

Isle of Man

Ellan Vannin

DOMESTIC ABUSE BILL 2019

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Explanatory Memorandum

1. This Bill is promoted by Miss August-Hanson MLC on behalf of the Council of Ministers. The Bill has passed the Keys, and was amended in that Branch. This reprint incorporates the amendments.
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 Act, 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 July 2019 (House of Commons Bill 422 of the 2017-19 Session, and which was subsequently reintroduced as House of Commons Bill 2 of the 2019-20 session following the prorogation at the end 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”.
12. *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.
13. *Clause 15* also deals with the requirement to make an application for a domestic abuse protection order in a case where a domestic abuse protection notice has been issued.
14. *Clause 16* provides for the making of an application for a domestic abuse prevention order where a domestic abuse prevention notice has been given.
15. *Clause 17* is novel and specifies circumstances in which a domestic abuse protection order may be made by a court in other proceedings
16. *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* specifies matters which are to be taken into account when a court is considering making an order against a third party. *Clause 21* permits a court, where it is just and convenient to do so, to make a domestic abuse protection order without notice. *Clause 22* spells out the provision which can be made by domestic abuse protection orders. *Clause 23* sets out some further provisions about requirements (other than electronic monitoring requirements) which can be imposed by a domestic abuse protection order. *Clause 24* deals with electronic monitoring. *Clause 25* deals with the duration and geographical extent of an order.
17. *Clause 26* deals with breach of an order, creating an offence punishable with up to 7 years’ custody on information. *Clause 27* establishes a procedure under which a warrant for the arrest of a person who is in breach of domestic abuse protection order. *The Schedule* makes provision about the remand of a person under this clause.
18. *Clause 28* 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 29* 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 28 and 29* are supplemented by *clause 30* (which imposes further requirements) and *clause 31* which creates offences in relation to notification requirements. *Clauses 32 and 33* deal with the variation and discharge of domestic abuse protection orders. *Clause 34* deals with appeals in relation to such orders.

19. Part 3 creates two offences. These are the domestic abuse offence (*clause 35*) and the controlling or coercive behaviour offence where two people are personally connected (*clause 36*). *Clause 37* 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 38* creates an exception in relation to a person who has responsibility (within the meaning of section 14 of the *Children and Young Persons Act 1966*) for a person under 16. *Clause 39* enables a court to convict a person charged with an offence under *clause 35* or *36* 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 40 to 42*, which together constitute Division 3 of the Part) deal with aggravation of the offences created by Division 1. *Clauses 40 and 41* 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 42* confers power on the Department by order, subject to Tynwald approval, to amend this Division and make consequential amendments to other provisions.
20. *Clauses 43 and 44* insert new provisions into the *Summary Jurisdiction Act 1989* and the *Matrimonial Proceedings Act 2003* respectively to prohibit cross-examination of victim of alleged domestic abuse by the alleged perpetrator. Once again, these provisions mirror provisions contained in the House of Commons' Bill 422 of the 2017-19 Session.
21. *Clause 45* 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.
22. *Clause 46* 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.
23. *Clause 47* empowers the Department to issue guidance to which those having functions under or in connection with the Act must have regard. Finally, *clause 48* makes a consequential amendment to the *Children and Young Persons Act 1966*, *clause 49* makes consequential and minor amendments to the *Land Registration Act 1982*, and *clause 50* repeals an uncommenced amendment to that Act contained in the *Central Registry Act 2018* because it is superseded by the provision made by *clause 49*.
24. 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*.



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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 HC Bill 2017-19/422/52

15 (1) In this Act—

16 “**the controlling or coercive behaviour offence**” has the meaning given by
 17 section 36(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 22(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**” is to be construed in accordance with subsection (2);

20 “**requirement**”, in relation to a domestic abuse protection order, is to be read in
21 accordance with section 22;

22 “**vulnerable adult**” means a person aged 18 or over whose ability to protect
23 himself or herself from violence, abuse, neglect or exploitation is
24 significantly impaired through physical or mental disability or illness,
25 old age, emotional fragility or distress, or otherwise; and for that
26 purpose, the reference to being impaired is to being temporarily or
27 indefinitely impaired.

28 (2) In this Act “**relative**”, in relation to a person, means—

- 29 (a) the father, mother, stepfather, stepmother, son, daughter, stepson,
30 stepdaughter, grandmother, grandfather, grandson or
31 granddaughter of that person or of that person’s spouse, former
32 spouse, civil partner or former civil partner, or
33 (b) the brother, sister, uncle, aunt, niece, nephew or first cousin
34 (whether of the full blood or of the half blood or by marriage or
35 civil partnership) of that person or of that person’s spouse, former
36 spouse, civil partner or former civil partner,

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

1 For the purposes of this subsection, treat any person who has been
 2 adopted as the legitimate child of his or her adoptive parent and also as
 3 the child of his or her natural parents.

- 4 (3) See also—
 5 (a) section 4 (definition of “domestic abuse”); and
 6 (b) section 5 (definition of “personally connected”).

7 4 Definition of “domestic abuse”

8 HC Bill 2017-19/422/1

- 9 (1) This section defines what is meant by “**domestic abuse**” in this Act.
- 10 (2) Behaviour of a person (“A”) towards another person (“B”) is “domestic
 11 abuse” if—
 12 (a) A and B are personally connected to each other, and
 13 (b) the behaviour is abusive.
- 14 (3) Behaviour is “**abusive**” of B if it consists of any of the following —
 15 (a) physical or sexual abuse;
 16 (b) violent or threatening behaviour;
 17 (c) controlling or coercive behaviour;
 18 (d) economic abuse (see subsection (5));
 19 (e) psychological, emotional or other abuse (see subsection (6));
 20 and it does not matter whether the behaviour consists of a single incident
 21 or a course of conduct.
- 22 (4) In subsection (3)(b) the reference to violent behaviour includes both
 23 sexual and physical violence.
- 24 (5) “**Economic abuse**” means any behaviour that has a substantial adverse
 25 effect on B's ability to—
 26 (a) acquire, use or maintain money or other property, or
 27 (b) obtain goods or services.
- 28 (6) The following are examples of abuse falling within subsection (3)(e)—
 29 (a) making B dependent upon, or subordinate to, A;
 30 (b) isolating B from friends, family members or other sources of social
 31 interaction and support;
 32 (c) controlling or regulating B's day-to-day activities;
 33 (d) depriving B of, or restricting B's freedom of action;
 34 (e) making B feel frightened, humiliated, degraded, punished or
 35 intimidated.
- 36 (7) For the sake of clarity, behaviour can be abusive of B as a result of
 37 subsection (3)(e) whether or not the behaviour actually causes B to

1 experience any of the relevant effects in subsection (6), but this does not
 2 prevent evidence from being adduced, in proceedings for an offence
 3 under section 35 or 36, about any effects which B actually experienced.

4 (8) None of the paragraphs of subsection (3), (5) or (6)(as the case requires) is
 5 to be taken to limit the meaning of any other paragraph of that
 6 subsection.

7 (9) For the purposes of this Act —

8 (a) A’s behaviour may be behaviour “**towards**” B despite the fact that
 9 it consists of behaviour directed at another person (for example,
 10 B’s child); and

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

13 In paragraph (a) “child” means a person under the age of 18.

14 (10) For the meaning of “personally connected” see section 5.

15 5 Definition of “personally connected”

16 HC Bill 2017-19/422/2and P1996/27/63 and drafting.

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

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

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

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

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

25 (e) they are, or have been, in an intimate personal relationship with
 26 each other within the last 10 years;

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

29 (g) they are relatives; or

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

34 (2) For subsection (1)(f) a person (“A”) has a parental relationship in relation
 35 to a child if—

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

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

- 1 (3) In this section—
- 2 “child” means a person under the age of 18 years;
- 3 “civil partnership agreement” has the meaning given by section 71 of the *Civil*
- 4 *Partnership Act 2011*;
- 5 “parental responsibility” has the same meaning as in the *Children and Young*
- 6 *Persons Act 2001*.
- 7 (4) Section 6 makes further provision about proving that persons are
- 8 personally connected to each other.

