16 responsible for supervising compliance with that requirement.

17 (3) Before including such a requirement in a domestic abuse protection
18 order, the court must receive evidence about its suitability and
19 enforceability from the person to be specified under subsection (2).

20 (4) Subsections (2) and (3) do not apply in relation to electronic monitoring
21 requirements (see instead section 23(3) and (4)).

22 (5) It is the duty of a person specified under subsection (2)—

23 (a) to make any necessary arrangements in connection with the
24 requirements for which the person has responsibility (the
25 “relevant requirements”);

26 (b) to promote P’s compliance with the relevant requirements;

27 (c) if the person considers that—

28 (i) P has complied with all the relevant requirements, or

29 (ii) P has failed to comply with a relevant requirement,

30 to inform the designated police officer, and in a case within
31 subparagraph (ii) to inform the police officer of any explanation
32 offered by P for the failure.

33 In paragraph (c) the “designated police officer” means a police officer
34 designated in the domestic abuse protection order.

35 (6) A person (“P”) who is subject to a requirement imposed by a domestic
36 abuse protection order—

37 (a) must keep in touch with the person specified under subsection (2)
38 in relation to that requirement, in accordance with any
39 instructions given by that person from time to time,

(b) if P changes home address, must notify the person specified under subsection (2) of the new home address; and

(c) if P ceases to have any home address, must notify the person specified under subsection (2) of that fact.

These obligations have effect as requirements of the order.

23 Further provision about electronic monitoring requirements

HC Bill 2017-19/422/34 (omitting subsections (4) and (5))

(1) Subsections (2) and (3) apply for the purpose of determining whether a court may impose an electronic monitoring requirement on a person (“P”) in a domestic abuse protection order.

(2) The requirement may not be imposed in P’s absence.

(3) If there is a person (other than P) without whose co-operation it would be impracticable to secure the monitoring in question, the requirement may not be imposed without that person’s consent.

(4) A domestic abuse protection order that includes an electronic monitoring requirement must specify the person who is to be responsible for the monitoring.

(5) The person specified under subsection (4) (“the responsible person”) must be of a description specified in regulations made by the Department.

Tynwald procedure – approval required.

(6) Where a domestic abuse protection order imposes an electronic monitoring requirement on a person, the person must (among other things)–

(a) submit, as required from time to time by the responsible person, to–

(i) being fitted with, or the installation of, any necessary apparatus, and

(ii) the inspection or repair of any apparatus fitted or installed for the purposes of the monitoring,

(b) not interfere with, or with the working of, any apparatus fitted or installed for the purposes of the monitoring, and

(c) take any steps required by the responsible person for the purpose of keeping in working order any apparatus fitted or installed for the purposes of the monitoring.

These obligations have effect as requirements of the order.

24 Duration and geographical application of orders

HC Draft Bill 2017-19/422/35

- (1) A domestic abuse protection order takes effect on the day on which it is made.

This is subject to subsection (2).

- (2) If, on the day on which a domestic abuse protection order (“the new order”) is made against a person, the person is subject to another domestic abuse protection order (“the previous order”), the new order may be made so as to take effect on the day on which the previous order ceases to have effect.

- (3) A domestic abuse protection order has effect—

- (a) for a specified period,
- (b) until the occurrence of a specified event, or
- (c) until further order.

Here “specified” means specified in the order.

- (4) A domestic abuse protection order may also specify periods for which particular requirements imposed by the order have effect.

- (5) But a domestic abuse protection order may not provide for an electronic monitoring requirement to have effect for more than 12 months.

- (6) Subsection (5) is subject to any variation of the order under section 31.

- (7) A requirement imposed by a domestic abuse protection order has effect throughout the Island unless expressly limited to a particular locality.

25 Breach of order

HC Bill 2017-19/422/36

- (1) A person who is subject to a domestic abuse protection order commits an offence if, without reasonable excuse, the person fails to comply with any requirement imposed by the order.

