



DOMESTIC ABUSE BILL 2019

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon. Bill Malarkey, MHK.

INTRODUCTION

- 1.** These explanatory notes relate to the Domestic Abuse Bill 2019. They have been prepared by the Department of Home Affairs in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
- 2.** The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

SUMMARY AND BACKGROUND

- 3.** Domestic abuse is an invidious abuse of trust where persons living in an intimate and/or family relationship find they are not safe from those close to them. These are the very people with whom they should be entitled to expect respect, security and trust, and to be loved and cherished. No one should have to experience the pain that this shameful and criminal behaviour inflicts, particularly at the hands of those closest to them. Furthermore, children should not have to witness or indeed to suffer the effects of such abusive behaviour in any of its forms. The Island has a duty to protect its people and to address such behaviour as being unacceptable.
- 4.** The key object of the Bill is to address domestic abuse specifically, for the first time in Manx law. Accordingly, the Bill defines what "domestic abuse" is, creates the offences of domestic abuse and controlling or coercive behaviour in intimate and family relationships and the punishment for these, and also establishes preventative and protective measures in the form of the Domestic Abuse Protection Notice (DAPN), and the Domestic Abuse Protection Order (DAPO). A DAPN may be issued by the Police but a DAPO may be made by any court before which a matter is being considered when domestic abuse is raised as a factor within the matter, irrespective of whether or not the initial matter concerned domestic abuse.
- 5.** Other objectives of the Bill, include –
 - raising public and professional awareness of domestic abuse so it is clearly seen as a key issue which must be addressed;
 - enhancing the safety of both victims of abuse and also those at risk of abuse before it has occurred;
 - providing appropriate tools and guidance to enable various agencies including the courts to effectively address domestic abuse, to take specific measures to protect victims, to provide means to punish offenders, and to identify those perpetrators who may be rehabilitated; and

- enabling key agencies such as the Constabulary by ensuring that they can share information allowing them to work effectively with other agencies to practically and effectively combat abuse.
6. In bringing forward this legislation, the Department has drawn on the Domestic Abuse (Scotland) Act 2018¹ and the Domestic Abuse Bill² (of Parliament) as well as information and legislation from other Commonwealth jurisdictions.

7. EUROPEAN CONVENTION ON HUMAN RIGHTS

Section 16 of the Human Rights Act 2001 requires the Member moving the Bill to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). In the opinion of the Member moving the Bill, the provisions of the Domestic Abuse Bill 2019 are compatible with the Convention rights.

8. FINANCIAL EFFECTS OF THE BILL

In the view of the mover of the Bill, it is not expected to increase or decrease revenue or have any financial or personnel implications.

NOTES ON CLAUSES

PART 1 – INTRODUCTORY

9. **Clauses 1 and 2** provide that the short title of the Act will be the Domestic Abuse Act 2019 and that the Act will come into operation at such time and in such manner as the Department, by order, may determine.
10. **Clause 3** provides interpretation including particular definition of terms such as “home address”, “police officer” and “relative”.
11. **Clause 4** defines what is meant by “domestic abuse” for the purposes of the Act. Subsection (2) states that behaviour by a person (“A”) towards another person (“B”) is “domestic abuse” where A and B are each aged 16 or over, are personally connected, and the behaviour is physical or sexual abuse; violent or threatening; controlling or coercive; economic abuse; psychological, emotional or other abuse as set out in subsection (3). It does not matter if the behaviour was exhibited in a single incident or as a course of conduct. Subsection (4) clarifies that violent behaviour includes both sexual and physical violence. Subsection (5) further defines what is meant by economic abuse. Subsection (6) sets out possible examples of abuse falling within subsection (3)(e). Subsection (7) clarifies that B can be abused even if the psychological, emotional or other abuse has not actually caused B to experience any of the effects described in subsection (6). Subsection (8) clarifies that the detail in each of subsections (3), (5) and (6) are not meant to limit any other subsection. Subsection (9) clarifies that A’s behaviour may be “towards” B even if it consists of conduct directed at another person (for example, B’s child).
12. **Clause 5** defines the key term “personally connected” and covers a wide variety of relationships that fall within the terms of the Bill. The reference in subsection (1)(e) to an “intimate personal relationship with each other” is not defined and so takes its meaning as a matter of ordinary English. It is not necessary for there to be, or to have been, a sexual relationship. Subsection (2) defines a parental relationship and subsection (3) provides further definitions.