9 6 Presumption that persons are personally connected

10 S2018/5/7 and drafting

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

21 PART 2 — DOMESTIC ABUSE

22 DIVISION 1 — DOMESTIC ABUSE PROTECTION NOTICES

23 7 Power to give a domestic abuse protection notice

24 HC Bill 2017-19/422/19

- 25 (1) A police officer may give a domestic abuse protection notice to a person
- 26 (“P”) if conditions A, B and (if appropriate) C are met.
- 27 (2) A “**domestic abuse protection notice**” is a notice prohibiting P from
- 28 being abusive towards a person aged 16 or over to whom P is personally
- 29 connected.
- 30 Section 8 contains further details about the provision that may be made
- 31 by such notices.
- 32 (3) Condition A is that the police officer has reasonable grounds for
- 33 believing that P has been abusive towards a person aged 16 or over to
- 34 whom P is personally connected.

- 1 (4) Condition B is that the police officer has reasonable grounds for
2 believing that it is necessary to give the notice to protect that person from
3 domestic abuse, or the risk of domestic abuse, carried out by P.
- 4 (5) Condition C is that the police officer must, before giving the notice,
5 obtain the consent of another police officer who is of, or above, the rank
6 of sergeant.
- 7 (6) It does not matter whether the abusive behaviour referred to in
8 subsection (3) took place in the Island or elsewhere.
- 9 (7) A domestic abuse protection notice may not be given to a person who is
10 under the age of 16.

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

14 8 Provision that may be made by notice

15 HC Bill 2017-19/422/20

- 16 (1) A domestic abuse protection notice may provide that the person to
17 whom the notice is given (“P”)—
- 18 (a) may not contact the person for whose protection the notice is
19 given;
- 20 (b) may not come within a specified distance of any premises in the
21 Island in which that person lives.
- 22 (2) If P lives in premises in the Island and the person for whose protection
23 the notice is given also lives in those premises, the notice may also
24 contain provision—
- 25 (a) prohibiting P from evicting or excluding that person from the
26 premises;
- 27 (b) prohibiting P from entering the premises;
- 28 (c) requiring P to leave the premises;
- 29 (d) prohibiting P from taking any step or any specified step which
30 would prevent the person for whose protection the notice is given
31 from occupying the premises (for example, by P surrendering the
32 tenancy of the premises).
- 33 (3) If P owns premises in the Island (whether alone or as a joint tenant or a
34 tenant in common with another), and the person for whose protection
35 the notice is given resides in those premises, but P does not, the notice
36 may also contain provision—
- 37 (a) prohibiting P (or any other joint tenant or tenant in common) from
38 evicting the person for whose protection the notice is given from
39 the premises;

- 1 (b) prohibiting P, or any other joint tenant or tenant in common from
2 entering the premises;
- 3 (c) prohibiting P or any other joint tenant or tenant in common from
4 taking any step or any specified step which would prevent the
5 person for whose protection the notice is given from occupying
6 the premises.
- 7 (4) In this section “specified” means specified in the notice.

8 **9 Matters to be considered before giving a notice**

9 HC Bill 2017-19/422/21

- 10 (1) Before giving a domestic abuse protection notice to a person (“P”), a
11 police officer must, among other things, consider the following—
- 12 (a) the welfare of any vulnerable adult and that of any person under
13 the age of 18 whose interests the officer considers relevant to the
14 giving of the notice (whether or not that person is a person to
15 whom P is personally connected);
- 16 (b) the opinion of the person for whose protection the notice would
17 be given, and of any person who is a joint tenant or tenant in
18 common with P who would be affected by the notice, about the
19 giving of the notice;
- 20 (c) any representations made by P about the giving of the notice;
- 21 (d) in a case where the notice includes provision relating to premises
22 lived in by P and the person for whose protection the notice
23 would be given, the opinion of any relevant occupant about the
24 giving of the notice.
- 25 (2) In subsection (1)(d) “relevant occupant” means a person other than P or
26 the person for whose protection the notice would be given—
- 27 (a) who lives in the premises; and
- 28 (b) who is personally connected to P or to the person for whose
29 protection the notice would be given.
- 30 (3) The officer must take reasonable steps to discover the opinions
31 mentioned in subsection (1).
- 32 (4) It is not necessary for the person for whose protection a domestic abuse
33 protection notice is given to consent to the giving of the notice.

34 **10 Further requirements in relation to notices**

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

- 36 (1) A domestic abuse protection notice must be given in writing.
- 37 (2) A domestic abuse protection notice given to a person suspected of
38 domestic abuse (“P”) must state—
- 39 (a) the grounds on which it has been given,

- 1 (b) that a police officer may arrest P without warrant if the police
2 officer has reasonable grounds for believing that P is in breach of
3 the notice,
- 4 (c) that an application under section 15 for a domestic abuse
5 protection order will be heard by a court of summary jurisdiction
6 within 14 days of the day on which the domestic abuse protection
7 notice is given, and that a notice of the hearing will be given to P,
- 8 (d) that the notice continues in effect until that application has been
9 determined or withdrawn, and
- 10 (e) the provision that a court of summary jurisdiction may include in
11 a domestic abuse protection order.

12 (3) The notice must be served on P personally by a police officer.

13 (4) If a domestic abuse protection notice includes provision which relates to
14 a person who is a tenant in common with P, or a joint tenant with P of
15 the relevant premises, (such person being referred to as “T”) and which
16 prohibits T—

17 (a) from evicting or excluding the person for whose protection the
18 notice was given from the premises;

19 (b) from taking any step or any specified step which would prevent
20 the person for whose protection the notice is given from
21 occupying the relevant premises (for example, by surrendering
22 the tenancy of the relevant premises),

23 a copy of the notice must be served personally on T by a police officer.

24 (5) On serving a notice on P or T, the police officer must ask that person for
25 an address at which that person may be given notice of the hearing of the
26 application for the domestic abuse protection order.

27 (6) Where a police officer serves a notice on T, the officer must inform T of
28 the effect of section 12 (breach of notice).

29 **11 Duration of notice**

30 Drafting

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

33 (a) a police officer notifies a court of summary jurisdiction that the
34 application for a domestic abuse protection order is no longer
35 being sought;

36 (b) a court of summary jurisdiction makes a domestic abuse
37 protection order on the application (see section 16);

38 (c) a court of summary jurisdiction dismisses the application for such
39 an order; or

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

4 **12 Breach of notice**

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

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

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

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

- 15 (2) Without prejudice to subsection (1), if a police officer has reasonable
 16 grounds for believing that a person is in breach of a domestic abuse
 17 protection notice, the police officer may arrest the person without
 18 warrant.

- 19 (3) A person arrested by virtue of subsection (2) must be held in custody and
 20 brought before a court of summary jurisdiction—

- 21 (a) before the end of the period of 24 hours beginning with the time
 22 of the arrest, or
 23 (b) if earlier, at the hearing of the application for a domestic abuse
 24 protection order. (see section 15(3)).

- 25 (4) If the person is brought before the court as mentioned in subsection
 26 (3)(a), the court may remand the person.

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

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

31 **13 Remand of person arrested for breach of notice**

32 HC Bill 2017-19/422/23 (and see also clause 27 *ibid.*)

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

- 36 (2) In the application of section 84(4) of the *Summary Jurisdiction Act 1989* to
 37 such a remand, the reference to the “other party” is to be read as a
 38 reference to the police officer who gave the notice.

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

18 DIVISION 2 – DOMESTIC ABUSE PROTECTION ORDERS

19 14 Meaning of “domestic abuse protection order”

20 HC Bill 2017-19/422/24

- 21 (1) In this Part a “**domestic abuse protection order**” means an order which,
22 for the purpose of preventing a person (referred to in this Division as
23 “P”) from being abusive towards a person aged 16 or over to whom P is
24 personally connected—
- 25 (a) prohibits P from doing things described in the order, or
26 (b) requires P to do things described in the order.
- 27 (2) A domestic abuse protection order may also contain provision—
- 28 (a) prohibiting a person who is P’s tenant in common or a joint tenant
29 with P (such person being referred to in this Part as “T”) from
30 doing either of the things mentioned in section 22(5)(a); or
31 (b) prohibiting T from acting as mentioned in section 22(5)(d),
32 if the conditions in section 20 are satisfied.
- 33 (3) A domestic abuse protection order may be made—
- 34 (a) on application (see section 15), or
35 (b) in the course of certain proceedings (see section 17).
- 36 (4) Section 18 sets out the conditions for making a domestic abuse protection
37 order.