Maximum penalty —

- (a) (on information) 7 years’ custody;
- (b) (summary) 12 months’ custody or a level 5 fine or both.

- (2) In a case where the order was made against the person without that person being given notice of the proceedings, the person commits an offence under this section only in respect of conduct engaged in at a time when the person was aware of the existence of the order.

See also section 32(7), which makes similar provision where an order has been varied.

- (3) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.

- 1 (4) A person may not be convicted of an offence under this section in respect
2 of any conduct which has been punished as a contempt of court.
- 3 (5) If a person is convicted of an offence under this section, it is not open to
4 the court by or before which the person is convicted to make, in respect
5 of the offence, an order for conditional discharge.
- 6 (6) In proceedings for an offence under this section, a copy of the original
7 domestic abuse protection order, certified by the proper officer of the
8 court that made it, is admissible as evidence of its having been made and
9 of its contents to the same extent that oral evidence of those matters is
10 admissible in those proceedings.

11 26 Arrest for breach of order

12 HC Bill 2017-19/422/37 (adapted)

- 13 (1) This section applies where the High Court has made a domestic abuse
14 protection order against a person (“P”).
- 15 (2) A person mentioned in subsection (3) may apply to a judge of the High
16 Court for the issue of a warrant for P’s arrest if the person considers that
17 P has failed to comply with the order or is otherwise in contempt of court
18 in relation to the order.
- 19 (3) The persons referred to in subsection (2) are—
- 20 (a) the person for whose protection the order was made;
- 21 (b) where the order was made under section 15, the person who
22 applied for the order (if different);
- 23 (c) any other person with the leave of a judge of the High Court.
- 24 (4) A judge of the High Court may issue a warrant on an application under
25 subsection (2) only if—
- 26 (a) the application is substantiated on oath, and
- 27 (b) the judge has reasonable grounds for believing that P has failed to
28 comply with the order or is otherwise in contempt of court in
29 relation to the order.
- 30 (5) If—
- 31 (a) P is brought before the High Court as a result of a warrant issued
32 under this section, and
- 33 (b) the court does not immediately dispose of the matter,
34 it may remand P in custody or on bail.
- 35 (6) The Schedule contains further provision about remand under this
36 section.
- 37 (7) For the power of a police officer to arrest P without warrant for breach of
38 a domestic abuse protection order, see section 27 of the *Police Powers and*
39 *Procedures Act 1998*.

27 Notification requirements

HC Bill 2017-19/422/37

- (1) Subsections (2) to (6) apply where a person is subject to a domestic abuse protection order.
- (2) The person must, within the period of 3 days beginning with the day on which the order is made, notify the police of the information in subsection (3).
- (3) The information referred to in subsection (2) is—
 - (a) the person's name and, if the person uses one or more other names, each of those names;
 - (b) the person's home address.
- (4) If the person uses a name which has not been notified under this section, the person must, within the period of three days beginning with the day on which the person first uses that name, notify a police officer of that name.
- (5) If the person changes home address, the person must, before the end of the period of three days beginning with the day on which that happens, notify a police officer of the new home address.
- (6) If the person ceases to have any home address, the person must, before the end of the period of three days beginning with the day on which that happens, notify a police officer of that fact.
- (7) The Department may by regulations specify further notification requirements which a court may impose when making or varying a domestic abuse protection order.
- (8) In this subsection a "notification requirement" is a requirement for the person against whom the order is made to provide specified information to the police.
- (9) The requirements imposed by subsections (2), (4) and (5) do not apply where the person is subject to notification requirements under section 11 of the *Sex Offenders Act 2006*.
- (10) If on any day the person ceases to be subject to any notification requirements mentioned in subsection (8), the requirements imposed by subsections (2), (4) and (5) apply to the person on and after that day, but as if the reference in subsection (2) to the day on which the order was made were a reference to that day.
- (11) For provision about how to give a notification under subsection (2), (4) or (5), see section 29.