¹asp 5.

²(HC Bill 422 of the 2017-19 Session)

- 13. Clause 6** provides that if the complaint or the information alleging the offence states that two persons are personally connected, then they are taken to be so connected, unless the matter is challenged before a plea is entered or indicated or unless the court specifically grants permission for a challenge to be made later.

PART 2 – DOMESTIC ABUSE

- 14. Clause 7** gives the Constabulary the power to issue a domestic abuse prevention notice (notice) to a person ("P") if that person and the other person against whom P is alleged to have committed domestic abuse are both aged 16 years or over. Condition A in subsection (3) specifies that the police officer must have reasonable grounds for believing P has been abusive towards another person to whom P is personally connected. Condition B in subsection (4) is that the police officer has reasonable grounds for believing it is necessary to give the notice to P to protect the other person from domestic abuse, or the risk of domestic abuse carried out by P. Condition C in subsection (5) only has to be fulfilled if the police officer giving the notice is below the rank of sergeant. In that case, a police officer of the rank constable must first obtain the consent of another officer of at least the rank of sergeant.
- 15. Clause 8** specifies the provision that may be made by a notice. Subsection (1) provides that the notice may prohibit P from contacting the person for whose protection the notice is given and may not come within a specified distance of the premises in which the person lives. Subsection (2) addresses the situation where both P and the person for whose protection the notice is given reside in the same premises. The notice may prevent P from evicting or excluding the other person from the premises, it may prohibit P from entering or require P to leave the premises and, importantly, may prohibit P from taking any step or specified step which would prevent the person for whose protection the notice is given from occupying the premises (for example, preventing P from surrendering the tenancy of the premises).
- 16. Clause 9** is about the measures a police officer must have taken reasonable steps to discover and have considered before a notice is given. The matters set out in subsection (1) include the welfare of anyone under 18; the opinion of the person for whose protection the notice would be given; any representations by P; the opinion of any other occupant of the premises who is personally connected to the person for whose protection the notice is to be given, or P, if P also lives in the premises. Subsection (4) makes it clear that the person for whose protection the notice is given does not necessarily have to consent to the notice being given.
- 17. Clause 10** states further requirements relating to notices, the first of which is that they must be given in writing. Subsection (2) provides that any notice given to P must state the grounds on which the notice is given; that P may be arrested if the notice is breached; that an application for a domestic abuse protection order ("an order") will be made to a court within 14 days; that the notice remains in effect until the court determines an application for an order or the application is withdrawn; and details of what a court of summary jurisdiction may include in the order. Subsection (3) says the notice must be served by a police officer and subsection (4) that the officer must ask for an address at which notice of the hearing of the application for an order may be given.
- 18. Clause 11** provides that the notice lasts until a police officer notifies a court that an application for an order will not be made; a court makes an order; a court dismisses an order; or 14 days has elapsed since the notice was given (unless a court has adjourned an application for an order).
- 19. Clause 12** provides that it is an offence to breach the terms of a notice with a maximum penalty of 12 months custody, a level 5 fine or both. This section also sets out the process around arrest for breach of a notice and its associated timelines.