15 Domestic abuse protection orders on application

HC Bill 2017-19/422/25 and drafting

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

17 Domestic abuse protection orders otherwise than on application

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

- (1) A court may make a domestic abuse protection order under this section in any of the cases set out below if section 18 is satisfied.
- (2) The High Court or a court of summary jurisdiction may make a domestic abuse protection order against P in any family proceedings to which both

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

21 **18 Conditions for making an order**

22 HC Bill 2017-19/422/29

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

19 Matters to be considered before making an order

HC Bill 2017-19/422/30

(1) Before making a domestic abuse protection order against P, the court must, among other things, consider the following—

(a) the welfare of any vulnerable adult and that of any person under the age of 18 whose interests the court considers relevant to the making of the order (whether or not that person is a person to whom P is personally connected);

(b) any opinion of the person for whose protection the order would be made—

(i) which relates to the making of the order, and

(ii) of which the court is made aware;

(c) in a case where the order includes provision relating to premises lived in by the person for whose protection the order would be made, any opinion of a relevant occupant of which the court is made aware.

(2) In subsection (1)(c) “relevant occupant” means a person other than P or the person for whose protection the order is made—

(a) who lives in the premises; and

(b) who is personally connected to —

(i) the person for whose protection the order would be made; or

(ii) if P also lives in the premises, P.

(3) It is not necessary for the person for whose protection a domestic abuse protection order is made to consent to the making of the order.

20 Matters to be considered before making an order against T

Before making a domestic abuse protection order which contains provision obliging T to do, or refrain from doing, something the court must, among other things, consider the things specified in section 19(1) and, in addition—

(a) the effect on T of the proposed order so far as it applies to T;

(b) whether the proposed provision (so far as it relates to T) is proportionate in all the circumstances; and

(c) any representations made to the court by T.

21 Making of orders without notice

HC Bill 2017-19/422/31

(1) A court may, in any case where it is just and convenient to do so, make a domestic abuse protection order against a person (“P”) even though P

- 1 has not been given such notice of the proceedings as would otherwise be
2 required by rules of court.
- 3 (2) Subsection (1) does not apply in relation to the making of an order under
4 section 15 on an application made in accordance with subsection (3) of
5 that section (see instead section 16(3) to (5)).
- 6 (3) In deciding whether to exercise its powers under subsection (1), the court
7 must have regard to all the circumstances, including—
- 8 (a) any risk that, if the order is not made immediately, P will cause
9 significant harm to the person for whose protection the order
10 would be made,
- 11 (b) in a case where an application for the order has been made,
12 whether it is likely that the person making the application will be
13 deterred or prevented from pursuing the application if an order is
14 not made immediately, and
- 15 (c) whether there is reason to believe that—
- 16 (i) P is aware of the proceedings but is deliberately evading
17 service, and
- 18 (ii) the delay involved in effecting substituted service will
19 cause serious prejudice to the person for whose protection
20 the order would be made.
- 21 (4) If a court makes an order against a person by virtue of subsection (1), it
22 must give the person an opportunity to make representations about the
23 order—
- 24 (a) as soon as just and convenient, and
- 25 (b) at a hearing of which notice has been given to all the parties in
26 accordance with rules of court.

27 **22 Provision that may be made by orders**

28 HC Bill 2017-19/422/32

- 29 (1) A court may by a domestic abuse protection order impose any
30 requirements that the court considers necessary to protect the person for
31 whose protection the order is made from domestic abuse or the risk of
32 domestic abuse.
- 33 Here “requirement” includes any prohibition or restriction.
- 34 (2) The court must, in particular, consider what requirements (if any) may
35 be necessary to protect the person for whose protection the order is made
36 from different kinds of abusive behaviour.
- 37 (3) Subsections (4) to (6) contain examples of the type of provision that may
38 be made under subsection (1), but they do not limit the type of provision
39 that may be so made.
- 40 (4) A domestic abuse protection order may provide that P—

- 1 (a) may not contact the person for whose protection it is made;
- 2 (b) may not come within a specified distance of any premises in
- 3 which that person lives.

4 Here “specified” means specified in the order.

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

- 7 (a) prohibiting P from evicting or excluding that person from the
- 8 premises;
- 9 (b) prohibiting P from entering the premises;
- 10 (c) requiring P to leave the premises;
- 11 (d) prohibiting P from taking any step or any specified step which
- 12 would prevent the person for whose protection the notice is given
- 13 from occupying the premises.

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

17 In this Part a requirement imposed by virtue of this subsection is referred

18 to as an “**electronic monitoring requirement**”.

- 19 (7) Sections 23 and 24 contain further provision about the requirements that
- 20 may be imposed by a domestic abuse protection order.

21 **23 Further provision about requirements that may be imposed by orders**

22 HC Bill 2017-19/422/33

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

- 25 (a) conflict with the person’s religious beliefs;
- 26 (b) interference with any times at which the person normally works
- 27 or attends an educational establishment;
- 28 (c) conflict with the requirements of any other court order or
- 29 injunction to which the person may be subject.

- 30 (2) A domestic abuse protection order that imposes a requirement to do
- 31 something on P or T must specify the person who is to be responsible for
- 32 supervising compliance with that requirement.

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

- 36 (4) Subsections (2) and (3) do not apply in relation to electronic monitoring
- 37 requirements (see instead section 24(3) and (4)).

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

- 1 (a) to make any necessary arrangements in connection with the
 2 requirements for which the person has responsibility (the
 3 “relevant requirements”);
- 4 (b) to promote compliance with the relevant requirements on the part
 5 of P or T (as the case requires);
- 6 (c) if the person considers that—
 7 (i) P or T has complied with all the relevant requirements, or
 8 (ii) P or T has failed to comply with a relevant requirement,
 9 to inform the designated police officer, and in a case within
 10 subparagraph (ii) to inform the police officer of any explanation
 11 offered by P or T for the failure.

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

- 14 (6) If P or T is subject to a requirement imposed by a domestic abuse
 15 protection order, then P or T —
- 16 (a) must keep in touch with the person specified under subsection (2)
 17 in relation to that requirement, in accordance with any
 18 instructions given by that person from time to time,
- 19 (b) if P or T changes home address, must notify the person specified
 20 under subsection (2) of the new home address; and
- 21 (c) if P or T ceases to have any home address, must notify the person
 22 specified under subsection (2) of that fact.

23 These obligations have effect as requirements of the order.

24 **24 Further provision about electronic monitoring requirements**

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

- 26 (1) Subsections (2) and (3) apply for the purpose of determining whether a
 27 court may impose an electronic monitoring requirement on a person
 28 (“P”) in a domestic abuse protection order.
- 29 (2) The requirement may not be imposed in P’s absence.
- 30 (3) If there is a person (other than P) without whose co-operation it would
 31 be impracticable to secure the monitoring in question, the requirement
 32 may not be imposed without that person’s consent.
- 33 (4) A domestic abuse protection order that includes an electronic monitoring
 34 requirement must specify the person who is to be responsible for the
 35 monitoring.
- 36 (5) The person specified under subsection (4) (“the responsible person”)
 37 must be of a description specified in regulations made by the
 38 Department.
- 39 Tynwald procedure — approval required.

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

4 (a) submit, as required from time to time by the responsible person,
5 to—

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

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

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

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

15 These obligations have effect as requirements of the order.

16 **25 Duration and geographical application of orders**

17 HC Bill 2017-19/422/35

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

20 This is subject to subsection (2).

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

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

27 (a) for a specified period,

28 (b) until the occurrence of a specified event, or

29 (c) until further order.

30 Here “specified” means specified in the order.

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

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

35 (6) Subsection (5) is subject to any variation of the order under section 32.

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

26 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 33(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.

- (4) A person may not be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.

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

- (6) In proceedings for an offence under this section, a copy of the original domestic abuse protection order, certified by the proper officer of the court that made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those matters is admissible in those proceedings.

27 Arrest for breach of order

HC Bill 2017-19/37 and drafting

- (1) This section applies where a relevant court has made a domestic abuse protection order.