28 Notification requirements: travel outside the Island

P2003/42/86

- (1) The Department may by regulations make provision requiring a person subject to a domestic abuse protection order who leaves the Island, or any description of such person—
- (a) to give in accordance with the regulations, before he or she leaves, a notification under subsection (2);
 - (b) if he or she subsequently return to the Island, to give in accordance with the regulations a notification under subsection (3).
- (2) A notification under this subsection must disclose —
- (a) the date on which the person will leave the Island;
 - (b) the country (or, if there is more than one, the first country) to which he or she will travel and his or her point of arrival (determined in accordance with the regulations) in that country;
 - (c) any other information prescribed by the regulations which the offender holds about his or her departure from or return to the Island or his or her movements while outside the Island.
- (3) A notification under this subsection must disclose any information prescribed by the regulations about the person’s return to the Island.
- (4) In this section “country” includes “territory”.
- Tynwald procedure for regulations under this section — affirmative.

29 Further provision about notification under section 27 or 28

LC CP15/Draft Bill/38

- (1) A person gives a notification under section 27(2), (4) or (5) or 28(2) or (3) by—
- (a) attending at Police Headquarters, and
 - (b) giving an oral or written notification to a police officer, or any person authorised for the purpose by the officer in charge of the station.
- (2) A notification given in accordance with this section must be acknowledged—
- (a) in writing, and
 - (b) in such form as the Department may direct.
- (3) When a person (“P”) gives a notification under section 27 or 28, P must, if requested to do so by the person to whom notification is given, allow that person to do any of the following things—
- (a) take P’s fingerprints;
 - (b) photograph, or otherwise produce an image of, P or any part of P.

- 1 (4) The power in subsection (3) is exercisable for the purpose of verifying P's
2 identity.

3 **30 Offences relating to notification**

4 LC CP15/Draft Bill/39

- 5 (1) A person ("P") commits an offence if P—
6 (a) fails, without reasonable excuse, to comply with a requirement
7 imposed by or under section 27 or 28, or
8 (b) notifies a police officer, in purported compliance with such a
9 requirement, of any information which P knows to be false.
- 10 (2) A person who fails, without reasonable excuse, to comply with section
11 29(3) commits an offence.
- 12 Maximum penalty for an offence under this section—
13 (a) (summary) 12 months' custody or a level 5 fine or both;
14 (b) (on information) 5 years' custody.

15 **31 Variation and discharge of orders**

16 LC CP15/Draft Bill/40

- 17 (1) A court may vary or discharge a domestic abuse protection order made
18 by that or any other court.
19 This is subject to section 32.
- 20 (2) A court may vary or discharge an order under this section—
21 (a) on the application of a person mentioned in subsection (3), or
22 (b) in any case in which it could make a domestic abuse protection
23 order under section 17.
- 24 (3) The persons referred to in subsection (2)(a) are—
25 (a) the person for whose protection the order was made;
26 (b) the person against whom the order was made ("P");
27 (c) where the order was made under section 16 (domestic abuse
28 protection order on notice) the person who applied for the order;
29 (d) a police officer of, or above, the rank of inspector.
- 30 (4) Before deciding whether to vary or discharge an order under this section,
31 the court must hear from—
32 (a) a police officer of, or above, the rank of inspector who wishes to
33 be heard,
34 (b) if P is present or represented by an advocate and P or P's advocate
35 (as the case requires) wishes to be heard, P or P's advocate, and
36 (c) in a case where the person for whose protection the order was
37 made is seeking to discharge the order, or to remove or make less

1 onerous any requirement imposed by the order, the person for
2 whose protection it was made.

3 (5) Section 19 (matters to be considered before making an order) applies in
4 relation to the variation or discharge of a domestic abuse protection
5 order as it applies in relation to the making of such an order, but as if
6 references to the person for whose protection the order would be made
7 were references to the person for whose protection the order was made.