20. **Clause 13** provides that a person may be remanded in custody or on bail following arrest for breach of a notice.
21. **Clause 14** provides that a court may make an order against a person ("P") if that person and the other person against whom P is alleged to have committed domestic abuse are both aged 16 years or over. As subsection (1) says, an order may prohibit P from doing certain things or require P to do certain things. Subsection (2) says an order may be made on application or in the course of certain proceedings as set out in clause 17.
22. **Clause 15** deals with orders made on application to a court. Subsection (2) sets out the four persons who may make an application for an order. These are: the person for whose protection the order is sought; a police officer of or above the rank of inspector; a person specified in regulations; or any other person the court permits to make such an application when the application is before it. Subsection (3) states that where a person was given a notice under clause 7, a police officer must apply for an order. The officer may only do so if authorised in writing by an officer of the rank of inspector or above. Subsection (4) provides that an application must be made to a court of summary jurisdiction unless subsection (5) applies. Subsection (5) says that where P and the person for whose protection the order is sought are parties to any civil or family proceedings, and where the court would have the power under clause 17 to make an order without an application being made; then an application for an order under this clause may be made by the person for whose protection the order is sought. Subsection (6) states that where an application is made to a court of summary jurisdiction the court may adjourn the hearing. On the hearing of the application, section 59 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.
23. **Clause 16** provides detail about applications for an order where a notice has been given by a police officer. Subsection (2) provides that the application for an order must be heard within 14 days of the notice being given. Subsections (3), (4) and (5) are to ensure that P is informed about proceedings and deal with those situations where either an address was not given when requested by a police officer, or was given and notice of the hearing was left at that address. The key point here is that the police officer must have made reasonable efforts to give P notice of the hearing. The various other subsections detail the administrative matters relating to the order process.
24. **Clause 17** deals with orders made against P otherwise than on application, such as any family proceedings to which P and the person for whose protection the order would be made are parties (see subsection (2)). Subsections (3), (4), (5) and (6) provide variously that an order may be made where P is convicted of an offence, acquitted of an offence, has an appeal against conviction allowed or is (along with the person for whose protection an order would be made) a party in the High Court to any relevant proceedings. In subsection (6) "relevant proceedings" means any specified by the Department after consulting the Deemsters. Subsection (7) imposes a further restriction, namely that an order may be made only if the court is satisfied it is in the interests of justice to do so.
25. **Clause 18** sets out the conditions for making an order, which are set out in subsections (2) and (3). Condition A is that the court is satisfied P has been abusive towards a person aged 16 or over to whom P is personally connected and condition B is that the order is necessary and proportionate to protect that person from domestic abuse, or the risk of domestic abuse, carried out by P. Subsection (4) makes it clear

that it does not matter whether the abusive behaviour took place in the Island or elsewhere or occurred before the section came into operation.

- 26. Clause 19** sets out matters that are to be considered before a court makes an order. These include the welfare of any person under the age of 18 whose interests the court thinks are relevant (whether or not that person is personally connected to P), the opinion of the person for whose protection the order is sought and in relation to premises lived in by the person for whose protection the order would be made, any opinion of a relevant occupant. Subsection (2) makes it clear that a "relevant occupant" means someone else who lives in the premises and is personally connected to the person for whose protection the order would be made or, if P lives in the premises, is personally connected to P (for example a partner of P's subsequent to the person for whose protection the order would be made).
- 27. Clause 20** makes provision about orders where they are to be made against P without prior notice. Subsection (3) provides that the court must have regard to all the circumstances, including any risk that, if the order is not made immediately, P will cause significant harm to the person for whose protection the order would be made. In a case where an application has been made, the court must consider whether it is likely the person making the application will be deterred or prevented from pursuing the application if an order is not made immediately. Other circumstances to be considered include circumstances where there is reason to believe P is aware of proceedings, but is deliberately evading service of the information giving notice of the intended proceedings, and where the delay involved in effectively serving such a notice would seriously prejudice the person for whose protection the order is sought. If a court makes an order against P where notice has not been made, that person must be given the opportunity to make representations as soon as is just and convenient.
- 28. Clause 21** deals with provision that may be made by a court for protecting a person from domestic abuse or the risk of domestic abuse in all its different forms. Subsections (4) to (6) contain some examples of the type of provision that may be made. They do not limit the type of provision that may otherwise be made. Examples include non-contact, prohibiting P from approaching or entering the premises in which the person for whose protection the order is made lives, requiring P to leave the premises, prohibiting P from evicting or excluding that person from the premises and an electronic monitoring requirement.
- 29. Clause 22** makes further provision about the requirements that may be imposed by orders. These include standard requirements to ensure the order does not interfere with a person's normal work or educational requirements or any other court order or injunction to which the person may be subject, or conflict with their religious beliefs. Other provisions in the section ensure the order is clear about who is responsible for ensuring the compliance of P with any of the relevant requirements specified within an order, and any failure to comply. Subsection (6) imposes requirements on P to keep in touch with whoever is responsible for supervising compliance with the terms of the order. This includes informing the supervisor if P ceases to have any home address.
- 30. Clause 23** makes further provision about the electronic monitoring requirements.
- 31. Clause 24** details the duration and geographical application of orders. Orders are to apply from the day on which they are made, with the exception that where person is already subject to an order, and a new order is made against them, they shall run consecutively as one ceases to have affect so the new order shall become effective. Subsection (3) states they may be made for a specified period, until a specified event occurs, or until another order is made. Within the order, particular requirements may apply for different periods of time, but any electronic monitoring requirement must not be longer than for 12 months at a time. Subsection (7) says an order applies throughout the Island unless expressly limited to a particular locality.