- (2) In this section—

“relevant court” means—

- (a) the High Court,
(b) a Court of General Gaol Delivery, or
(c) a court of summary jurisdiction; and

“the relevant judge” means—

- (a) where the order was made by the High Court, a judge of that court;

- 1 (b) where the order was made by a Court of General Gaol Delivery, a
2 Deemster; or
- 3 (c) where the order was made by a court of summary jurisdiction, the
4 High Bailiff or a justice of the peace.
- 5 (3) A person mentioned in subsection (4) may apply to the relevant judge for
6 the issue of a warrant for the arrest of P or T if the person considers that
7 P or T (as the case requires) has failed to comply with the order or is
8 otherwise in contempt of court in relation to the order.
- 9 (4) The persons referred to in subsection (3) are—
- 10 (a) the person for whose protection the order was made;
- 11 (b) where the order was made under section 15, the person who
12 applied for the order (if different);
- 13 (c) any other person with the leave of the relevant judge.
- 14 (5) The relevant judge may issue a warrant on an application under
15 subsection (3) only if—
- 16 (a) the application is substantiated on oath, and
- 17 (b) the relevant judge has reasonable grounds for believing that P or
18 T (as the case requires) has failed to comply with the order or is
19 otherwise in contempt of court in relation to the order.
- 20 (6) A relevant court may remand P or T if—
- 21 (a) that person is brought before a relevant court as a result of a
22 warrant issued under this section, and
- 23 (b) the court does not immediately dispose of the matter.
- 24 (7) The Schedule contains further provision about remand under this
25 section.
- 26 In the Schedule “the relevant person” means P or T as the case requires.
- 27 (8) For the power of a constable to arrest P or T without warrant for breach
28 of a domestic abuse protection order, see section 27 of the *Police Powers
29 and Procedures Act 1998*.

30 **28 Notification requirements**

31 HC Bill 2017-19/422/38

- 32 (1) Subsections (2) to (6) apply where a person is subject to a domestic abuse
33 protection order.
- 34 (2) The person must, within the period of 3 days beginning with the day on
35 which the order is made, notify the police of the information in
36 subsection (3).
- 37 (3) The information referred to in subsection (2) is—
- 38 (a) the person’s name and, if the person uses one or more other
39 names, each of those names;

- 1 (b) the person's home address.
- 2 (4) If the person uses a name which has not been notified under this section,
3 the person must, within the period of three days beginning with the day
4 on which the person first uses that name, notify a police officer of that
5 name.
- 6 (5) If the person changes home address, the person must, before the end of
7 the period of three days beginning with the day on which that happens,
8 notify a police officer of the new home address.
- 9 (6) If the person ceases to have any home address, the person must, before
10 the end of the period of three days beginning with the day on which that
11 happens, notify a police officer of that fact.
- 12 (7) The Department may by regulations specify further notification
13 requirements which a court may impose when making or varying a
14 domestic abuse protection order.
- 15 (8) In this subsection a "notification requirement" is a requirement for the
16 person against whom the order is made to provide specified information
17 to the police.
- 18 (9) The requirements imposed by subsections (2), (4) and (5) do not apply
19 where the person is subject to notification requirements under section 11
20 of the *Sex Offenders Act 2006*.
- 21 (10) If on any day the person ceases to be subject to any notification
22 requirements mentioned in subsection (8), the requirements imposed by
23 subsections (2), (4) and (5) apply to the person on and after that day, but
24 as if the reference in subsection (2) to the day on which the order was
25 made were a reference to that day.
- 26 (11) For provision about how to give a notification under subsection (2), (4) or
27 (5), see section 30.

28 **29 Notification requirements: travel outside the Island**

29 P2003/42/86

- 30 (1) The Department may by regulations make provision requiring a person
31 subject to a domestic abuse protection order who leaves the Island, or any
32 description of such person—
- 33 (a) to give in accordance with the regulations, before he or she leaves,
34 a notification under subsection (2);
- 35 (b) if he or she subsequently return to the Island, to give in
36 accordance with the regulations a notification under subsection
37 (3).
- 38 (2) A notification under this subsection must disclose —
- 39 (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.

30 Further provision about notification under section 28 or 29

HC Bill 2017-19/422/38

(1) A person gives a notification under section 28(2), (4) or (5) or 29(2) or (3) by giving a notification to such person and in such manner as the Department may prescribe by regulations.

The regulations must prescribe, in addition to other means, a means of electronic communication (within the meaning of the *Electronic Transactions Act 2000*).

Tynwald procedure — approval required.

(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 28 or 29, P must, if requested to do so by the person to whom notification is given, attend at a police station specified by that person and 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.

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

31 Offences relating to notification

HC Bill 2017-19/422/40

(1) A person ("P") commits an offence if P—

(a) fails, without reasonable excuse, to comply with a requirement imposed by or under section 28 or 29, or

(b) notifies a police officer, in purported compliance with such a requirement, of any information which P knows to be false.

- 1 (2) A person who fails, without reasonable excuse, to comply with section
2 30(3) commits an offence.
3 Maximum penalty for an offence under this section—
4 (a) (summary) 12 months' custody or a level 5 fine or both;
5 (b) (on information) 5 years' custody.

6 **32 Variation and discharge of orders**

7 HC Bill 2017-19/422/41

- 8 (1) A court may vary or discharge a domestic abuse protection order made
9 by that or any other court.
10 This is subject to section 33.
11 (2) A court may vary or discharge an order under this section—
12 (a) on the application of a person mentioned in subsection (3), or
13 (b) in any case in which it could make a domestic abuse protection
14 order under section 17.
15 (3) The persons referred to in subsection (2)(a) are—
16 (a) the person for whose protection the order was made;
17 (b) the person against whom the order was made (“P”);
18 (c) where the order was made under section 16 (domestic abuse
19 protection order on notice) the person who applied for the order;
20 (d) a police officer of, or above, the rank of inspector;
21 (e) a person acting on behalf of a child for whom either the person for
22 whose protection the order was made or P has parental
23 responsibility, but only with the leave of the court.
24 (4) Before deciding whether to vary or discharge an order under this section,
25 the court must hear from—
26 (a) a police officer of, or above, the rank of inspector who wishes to
27 be heard,
28 (b) if P is present or represented by an advocate and P or P’s advocate
29 (as the case requires) wishes to be heard, P or P’s advocate, and
30 (c) in a case where the person for whose protection the order was
31 made is seeking to discharge the order, or to remove or make less
32 onerous any requirement imposed by the order, the person for
33 whose protection it was made.
34 (5) Section 19 (matters to be considered before making an order) applies in
35 relation to the variation or discharge of a domestic abuse protection
36 order as it applies in relation to the making of such an order, but as if
37 references to the person for whose protection the order would be made
38 were references to the person for whose protection the order was made.

- 1 (6) Section 21 (making of orders without notice) applies in relation to the
2 variation of a domestic abuse protection order as it applies in relation to
3 the making of such an order, but as if—
- 4 (a) references to the person for whose protection the order would be
5 made were references to the person for whose protection the
6 order was made,
- 7 (b) subsection (2) were omitted, and
- 8 (c) the reference in subsection (4) to making representations about
9 the order were a reference to making representations about the
10 variation.
- 11 (7) The court may make any order varying or discharging a domestic abuse
12 protection order that it considers appropriate.
- 13 This is subject to subsections (8) to (12).
- 14 (8) The court may include an additional requirement in the order, or extend
15 the period for which the order, or a requirement imposed by the order,
16 has effect, only if it is satisfied that it is necessary to do so in order to
17 protect the person for whose protection the order was made from
18 domestic abuse, or the risk of domestic abuse, carried out by P.
- 19 (9) The court may not extend the period for which an electronic monitoring
20 requirement has effect by more than 12 months at a time.
- 21 (10) The court may remove any requirement imposed by the order, or make
22 such a requirement less onerous, only if satisfied that the requirement as
23 imposed is no longer necessary to protect the person for whose
24 protection the order was made from domestic abuse, or the risk of
25 domestic abuse, carried out by P.
- 26 (11) If it appears to the court that any conditions necessary for a requirement
27 to be imposed are no longer met, the court—
- 28 (a) may not extend the requirement, and
- 29 (b) must remove the requirement.
- 30 (12) The court may discharge the order only if satisfied that the order is no
31 longer necessary to protect the person for whose protection the order
32 was made from domestic abuse, or the risk of domestic abuse, carried out
33 by P.

34 **33 Variation and discharge: supplementary**

35 HC Bill 2017-19/422/42

- 36 (1) Any application to vary or discharge a domestic abuse protection order
37 under section 32 must be made to the court that made the order.