8 (6) Section 20 (making of orders without notice) applies in relation to the
9 variation of a domestic abuse protection order as it applies in relation to
10 the making of such an order, but as if—

11 (a) references to the person for whose protection the order would be
12 made were references to the person for whose protection the
13 order was made,

14 (b) subsection (2) were omitted, and

15 (c) the reference in subsection (4) to making representations about
16 the order were a reference to making representations about the
17 variation.

18 (7) The court may make any order varying or discharging a domestic abuse
19 protection order that it considers appropriate.

20 This is subject to subsections (8) to (12).

21 (8) The court may include an additional requirement in the order, or extend
22 the period for which the order, or a requirement imposed by the order,
23 has effect, only if it is satisfied that it is necessary to do so in order to
24 protect the person for whose protection the order was made from
25 domestic abuse, or the risk of domestic abuse, carried out by P.

26 (9) The court may not extend the period for which an electronic monitoring
27 requirement has effect by more than 12 months at a time.

28 (10) The court may remove any requirement imposed by the order, or make
29 such a requirement less onerous, only if satisfied that the requirement as
30 imposed is no longer necessary to protect the person for whose
31 protection the order was made from domestic abuse, or the risk of
32 domestic abuse, carried out by P.

33 (11) If it appears to the court that any conditions necessary for a requirement
34 to be imposed are no longer met, the court—

35 (a) may not extend the requirement, and

36 (b) must remove the requirement.

37 (12) The court may discharge the order only if satisfied that the order is no
38 longer necessary to protect the person for whose protection the order
39 was made from domestic abuse, or the risk of domestic abuse, carried out
40 by P.

32 Variation and discharge: supplementary

LC CP15/Draft Bill/41

(1) Any application to vary or discharge a domestic abuse protection order under section 31 must be made to the court that made the order.

This is subject to subsection (2).

(2) Where—

(a) the order was made under section 17 on an appeal in relation to a person's conviction or sentence for an offence, or

(b) the order was made by a court under that section against a person committed or remitted to that court for sentencing for an offence,

any application to vary or discharge the order must be made to the court by or before which the person was convicted (but see subsection (3)).

(3) Where the person mentioned in subsection (2)(b)—

(a) was convicted by a juvenile court;

(b) is aged 18 or over at the time of the application,

the reference in subsection (2) to the court by or before which the person was convicted is to be read as a reference to a court of summary jurisdiction.

(4) Except as provided for by subsection (3), a domestic abuse protection order made by the Court of General Gaol Delivery may only be varied or discharged by that court.

(5) A domestic abuse protection order made by the High Court may only be varied or discharged by that court.

(6) An order that has been varied under section 31 remains an order of the court that first made it for the purposes of any further application under that section.

(7) In a case where—

(a) an order made against a person is varied under section 31 so as to include an additional requirement, or to extend the period for which the order, or a requirement imposed by the order, has effect, and

(b) the person was not given notice of the proceedings,

the person commits an offence under section 25 only in respect of conduct engaged in at a time when the person was aware of the making of the variation.

33 Appeals

LC CP15/Draft Bill/42

(1) A person against whom a domestic abuse protection order is made may appeal against the making of the order.

- 1 (2) An appeal may be brought against the decision of a court not to make a
2 domestic abuse protection order under section 15—
- 3 (a) by the person who applied for the order, or
4 (b) if different, by the person for whose protection the order was
5 sought.
- 6 (3) An appeal may be brought against any decision of a court under section
7 31 in relation to a domestic abuse protection order.
- 8 (4) An appeal under subsection (3) may be brought by any of the
9 following—
- 10 (a) the person for whose protection the order was made;
11 (b) the person against whom the order was made (“P”);
12 (c) where the order was made under section 15, the person who
13 applied for the order;
14 (d) a police officer of, or above, the rank of inspector.
- 15 (5) An appeal under any of subsections (1) to (3) lies to the Staff of
16 Government Division.
- 17 (6) Before determining an appeal made in accordance with this section, the
18 relevant court must hear from any police officer of, or above, the rank of
19 inspector who wishes to be heard.
- 20 (7) An appeal brought in accordance with this section is to be determined
21 applying the same principles as would be applied in determining a
22 petition of dolence.
- 23 (8) In determining an appeal under this section, the Staff of Government
24 Division must either—
- 25 (a) dismiss the appeal, or
26 (b) quash the whole or part of the decision to which the appeal
27 relates.
- 28 (9) If the Staff of Government Division quashes the whole or part of a
29 decision made by a court, it may refer the matter back to that court with
30 a direction to reconsider and make a new decision in accordance with its
31 ruling.
- 32 (10) A person may not exercise any other right of appeal which would, apart
33 from this section, be exercisable in relation to a decision referred to in
34 subsection (1), (2) or (3).