32. **Clause 25** states that it is an offence, without reasonable excuse, to breach any requirement of an order and may attract a maximum penalty of 12 months custody or a level 5 fine or both on summary conviction or 7 years custody on information.
33. **Clause 26** expressly provides powers for the High Court to issue a warrant for the arrest of a person considered to have breached the terms of the order. Subsection (7) makes it clear that a police officer has power to arrest P without a warrant under section 27 of the Police Powers and Procedures Act 1998.
34. **Clause 27** makes provision where the terms of an order require P to notify the police and the requirements are similar to those in respect of sex offenders. Indeed the requirements specified here do not apply in any case where P is already subject to notification as a sex offender.
35. **Clause 28** permits the Department to make regulations requiring P to notify the police of any intention to travel outside the Island, and give such further details about P's travel arrangements as may be required by the regulations.
36. **Clause 29** makes further provision about specific notification requirements under clauses 27 or 28 (for example, how and where a notification must be given and acknowledged). Subsection (3) requires P, when requested to do so, to allow the police to take fingerprints and/or photograph or produce an image of P. As subsection (4) makes clear, this is for the purposes of verifying P's identity.
37. **Clause 30** provides that it is an offence should P fail to comply with any particular notification requirement and this will attract a maximum penalty of 12 months' custody or a level 5 fine or both on summary conviction or 5 years' custody on information.
38. **Clause 31** provides for the variation or discharge of orders and **clause 32** makes supplementary provision in respect of their variation or discharge.
39. **Clause 33** makes provision for appeals in relation to orders. Subsections (1) and (2) empower P to appeal against the making of the order on the one hand, or the person who applied for the order, or, if different, the person for whose protection the order was sought to appeal against the decision of a court not to grant an order on the other hand. Subsections (3) and (4) empower appeals against decisions of the court under clause 31 and list the four persons who may so appeal. Subsection (5) provides that the appeal lies to the Staff of Government Division. Subsection (7) provides that the principles to be applied in determining an appeal are the same as for a petition of dolence. Subsection (8) provides that the Staff of Government Division must either dismiss the appeal or quash in whole or in part the decision to which the appeal relates, however (9) permits the case to be referred to the court that made the decision with a direction to reconsider it and make a new decision in accordance with the ruling of the Staff of Government Division.

PART 3 – ABUSIVE BEHAVIOUR OFFENCES

40. **Clause 34** sets out the components of the domestic abuse offence i.e. the behaviours and factors that combine to constitute the offence. Subsection (1) declares that a person ("A") commits the offence if A engages in behaviour that is abusive of another person ("B"), when A and B are personally connected at the time and the conditions in subsection (2) are met. The conditions are that a reasonable person would consider the behaviour to be likely to cause B to suffer physical or psychological harm, and that A either intends that harm to be caused, or is reckless as to whether B is caused to suffer such harm. Subsection (4) states that the offence may be committed whether or not A's behaviour actually causes B to suffer any physical or psychological harm. This does not prevent any evidence being brought forward and offered in proceedings about any harm actually suffered by B as a result of the behaviour. Subsection (5) provides a defence where the person shows the behaviour was reasonable in the

particular circumstances. Subsection (6) provides that the defence is shown if evidence adduced is enough to raise an issue as to whether the behaviour was reasonable in those circumstances and the prosecution fail to prove the contrary beyond reasonable doubt. The maximum penalty for the offence is 12 months custody, a level fine or both on summary conviction or 14 years custody on information.