38 This is subject to subsection (2).

- 39 (2) Where—

- 1 (a) the order was made under section 17 on an appeal in relation to a
2 person's conviction or sentence for an offence, or
- 3 (b) the order was made by a court under that section against a person
4 committed or remitted to that court for sentencing for an offence,
5 any application to vary or discharge the order must be made to the court
6 by or before which the person was convicted (but see subsection (3)).
- 7 (3) Where the person mentioned in subsection (2)(b)—
8 (a) was convicted by a juvenile court;
9 (b) is aged 18 or over at the time of the application,
10 the reference in subsection (2) to the court by or before which the person
11 was convicted is to be read as a reference to a court of summary
12 jurisdiction.
- 13 (4) Except as provided for by subsection (3), a domestic abuse protection
14 order made by the Court of General Gaol Delivery may only be varied or
15 discharged by that court.
- 16 (5) A domestic abuse protection order made by the High Court may only be
17 varied or discharged by that court.
- 18 (6) An order that has been varied under section 32 remains an order of the
19 court that first made it for the purposes of any further application under
20 that section.
- 21 (7) In a case where—
22 (a) an order made against a person is varied under section 32 so as to
23 include an additional requirement, or to extend the period for
24 which the order, or a requirement imposed by the order, has
25 effect, and
26 (b) the person was not given notice of the proceedings,
27 the person commits an offence under section 26 only in respect of
28 conduct engaged in at a time when the person was aware of the making
29 of the variation.

30 **34 Appeals**

31 HC Bill 2017-19/422/43

- 32 (1) A person against whom a domestic abuse protection order is made may
33 appeal against the making of the order.
- 34 (2) An appeal may be brought against the decision of a court not to make a
35 domestic abuse protection order under section 15—
36 (a) by the person who applied for the order, or
37 (b) if different, by the person for whose protection the order was
38 sought.

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

30 PART 3 — ABUSIVE BEHAVIOUR: OFFENCES

31 DIVISION 1 — OFFENCES

32 35 The domestic abuse offence

33 HC Bill 2017-19/422/57

- 34 (1) A person (referred to in this Part as “A”) commits an offence if—
- 35 (a) A engages in behaviour that is abusive of another person (referred
36 to in this Part as “B”);
- 37 (b) A and B are personally connected to each other at the time; and

- 1 (c) the conditions in subsection (2) are met.
- 2 The offence is referred to in this Part as “**the domestic abuse offence**”.
- 3 (2) The conditions referred to in subsection (1)(c) are—
- 4 (a) that a reasonable person would consider the behaviour to be
- 5 likely to cause B to suffer physical or psychological harm; and
- 6 (b) that A—
- 7 (i) intends the behaviour to cause B to suffer physical or
- 8 psychological harm, or
- 9 (ii) is reckless as to whether the behaviour causes B to suffer
- 10 physical or psychological harm.
- 11 (3) For the purposes of this Part “**psychological harm**” includes fear, alarm
- 12 and distress.
- 13 (4) The domestic abuse offence may be committed whether or not A’s
- 14 behaviour actually causes B to suffer any physical or psychological harm.
- 15 But this does not prevent evidence being adduced in proceedings for the
- 16 domestic abuse offence about any harm actually suffered by B as a result
- 17 of the behaviour.
- 18 (5) In proceedings in respect of a charge of the domestic abuse offence, it is
- 19 defence for a person to show that the behaviour was reasonable in the
- 20 particular circumstances.
- 21 (6) That is shown if—
- 22 (a) evidence adduced is enough to raise an issue as to whether the
- 23 behaviour was as described in subsection (5), and
- 24 (b) the prosecution does not prove beyond reasonable doubt that the
- 25 behaviour was not as described in that subsection.
- 26 (7) See also—
- 27 (a) section 37 (behaviour occurring outside the Island);
- 28 (b) section 38 (exception for persons having responsibility for
- 29 children); and
- 30 (c) section 39 (alternative offence)
- 31 Maximum penalty for an offence under this section—
- 32 (a) (on information) 14 years’ custody;
- 33 (b) (summary) 12 months’ custody, a level 5 fine or both.

34 **36 The controlling or coercive behaviour offence**

35 [P2015/9/76 and drafting]

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

- 1 (a) A repeatedly or continuously engages in behaviour towards
2 another person (B) that is controlling or coercive,
3 (b) at the time of the behaviour, A and B are personally connected,
4 (c) the behaviour has a serious effect on B, and
5 (d) A knows or ought to know that the behaviour will have a serious
6 effect on B.
- 7 (2) A's behaviour has a "serious effect" on B if—
8 (a) it causes B to fear, on at least two occasions, that violence will be
9 used against B, or
10 (b) it causes B serious alarm or distress which has a substantial
11 adverse effect on B's usual day-to-day activities.
- 12 (3) For the purposes of subsection (1)(d) A "ought to know" that which a
13 reasonable person in possession of the same information would know.
- 14 (4) In proceedings for the controlling and coercive behaviour offence it is a
15 defence for A to show that—
16 (a) in engaging in the behaviour in question, A believed that he or
17 she was acting in B's best interests, and
18 (b) the behaviour was in all the circumstances reasonable.
- 19 (5) A is to be taken to have shown the facts mentioned in subsection (4) if—
20 (a) sufficient evidence of the facts is adduced to raise an issue with
21 respect to them, and
22 (b) the contrary is not proved beyond reasonable doubt.
- 23 (6) The defence in subsection (4) is not available to A in relation to
24 behaviour that causes B to fear that violence will be used against B.
- 25 Maximum penalty—
26 (on information) – 14 years or a fine;
27 (summary) - 12 months' custody or a level 5 fine or both.

28 DIVISION 2 — PROCEDURAL PROVISIONS

29 **37 Behaviour occurring outside the Island**

30 HC Bill 2017-19/422/61 and drafting

- 31 (1) A commits the domestic abuse offence or the controlling or coercive
32 behaviour offence (as the case requires) if—
33 (a) A's behaviour consists of or includes behaviour occurring in a
34 country outside the Island,
35 (b) the behaviour would constitute the domestic abuse offence or the
36 controlling or coercive behaviour offence if it occurred in the
37 Island, and

- 1 (c) A is —
- 2 (i) a United Kingdom national who is present in the Island; or
- 3 (ii) habitually resident in the Island
- 4 (2) If the behaviour occurs wholly outside the Island and paragraphs (b) and
- 5 (c) of subsection (1) are satisfied —
- 6 (a) proceedings for the relevant offence may be taken in the Island,
- 7 and
- 8 (b) the offence may for incidental purposes be treated as having been
- 9 committed in the Island.
- 10 (3) In this section —
- 11 “country” includes territory;
- 12 “UK national” means someone who, in the terms of the British Nationality Act
- 13 1981 (of Parliament), is—
- 14 (a) a British citizen,
- 15 (b) a British overseas territories citizen, a British National (Overseas)
- 16 or a British Overseas citizen, or
- 17 (c) a British subject or a British protected person.

18 **38 Exception for persons having responsibility for children**

19 HC Bill 2017-19/422/62 and drafting

20 A does not commit the domestic abuse offence or the controlling or coercive

21 behaviour offence if at the time of the behaviour in question—

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

26 **39 Conviction of alternative offence**

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

28 In proceedings for the domestic abuse offence or the controlling or coercive

29 behaviour offence, A may be convicted of an alternative offence if the facts

30 proved against A—

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

DIVISION 3 — AGGRAVATION

1

2 **40 Aggravation of offence where victim is under 18**

3

HC Bill 2017-19/422/66

4

(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.

5

6

7

8

(2) Subsection (3) applies where—

9

(a) A is charged as mentioned in subsection (1), and

10

(b) the charge is proved.

11

(3) The court must—

12

(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),

13

14

(b) record the conviction in a way that shows that the offence is so aggravated,

15

16

(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

17

18

19

(d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.

20

21

(4) If the charge—

22

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

23

(b) is otherwise proved,

24

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

25 **41 Aggravation of offence where child is otherwise involved**

26

HC Bill 2017-19/422/67

27

(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.

28

29

30

(2) For the purposes of this section, “relevant child” means a person under the age of 18 who is neither A nor B.