(c) section 38 (alternative offence)

Maximum penalty for an offence under this section—

(a) *(on information) 14 years' custody;*

(b) *(summary) 12 months' custody, a level 5 fine or both.*

35 The controlling or coercive behaviour offence

[P2015/9/76 and drafting]

(1) A person (A) commits an offence (“**the controlling or coercive behaviour offence**”) if—

(a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,

(b) at the time of the behaviour, A and B are personally connected,

(c) the behaviour has a serious effect on B, and

(d) A knows or ought to know that the behaviour will have a serious effect on B.

(2) A's behaviour has a “serious effect” on B if—

(a) it causes B to fear, on at least two occasions, that violence will be used against B, or

(b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities.

(3) For the purposes of subsection (1)(d) A “ought to know” that which a reasonable person in possession of the same information would know.

(4) In proceedings for the controlling and coercive behaviour offence it is a defence for A to show that—

(a) in engaging in the behaviour in question, A believed that he or she was acting in B's best interests, and

(b) the behaviour was in all the circumstances reasonable.

(5) A is to be taken to have shown the facts mentioned in subsection (4) if—

(a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and

(b) the contrary is not proved beyond reasonable doubt.

(6) The defence in subsection (4) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

Maximum penalty—

(on information) – 14 years or a fine;

(summary) - 12 months' custody or a level 5 fine or both.

DIVISION 2 — PROCEDURAL PROVISIONS

36 Behaviour occurring outside the Island

HC Bill 2017-19/422/61 and drafting

- (1) A commits the domestic abuse offence or the controlling or coercive behaviour offence (as the case requires) if—
- (a) A's behaviour consists of or includes behaviour occurring in a country outside the Island,
 - (b) the behaviour would constitute the domestic abuse offence or the controlling or coercive behaviour offence if it occurred in the Island, and
 - (c) A is —
 - (i) a United Kingdom national who is present in the Island; or
 - (ii) habitually resident in the Island
- (2) If the behaviour occurs wholly outside the Island and paragraphs (b) and (c) of subsection (1) are satisfied—
- (a) proceedings for the relevant offence may be taken in the Island, and
 - (b) the offence may for incidental purposes be treated as having been committed in the Island.
- (3) In this section—
- “country” includes territory;
- “UK national” means someone who, in the terms of the British Nationality Act 1981 (of Parliament), is—
- (a) a British citizen,
 - (b) a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, or
 - (c) a British subject or a British protected person.

37 Exception for persons having responsibility for children

HC Bill 2017-19/422/62 and drafting

A does not commit the domestic abuse offence or the controlling or coercive behaviour offence if at the time of the behaviour in question—

- (a) A has responsibility for B, for the purposes of Part 1 of the *Children and Young Persons Act 1966* (see section 14 of that Act); and
- (b) B is under 16.

38 Conviction of alternative offence

HC Bill 2017-19/422/64 and drafting.