- 41. Clause 35** sets out the components of the offence of controlling or coercive behaviour i.e. the behaviours and factors that combine to create the actual offence. Subsection (1) declares that a person ("A") commits an offence if A repeatedly or continuously engages in behaviour towards another person ("B") that is controlling or coercive. The other elements of the offence are that A and B are personally connected, the behaviour has a serious effect on B and that A knows, or ought to know, that the behaviour will have a serious effect on B. Subsection (2) defines "serious effect" as causing B to fear on at least two occasions that violence will be used against B, or that it causes B serious alarm or distress which is such as to have a substantial adverse effect on B's usual day to day activities. Subsection (4) provides the defence of acting in B's best interests, and that the behaviour was in all the circumstances reasonable. Subsection (5) provides that the defence is shown if sufficient evidence of the facts is adduced to raise an issue with respect to them and the prosecution fail to prove the contrary beyond reasonable doubt. Subsection (6) states that the defence in subsection (4) is not available to A where the behaviour causes B to fear that violence will be used against B. The maximum penalty for the offence is 12 months custody, a level 5 fine or both on summary conviction or 14 years custody or a fine on information.
- 42. Clause 36** makes provision in the case of offences under clauses 34 or 35 where A's behaviour consists of, or includes, behaviour occurring in a country outside the Island. Where the behaviour would constitute an offence if it occurred in the Island, and A is either a UK national present in the Island, or is habitually resident in the Island, then the offence is committed. Subsection (2) adds that if the behaviour occurs wholly outside the Island and earlier provision above applies then proceedings may be taken in the Island and the offence may be treated for practical purposes as if it had been committed in the Island.
- 43. Clause 37** makes an exception to the offences under clauses 34 and 35 where A has responsibility for B and B is under the age of 16.
- 44. Clause 38** provides that in proceedings for an offence under clauses 34 or 35, A may be convicted of an alternative offence if the facts proved against A do not amount to the offence with which A is charged, but do amount to an offence under 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), section 2 of the Protection from Harassment Act 2000 (offence of harassment) or section 4 of that Act (putting people in fear of violence).
- 45. Clauses 39, 40 and 41** make provision for the offences under clauses 34 or 35 to be aggravated where the victim is under the age of 18, where a child is otherwise involved, or where the Department provides by order for other factors to constitute aggravation of the offences. These may include offences committed towards a woman during or after pregnancy, those where an element includes strangulation or where actual action or threatened action is made against pets.

PART 4 – CLOSING PROVISIONS

- 46. Clause 42** empowers the Department to make regulations about the disclosure of information by the Constabulary. Before making regulations, subsection (2) requires the Department to consult the Chief Constable and such other persons as the

Department considers appropriate. It is envisaged regulations may include what is colloquially known as "Clare's Law", and sharing of information with the Departments of Health and Social Care and of Education, Sport and Culture in terms of safeguarding and promoting the welfare of children, whether in school or in the home, and safeguarding and protecting vulnerable adults for the purposes of preventing and mitigating the effects of domestic abuse.

- 47. Clause 43** requires the Department to issue a code of practice relating to the processing of data gathered in connection with the electronic monitoring requirement.
- 48. Clause 44** empowers the Department, from time to time, to issue, revise and replace guidance relating to the exercise of functions under or by virtue of this Act. Subsection (2) provides that any person must have regard to the guidance when exercising a function to which the guidance relates. Subsection (3) requires the Department to consult the Deemsters, the Chief Constable and such other persons as the Department considers appropriate before issuing, revising or replacing guidance. The Department is aware a number of functions provided for under the Bill would benefit from clarification through guidance, and will prepare and consult on such guidance to such extent as is necessary to enable the Act to be brought into operation.
- 49. Clause 45** makes a few amendments to subsection (1) of the Children and Young Persons Act 1966. After the word "wilfully" is inserted "or recklessly" and after "ill-treats" is inserted "(whether physically or otherwise)" and these amendments are to clarify matters in court proceedings. Subsection (2)(e) is a clarification and refers to a fine by its modern term ("level 5 fine").
- 50. Clauses 46 and 47** make consequential and minor amendments to the Land Registration Act 1982 and repeal an amendment contained in the Central Registry Act 2018.
- 51. The Schedule** makes further provision about remand under clause 26 (where a person is arrested for breach of a domestic abuse prevention order).