31

32

(3) For the purposes of this section, the domestic abuse offence is aggravated by reason of involving a relevant child if—

33

34

(a) at any time in the commission of the offence—

35

(i) A directed behaviour at the child, or

36

(ii) A made use of the child in directing behaviour at B, or

- 1 (b) the child saw or heard, or was present during, an incident of
2 behaviour which A directed at B as part of the course of
3 behaviour.
- 4 (4) Behaviour is “directed at” a person if it is directed at a person in any way
5 including (for example)—
- 6 (a) by way of conduct relating to the person's ability to acquire, use
7 or maintain money or other property or to obtain goods or
8 services,
- 9 (b) by way of other conduct towards property, or
10 (c) by making use of a third party,
11 as well as in a personal or direct manner.
- 12 (5) Subsection (6) applies where—
- 13 (a) A is charged as mentioned in subsection (1), and
14 (b) the charge is proved.
- 15 (6) The court must—
- 16 (a) state on conviction that the offence is aggravated by reason of
17 involving a relevant child,
18 (b) record the conviction in a way that shows that the offence is so
19 aggravated,
20 (c) in determining the appropriate sentence, treat the fact that the
21 offence is so aggravated as a factor that increases the seriousness
22 of the offence, and
23 (d) in imposing sentence, explain how the fact that the offence is so
24 aggravated affects the sentence imposed.
- 25 (7) If the charge—
- 26 (a) is not proved as respects the allegation of aggravation, but
27 (b) is otherwise proved,
28 A may be convicted of the charge without the allegation of aggravation.

29 **42 Power to amend Division**

- 30 (1) The Department may by order amend this Division to add, vary or
31 remove provisions about the factors which constitute aggravation of the
32 domestic abuse offence or the controlling or coercive behaviour offence.
33 Tynwald procedure — approval required.
- 34 (2) An order under subsection (1) may include such consequential,
35 incidental, supplemental and transitional provision, including
36 amendments to other provisions of this Act as the Department considers
37 appropriate.

PART 4 – PROHIBITION OF CROSS-EXAMINATION IN PERSON

DIVISION 1: PROCEEDINGS IN THE COURTS OF SUMMARY JURISDICTION

43 Summary Jurisdiction Act 1989 amended

- (1) The *Summary Jurisdiction Act 1989* is amended as follows.
- (2) For the italic cross-heading preceding section 48 substitute—

“DIVISION 1: DOMESTIC PROCEEDINGS”.

- (3) After section 53 insert—

“DIVISION 2: THE PROHIBITION ON CROSS-EXAMINATION

53A Prohibition of cross-examination in person: introductory

In this Division “**witness**”, in relation to any proceedings, includes a party to the proceedings.

53B Prohibition of cross-examination in person: victims of offences

- (1) In family proceedings, no party to the proceedings who has been convicted of or given a caution for, or is charged with, a specified offence may cross-examine in person a witness who is the victim, or alleged victim, of that offence.
- (2) In family proceedings, no party to the proceedings who is the victim, or alleged victim, of a specified offence may cross-examine in person a witness who has been convicted of, or given a caution for, or is charged with, that offence.
- (3) Subsections (1) and (2) do not apply to a conviction or caution that is spent for the purposes of the *Rehabilitation of Offenders Act 2001* unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3) or (4) of that Act.
- (4) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction, caution or charge when the cross-examination took place.
- (5) In this section—
- “caution” means—

- 1 (a) a caution given by a police officer on the Island in respect
2 of an offence which, at the time the caution is given, the
3 person to whom it is given has admitted;
- 4 (b) a conditional caution given under section 22 of the
5 Criminal Justice Act 2003 (of Parliament);
- 6 (c) a youth conditional caution given under section 66A of the
7 Crime and Disorder Act 1998 (of Parliament);
- 8 (d) any other caution given to a person in England and Wales
9 or Northern Ireland in respect of an offence which, at the
10 time the caution is given, that person has admitted;
- 11 (e) anything corresponding to a caution falling within
12 paragraph (a), (b), (c) or (d) (however described) which is
13 given to a person in respect of an offence under the law of
14 Scotland;

15 “conviction” means—

- 16 (a) a conviction before a court in the Island;
- 17 (b) a conviction before a court in England and Wales, Scotland
18 or Northern Ireland;
- 19 (c) a conviction in service disciplinary proceedings (in the
20 Island or elsewhere);
- 21 (d) a finding in any criminal proceedings (including a finding
22 linked with a finding of insanity) that the person
23 concerned has committed an offence or done the act or
24 made the omission charged;

25 and “convicted” is to be read accordingly;

26 “service disciplinary proceedings” means—

- 27 (a) any proceedings (whether or not before a court) in respect
28 of a service offence within the meaning of the Armed
29 Forces Act 2006 (of Parliament) (except proceedings before
30 a civilian court within the meaning of that Act);
- 31 (b) any proceedings under the Army Act 1955, the Air Force
32 Act 1955 or the Naval Discipline Act 1957 (whether before
33 a court-martial or before any other court or person
34 authorised under any of those Acts to award a punishment
35 in respect of an offence);
- 36 (c) any proceedings before a Standing Civilian Court
37 established under the Armed Forces Act 1976 (of
38 Parliament);

39 “specified offence” means an offence which is specified, or of a
40 description specified, in rules of court.

- 1 (6) The following provisions (which deem a conviction of a person
2 discharged not to be a conviction) do not apply for the purposes
3 of this section to a conviction of a person for an offence in respect
4 of which an order has been made discharging the person
5 absolutely or conditionally—
- 6 (a) section 6 of the *Criminal Justice Act 1963*;
- 7 (b) section 14 of the Powers of Criminal Courts (Sentencing)
8 Act 2003 (of Parliament);
- 9 (c) section 187 of the Armed Forces Act 2006 (of Parliament);
10 or any corresponding earlier Manx or Parliamentary enactment.
- 11 (7) For the purposes of this section “offence” includes an offence
12 under a law that is no longer in force.

13 **53C Prohibition of cross-examination in person: persons protected by**
14 **injunctions etc**

- 15 (1) In family proceedings, no party to the proceedings against whom
16 an on-notice protective injunction is in force may cross-examine in
17 person a witness who is protected by the injunction.
- 18 (2) In family proceedings, no party to the proceedings who is
19 protected by an on-notice protective injunction may cross-
20 examine in person a witness against whom the injunction is in
21 force.
- 22 (3) Cross-examination in breach of subsection (1) or (2) does not
23 affect the validity of a decision of the court in the proceedings if
24 the court was not aware of the protective injunction when the
25 cross-examination took place.
- 26 (4) In this section “protective injunction” means an order or
27 injunction specified, or of a description specified, in rules of court.
- 28 (5) For the purposes of this section, a protective injunction is an “on-
29 notice” protective injunction if—
- 30 (a) the court is satisfied that there has been a hearing at which
31 the person against whom the protective injunction is in
32 force asked, or could have asked, for the injunction to be
33 set aside or varied, or
- 34 (b) the protective injunction was made at a hearing of which
35 the court is satisfied that both the person who applied for it
36 and the person against whom it is in force had notice.

53D Direction for prohibition of cross-examination in person: other cases

- (1) In family proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if—
- (a) neither section 53B nor section 53C operates to prevent the party from cross-examining the witness, and
 - (b) it appears to the court that—
 - (i) the quality condition or the significant distress condition is met, and
 - (ii) it would not be contrary to the interests of justice to give the direction.
- (2) The “quality condition” is met if the quality of evidence given by the witness on cross-examination—
- (a) is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and
 - (b) would be likely to be improved if a direction were given under this section.
- (3) The “significant distress condition” is met if—
- (a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and
 - (b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.
- (4) A direction under this section may be made by the court—
- (a) on an application made by a party to the proceedings, or
 - (b) of its own motion.
- (5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard, among other things, to—
- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person;
 - (b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person;
 - (c) the nature of the questions likely to be asked, having regard to the issues in the proceedings;

- 1 (d) any behaviour by the party in relation to the witness in
 2 respect of which the court is aware that a finding of fact
 3 has been made in the proceedings or any other family
 4 proceedings;
- 5 (e) any behaviour by the witness in relation to the party in
 6 respect of which the court is aware that a finding of fact
 7 has been made in the proceedings or any other family
 8 proceedings;
- 9 (f) any behaviour by the party at any stage of the proceedings,
 10 both generally and in relation to the witness;
- 11 (g) any behaviour by the witness at any stage of the
 12 proceedings, both generally and in relation to the party;
- 13 (h) any relationship (of whatever nature) between the witness
 14 and the party.