In proceedings for the domestic abuse offence or the controlling or coercive behaviour offence, A may be convicted of an alternative offence if the facts proved against A—

- (a) do not amount to the offence with which A is charged, but
- (b) do amount to an offence under—
 - (i) section 56(1)(b) of the *Petty Sessions and Summary Jurisdiction Act 1927* (using provoking language or behaviour tending to a breach of the peace);
 - (ii) section 2 of the *Protection from Harassment Act 2000* (offence of harassment); or
 - (iii) section 4 of that Act (putting people in fear of violence).

DIVISION 3 — AGGRAVATION**39 Aggravation of offence where victim is under 18**

(1) A charge of the domestic abuse offence or the controlling or coercive behaviour offence against A may include an allegation that the offence is aggravated by reason of B having been under the age of 18 at the time of any of the behaviour constituting the offence.

(2) Subsection (3) applies where—

- (a) A is charged as mentioned in subsection (1), and
- (b) the charge is proved.

(3) The court must—

- (a) state on conviction that the offence is aggravated by reason of B having been under the age of 18 as mentioned in subsection (1),
- (b) record the conviction in a way that shows that the offence is so aggravated,
- (c) in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence, and
- (d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.

(4) If the charge—

- (a) is not proved as respects the allegation of aggravation, but
- (b) is otherwise proved,

A may be convicted of the charge omitting the allegation of aggravation.

40 Aggravation of offence where child is otherwise involved

- (1) A charge of the domestic abuse offence or the controlling or coercive behaviour offence against A may include an allegation that the offence is aggravated by reason of involving a relevant child.
- (2) For the purposes of this section, “relevant child” means a person under the age of 18 who is neither A nor B.
- (3) For the purposes of this section, the domestic abuse offence is aggravated by reason of involving a relevant child if—
- (a) at any time in the commission of the offence—
 - (i) A directed behaviour at the child, or
 - (ii) A made use of the child in directing behaviour at B, or
 - (b) the child saw or heard, or was present during, an incident of behaviour which A directed at B as part of the course of behaviour.
- (4) Behaviour is “directed at” a person if it is directed at a person in any way including (for example)—
- (a) by way of conduct relating to the person's ability to acquire, use or maintain money or other property or to obtain goods or services,
 - (b) by way of other conduct towards property, or
 - (c) by making use of a third party,
- as well as in a personal or direct manner.
- (5) Subsection (6) applies where—
- (a) A is charged as mentioned in subsection (1), and
 - (b) the charge is proved.
- (6) The court must—
- (a) state on conviction that the offence is aggravated by reason of involving a relevant child,
 - (b) record the conviction in a way that shows that the offence is so aggravated,
 - (c) in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence, and
 - (d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.
- (7) If the charge—
- (a) is not proved as respects the allegation of aggravation, but
 - (b) is otherwise proved,
- A may be convicted of the charge without the allegation of aggravation.

1 **41 Power to amend Division**

- 2 (1) The Department may by order amend this Division to add, vary or
3 remove provisions about the factors which constitute aggravation of the
4 domestic abuse offence or the controlling or coercive behaviour offence.
5 Tynwald procedure – approval required.
- 6 (2) An order under subsection (1) may include such consequential,
7 incidental, supplemental and transitional provision, including
8 amendments to other provisions of this Act as the Department considers
9 appropriate.

10 **PART 4 – CLOSING PROVISIONS**

11 **DIVISION 1 – GUIDANCE**

12 **42 Regulations about the disclosure of information by the Constabulary**

- 13 (1) The Department must make regulations about the disclosure of police
14 information by the Constabulary for the purposes of preventing and
15 mitigating the effects of domestic abuse.
16 Here “**police information**” means information held by the Constabulary.
17 Tynwald procedure – approval required.
- 18 (2) Regulations under subsection (1) have effect to authorise the disclosure
19 of information despite any obligation of confidentiality (whether arising
20 by statute or otherwise).
- 21 (3) Before making or amending regulations under this section the
22 Department must consult—
23 (a) the Chief Constable, and
24 (b) such other persons as the Department considers appropriate.
- 25 (4) Subsection (3) does not apply in relation to any amendments to
26 regulations under this section if the Department considers the proposed
27 amendments are insubstantial.