15 (6) Any reference in this section to the quality of a witness's evidence
 16 are to its quality in terms of completeness, coherence and
 17 accuracy.

18 (7) For this purpose “coherence” refers to a witness's ability in giving
 19 evidence to give answers which—

- 20 (a) address the questions put to the witness, and
 21 (b) can be understood, both individually and collectively.

22 **53E Directions under section 53D: supplementary**

23 (1) A direction under section 53D has binding effect from the time it
 24 is made until the witness in relation to whom it applies is
 25 discharged.

26 (2) But the court may revoke a direction under section 53D before the
 27 witness is discharged, if it appears to the court to be in the
 28 interests of justice to do so, either—

- 29 (a) on an application made by a party to the proceedings, or
 30 (b) of its own motion.

31 (3) The court may revoke a direction under section 53D on an
 32 application made by a party to the proceedings only if there has
 33 been a material change of circumstances since—

- 34 (a) the direction was given, or
 35 (b) if a previous application has been made by a party to the
 36 proceedings, the application (or the last application) was
 37 determined.

38 (4) The court must state its reasons for—

- 39 (a) giving a direction under section 53D;

- 1 (b) refusing an application for a direction under section 53D;
2 (c) revoking a direction under section 53D;
3 (d) refusing an application for the revocation of a direction
4 under section 53D.

5 **53F Alternatives to cross-examination in person**

- 6 (1) This section applies where a party to family proceedings is
7 prevented from cross-examining a witness in person by virtue of
8 section 53B, 53C or 53D.
- 9 (2) The court must consider whether (ignoring this section) there is a
10 satisfactory alternative means—
11 (a) for the witness to be cross-examined in the proceedings, or
12 (b) of obtaining evidence that the witness might have given
13 under cross-examination in the proceedings.
- 14 (3) If the court decides that there is not, the court must—
15 (a) invite the party to the proceedings to arrange for an
16 advocate to act for the party for the purpose of cross-
17 examining the witness, and
18 (b) require the party to the proceedings to notify the court, by
19 the end of a period specified by the court, of whether an
20 advocate is to act for the party for that purpose.
- 21 (4) Subsection (5) applies if, by the end of the period specified under
22 subsection (3)(b), either—
23 (a) the party has notified the court that no advocate is to act
24 for the party for the purpose of cross-examining the
25 witness, or
26 (b) no notification has been received by the court and it
27 appears to the court that no advocate is to act for the party
28 for the purpose of cross-examining the witness.
- 29 (5) The court must consider whether it is necessary in the interests of
30 justice for the witness to be cross-examined by an advocate
31 appointed by the court to represent the interests of the party.
- 32 (6) If the court decides that it is, the court must appoint an advocate
33 (chosen by the court) to cross-examine the witness in the interests
34 of the party.
- 35 (7) An advocate appointed by the court under subsection (6) is not
36 responsible to the party.
- 37 (8) For the purposes of this section a reference to cross-examination
38 includes (in a case where a direction is given under section 53D
39 after the party has begun cross-examining the witness) a reference
40 to continuing to conduct cross-examination.

53G Costs of legal representatives appointed under section 53F

- (1) The Treasury may by regulations make provision for the payment out of the General Revenue of the Island of sums in respect of—
- (a) fees or costs properly incurred by an advocate appointed under section 53F, and
 - (b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.
- (2) The regulations may provide for the amounts to be determined by the Treasury or such other person as the regulations may specify.
- (3) The regulations may provide for the amounts paid to be calculated in accordance with—
- (a) a rate or scale specified in the regulations, or
 - (b) other provision made by or under the regulations.
- Tynwald procedure for regulations under this section — approval required. **22**.
- (4) For the italic cross-heading preceding section 54 substitute—

23 DIVISION 3: ORDERS IN DOMESTIC PROCEEDINGS 22.

DIVISION 2: PROCEEDINGS UNDER THE MATRIMONIAL PROCEEDINGS ACT
2003

44 Matrimonial Proceedings Act 2003 amended

- (1) The *Matrimonial Proceedings Act 2003* is amended as follows.
- (2) For the italic cross-heading in Part 5 before the section specified in column 1 of the table below, substitute the Division heading specified in column 2—

Section	New Division heading
91	Division 1: Jurisdiction
92	Division 2: Rights to occupy matrimonial or civil partnership home
95	Division 3: Occupation orders
104	Division 4: Non-molestation orders
105	Division 5: Further provision as to molestation orders
115	Division 7: Supplemental.

- (3) Before section 106 insert—

1

▣ DIVISION 6: MISCELLANEOUS ▣.

2

- (4) After section 114 (but before the Division heading preceding section 115) insert—

3

4

▣ DIVISION 6A: FAMILY PROCEEDINGS: PROHIBITION OF CROSS-EXAMINATION IN PERSON

5

6

114A Prohibition of cross-examination in person: introductory

7

In this Division —

8

“**the court**” means the High Court;

9

“**witness**”, in relation to any proceedings, includes a party to the proceedings.

10

11

Note: This Division applies only for the purposes of proceedings under this Act in the High Court. For corresponding provisions in the courts of summary jurisdiction see Division 2 of Part 5 of the Summary Jurisdiction Act 1989

12

13

14

15

114B Prohibition of cross-examination in person: victims of offences

16

- (1) In family proceedings, no party to the proceedings who has been convicted of or given a caution for, or is charged with, a specified offence may cross-examine in person a witness who is the victim, or alleged victim, of that offence.

17

18

19

20

- (2) In family proceedings, no party to the proceedings who is the victim, or alleged victim, of a specified offence may cross-examine in person a witness who has been convicted of or given a caution for, or is charged with, that offence.

21

22

23

24

- (3) Subsections (1) and (2) do not apply to a conviction or caution that is spent for the purposes of the *Rehabilitation of Offenders Act 2001*, unless evidence in relation to the conviction or caution is admissible in, or may be required in, the proceedings by virtue of section 7(2), (3) or (4) of that Act.

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- (4) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the conviction, caution or charge when the cross-examination took place.

30

31

32

33

- (5) In this section —

34

“**caution**” means—

35

- (a) a caution given in the Island by a constable or other authorised person to a person who, at the time it is given, has admitted the offence for which it is given;

36

37

- 1 (b) a conditional caution given under section 22 of the
2 Criminal Justice Act 2003 (of Parliament);
- 3 (c) a youth conditional caution given under section 66A of the
4 Crime and Disorder Act 1998 (of Parliament);
- 5 (d) any other caution given to a person in England and Wales
6 or Northern Ireland in respect of an offence which, at the
7 time the caution is given, that person has admitted;
- 8 (e) anything corresponding to a caution falling within
9 paragraph (a), (b), (c) or (d) (however described) which is
10 given to a person in respect of an offence under the law of
11 Scotland;

12 “conviction” means—

- 13 (a) a conviction before a court in the Island;
- 14 (b) a conviction before a court in England and Wales, Scotland
15 or Northern Ireland;
- 16 (c) a conviction in service disciplinary proceedings (in the
17 Island or elsewhere);
- 18 (d) a finding in any criminal proceedings (including a finding
19 linked with a finding of insanity) that the person
20 concerned has committed an offence or done the act or
21 made the omission charged;

22 and “convicted” is to be read accordingly;

23 “service disciplinary proceedings” means—

- 24 (a) any proceedings (whether or not before a court) in respect
25 of a service offence within the meaning of the Armed
26 Forces Act 2006 (of Parliament) (except proceedings before
27 a civilian court within the meaning of that Act);
- 28 (b) any proceedings under the Army Act 1955, the Air Force
29 Act 1955, or the Naval Discipline Act 1957 (each an Act of
30 Parliament) (whether before a court-martial or before any
31 other court or person authorised under any of those Acts of
32 Parliament to award a punishment in respect of an
33 offence);
- 34 (c) any proceedings before a Standing Civilian Court
35 established under the Armed Forces Act 1976 (of
36 Parliament);

37 “specified offence” means an offence which is specified, or of a
38 description specified in rules of court.

- 39 (6) The following provisions (which deem a conviction of a person
40 discharged not to be a conviction) do not apply for the purposes
41 of this section to a conviction of a person for an offence in respect

of which an order has been made discharging the person absolutely or conditionally—

- (a) section 6 of the *Criminal Justice Act 1963*;
 - (b) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (of Parliament);
 - (c) section 187 of the Armed Forces Act 2006 (of Parliament);
- or any corresponding earlier Manx or Parliamentary enactment.