28 **43 Data from electronic monitoring: code of practice**

- 29 (1) The Department must issue a code of practice relating to the processing
30 of data gathered in the course of electronic monitoring of individuals
31 under electronic monitoring requirements imposed by domestic abuse
32 protection orders.
- 33 (2) A failure to act in accordance with a code issued under this section does
34 not of itself make a person liable to any criminal or civil proceedings, but
35 a court may have regard to the code in determining whether a person has
36 acted lawfully.

- 1 **44 Guidance**
- 2 (1) The Department may from time to time issue, revise and replace
- 3 guidance relating to the exercise of functions under or by virtue of this
- 4 Act.
- 5 (2) Any person must have regard to any guidance issued under this section
- 6 when exercising a function to which the guidance relates.
- 7 (3) Before issuing, revising or replacing guidance under this section, the
- 8 Department must consult—
- 9 (a) the Deemsters;
- 10 (b) the Chief Constable; and
- 11 (c) such other persons as the Department considers appropriate.
- 12 (4) The Department must arrange for any guidance issued or revised, and
- 13 any guidance which replaces earlier guidance under this section to be
- 14 published in such manner as the Department considers appropriate.

15 **DIVISION 2 – CONSEQUENTIAL AND MINOR AMENDMENTS**

- 16 **45 Children and Young Persons Act 1966 amended**
- 17 (1) Section 1 of the *Children and Young Persons Act 1966* (cruelty to persons
- 18 under 16) is amended as follows.
- 19 (2) In subsection (1) —
- 20 (a) after “wilfully” insert “or recklessly”;
- 21 (b) after “ill-treats” insert “(whether physically or otherwise)”;
- 22 (c) after “ill-treated” insert “(whether physically or otherwise)”.
- 23 (d) for the words from “(including” to “derangement)” substitute—
- 24 “(whether the suffering or injury is of a physical or a psychological
- 25 nature)”;
- 26 (e) for the words following “guilty of” substitute—
- 27 “an offence.
- 28 Maximum penalty—
- 29 (on information) 2 years’ custody;
- 30 (summary) 12 months’ custody or a level 5 fine or both.”.

- 31 **46 Consequential and minor amendments to the Land Registration Act**
- 32 **1982**
- 33 (1) The *Land Registration Act 1982* is amended as follows.
- 34 (2) In section 73 (searches)—
- 35 (a) renumber subsection (1D) as subsection (1C);

- 1 (b) in that subsection for “Subsections (1A) and (1B)” substitute
2 “Subsections (1) to (1B)”; and
3 (c) omit subsection (5).
- 4 (3) In Schedule 11 for paragraph 18 (matters in respect of which Land
5 Registry Rules may be made) substitute—
6 “18. Regulating the manner in which, and extent to which, information held
7 for or in connection with the purposes of this Act may be accessed or inspected,
8 or published (whether following a search or otherwise).”.

9 **47 Repeal of amendment contained in Central Registry Act 2018**

10 In the Schedule to the Central Registry Act 2018, paragraph 33(13) (which
11 would have repealed entry 12 in Part 1 of Schedule 6 to the Land Registration
12 Act 1982) is repealed.
13

1

SCHEDULE

2

FURTHER PROVISION ABOUT REMAND UNDER SECTION 26

3

[Section 26]

4

1 Introductory

5

This Schedule applies where a court has power to remand a person (“P”) under section 26.

6

7

2 Remand in custody or on bail

8

(1) The court may remand P in custody or on bail.

9

(2) If remanded in custody, P is to be committed to custody to be brought before the court—

10

11

(a) at the end of the period of remand, or

12

(b) at such earlier time as the court may require.

13

(3) The court may remand P on bail—

14

(a) by taking from P a recognisance (with or without sureties) conditioned as provided in paragraph 3, or

15

16

(b) by fixing the amount of the recognisances with a view to their being taken subsequently in accordance with paragraph 7 and, in the meantime, committing P to custody as mentioned in sub-paragraph (2).

17

18

19

20

(4) Where P is brought before the court after remand, the court may further remand P.

21

22

3 Conditions of recognisance

23

(1) Where P is remanded on bail, the court may direct that P’s recognisance be conditioned for P’s appearance—

24

25

(a) before the court at the end of the period of remand, or

26

(b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

27

28

(2) Where a recognisance is conditioned for P’s appearance as mentioned in sub-paragraph (1)(b), the fixing of a time for P next to appear is to be treated as a remand.

29

30

31

(3) Nothing in this paragraph affects the power of the court at any subsequent hearing to remand P afresh.

32

1 **4 Period of remand**

- 2 The court may not remand P for a period exceeding 8 clear days unless—
- 3 (a) the court adjourns proceedings for the purpose mentioned in
- 4 paragraph 5(1), or
- 5 (b) P is remanded on bail and both P and the other party to the
- 6 proceedings consent.
- 7 This is subject to paragraph 6.

8 **5 Remand for medical report**

- 9 (1) If the court has reason to suspect that a medical report will be required,
- 10 the power to remand a person under section 26 may be exercised for the
- 11 purpose of enabling a medical examination to take place and a report to
- 12 be made.
- 13 (2) If the person is remanded in custody for that purpose, the adjournment
- 14 may not be for more than 3 weeks at a time.
- 15 (3) If the person is remanded on bail for that purpose, the adjournment may
- 16 not be for more than 4 weeks at a time.
- 17 (4) Sub-paragraph (5) applies if there is reason to suspect that a person who
- 18 has been arrested under a warrant issued on an application made under
- 19 section 26 is suffering from mental disorder within the meaning of the
- 20 *Mental Health Act 1998*.
- 21 (5) The court has the same power to make an order under Schedule 1A to
- 22 the *Criminal Jurisdiction Act 1993* (remand to hospital for report on
- 23 accused's mental condition or for treatment) as the Court of General Gaol
- 24 Delivery has under that section in the case of a person awaiting trial
- 25 before a court for an offence punishable with custody.

26 **6 Further remand**

- 27 (1) If the court is satisfied that a person ("P") who has been remanded is
- 28 unable by reason of illness or accident to appear or be brought before the
- 29 court at the end of the period of remand, the court may further remand P
- 30 in P's absence.
- 31 (2) The power under sub-paragraph (1) may, in the case of a person who
- 32 was remanded on bail, be exercised by enlarging the person's
- 33 recognizance and those of any sureties for the person to a later time.
- 34 (3) Where a person ("P") remanded on bail is bound to appear before the
- 35 court at any time and the court has no power to remand P under sub-
- 36 paragraph (1), the court may (in P's absence) enlarge P's recognizance
- 37 and those of any sureties for P to a later time.
- 38 (4) The enlargement of P's recognizance is to be treated as a further remand.

1 (5) Paragraph 4 does not apply to the exercise of the powers conferred by
2 this paragraph.

3 **7 Postponement of taking of recognizance**

4 Where under paragraph 2(3)(b) the court fixes the amount in which the
5 principal and the sureties, if any, are to be bound, the recognizance may
6 afterwards be taken by a person prescribed by rules of court, with the same
7 consequences as if it had been entered into before the court.

8 **8 Requirements imposed on remand on bail**

9 The court may, when remanding a person on bail in accordance with this
10 Schedule, require the person to comply, before release on bail or later, with such
11 conditions as it considers necessary or expedient to secure that the person does
12 not interfere with witnesses or otherwise obstruct the course of justice.

IN THE KEYS

DOMESTIC ABUSE BILL 2019

A **BILL** to make fresh provision about domestic abuse and stalking; to make consequential and minor amendments to the Land Registration Act 1982 and for connected purposes.

Leave to introduce given by the Council of Ministers on 3 October 2019.

MR MALARKEY

OCTOBER 2019