- (7) For the purposes of this section “offence” includes an offence under a law that is no longer in force.

114C Prohibition of cross-examination in person: persons protected by injunctions etc

- (1) In family proceedings, no party to the proceedings against whom an on-notice protective injunction is in force may cross-examine in person a witness who is protected by the injunction.
- (2) In family proceedings, no party to the proceedings who is protected by an on-notice protective injunction may cross-examine in person a witness against whom the injunction is in force.
- (3) Cross-examination in breach of subsection (1) or (2) does not affect the validity of a decision of the court in the proceedings if the court was not aware of the protective injunction when the cross-examination took place.
- (4) In this section “protective injunction” means an order or injunction specified, or of a description specified, in rules made by the Deemsters.
Tynwald procedure – negative
- (5) For the purposes of this section, a protective injunction is an “on-notice” protective injunction if—
 - (a) the court is satisfied that there has been a hearing at which the person against whom the protective injunction is in force asked, or could have asked, for the injunction to be set aside or varied, or
 - (b) the protective injunction was made at a hearing of which the court is satisfied that both the person who applied for it and the person against whom it is in force had notice.

114D Direction for prohibition of cross-examination in person: other cases

- (1) In family proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if—
- (a) neither section 114B nor section 114C operates to prevent the party from cross-examining the witness, and
 - (b) it appears to the court that—
 - (i) the quality condition or the significant distress condition is met, and
 - (ii) it would not be contrary to the interests of justice to give the direction.
- (2) The “quality condition” is met if the quality of evidence given by the witness on cross-examination—
- (a) is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and
 - (b) would be likely to be improved if a direction were given under this section.
- (3) The “significant distress condition” is met if—
- (a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and
 - (b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.
- (4) A direction under this section may be made by the court—
- (a) on an application made by a party to the proceedings, or
 - (b) of its own motion.
- (5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard, among other things, to—
- (a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person;
 - (b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person;
 - (c) the nature of the questions likely to be asked, having regard to the issues in the proceedings;

- 1 (d) any behaviour by the party in relation to the witness in
 2 respect of which the court is aware that a finding of fact
 3 has been made in the proceedings or any other family
 4 proceedings;
- 5 (e) any behaviour by the witness in relation to the party in
 6 respect of which the court is aware that a finding of fact
 7 has been made in the proceedings or any other family
 8 proceedings;
- 9 (f) any behaviour by the party at any stage of the proceedings,
 10 both generally and in relation to the witness;
- 11 (g) any behaviour by the witness at any stage of the
 12 proceedings, both generally and in relation to the party;
- 13 (h) any relationship (of whatever nature) between the witness
 14 and the party.
- 15 (6) Any reference in this section to the quality of a witness's evidence
 16 are to its quality in terms of completeness, coherence and
 17 accuracy.
- 18 (7) For this purpose "coherence" refers to a witness's ability in giving
 19 evidence to give answers which—
- 20 (a) address the questions put to the witness, and
 21 (b) can be understood, both individually and collectively.

22 **114E Directions under section 114D: supplementary**


- 23 (1) A direction under section 114D has binding effect from the time it
 24 is made until the witness in relation to whom it applies is
 25 discharged.
- 26 (2) But the court may revoke a direction under section 114D before
 27 the witness is discharged, if it appears to the court to be in the
 28 interests of justice to do so, either—
- 29 (a) on an application made by a party to the proceedings, or
 30 (b) of its own motion.
- 31 (3) The court may revoke a direction under section 114D on an
 32 application made by a party to the proceedings only if there has
 33 been a material change of circumstances since—
- 34 (a) the direction was given, or
 35 (b) if a previous application has been made by a party to the
 36 proceedings, the application (or the last application) was
 37 determined.
- 38 (4) The court must state its reasons for—
- 39 (a) giving a direction under section 114D

- 1 (b) refusing an application for a direction under section 114D;
2 (c) revoking a direction under section 114D;
3 (d) refusing an application for the revocation of a direction
4 under section 114D.

5 **114F Alternatives to cross-examination in person**

- 6 (1) This section applies where a party to family proceedings is
7 prevented from cross-examining a witness in person by virtue of
8 section 114B, 114C or 114D.
- 9 (2) The court must consider whether (ignoring this section) there is a
10 satisfactory alternative means—
11 (a) for the witness to be cross-examined in the proceedings, or
12 (b) of obtaining evidence that the witness might have given
13 under cross-examination in the proceedings.
- 14 (3) If the court decides that there is not, the court must—
15 (a) invite the party to the proceedings to arrange for an
16 advocate to act for the party for the purpose of cross-
17 examining the witness, and
18 (b) require the party to the proceedings to notify the court, by
19 the end of a period specified by the court, of whether an
20 advocate is to act for the party for that purpose.
- 21 (4) Subsection (5) applies if, by the end of the period specified under
22 subsection (3)(b), either—
23 (a) the party has notified the court that no advocate is to act
24 for the party for the purpose of cross-examining the
25 witness, or
26 (b) no notification has been received by the court and it
27 appears to the court that no advocate is to act for the party
28 for the purpose of cross-examining the witness.
- 29 (5) The court must consider whether it is necessary in the interests of
30 justice for the witness to be cross-examined by an advocate
31 appointed by the court to represent the interests of the party.
- 32 (6) If the court decides that it is, the court must appoint an advocate
33 (chosen by the court) to cross-examine the witness in the interests
34 of the party.
- 35 (7) An advocate appointed by the court under subsection (6) is not
36 responsible to the party.
- 37 (8) For the purposes of this section a reference to cross-examination
38 includes (in a case where a direction is given under section 114D
39 after the party has begun cross-examining the witness) a reference
40 to continuing to conduct cross-examination.

114G Costs of advocates appointed under section 114F

- (1) After consulting the Deemsters, The Treasury may by regulations make provision for the payment out of the General Revenue of sums in respect of—
- (a) fees or costs properly incurred by an advocate appointed under 114F, and
- (b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.
- (2) The regulations may provide for the amounts to be determined by the Treasury or such other person as the regulations may specify.
- (3) The regulations may provide for the amounts paid to be calculated in accordance with—
- (a) a rate or scale specified in the regulations, or
- (b) other provision made by or under the regulations.
- Tynwald procedure — approval required. .

PART 5 – CLOSING PROVISIONS**DIVISION 1 – REGULATIONS ETC.****45 Regulations about the disclosure of information by the Constabulary**

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

1 **46 Data from electronic monitoring: code of practice**

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

10 **47 Guidance**

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

24 **DIVISION 2 — CONSEQUENTIAL AND MINOR AMENDMENTS**

25 **48 Children and Young Persons Act 1966 amended**

- 26 (1) Section 1 of the *Children and Young Persons Act 1966* (cruelty to persons
 27 under 16) is amended as follows.
- 28 (2) In subsection (1) —
- 29 (a) after “wilfully” insert “or recklessly”;
- 30 (b) after “ill-treats” insert “(whether physically or otherwise)”;
- 31 (c) after “ill-treated” insert “(whether physically or otherwise)”.
- 32 (d) for the words from “(including” to “derangement)” substitute—
 33 “(whether the suffering or injury is of a physical or a psychological
 34 nature)”;
- 35 (e) for the words following “guilty of” substitute—
 36 “an offence.
 37 Maximum penalty—

1 (on information) 2 years' custody;
2 (summary) 12 months' custody or a level 5 fine or both.”.

3 **49 Consequential and minor amendments to the Land Registration Act**
4 **1982**

- 5 (1) The *Land Registration Act 1982* is amended as follows.
- 6 (2) In section 73 (searches)—
- 7 (a) renumber subsection (1D) as subsection (1C);
- 8 (b) in that subsection for “Subsections (1A) and (1B)” substitute
- 9 “Subsections (1) to (1B)”; and
- 10 (c) omit subsection (5).
- 11 (3) In Schedule 11 for paragraph 18 (matters in respect of which Land
- 12 Registry Rules may be made) substitute—

13 “18. Regulating the manner in which, and extent to which, information held
14 for or in connection with the purposes of this Act may be accessed or inspected,
15 or published (whether following a search or otherwise).”.

16 **50 Repeal of amendment contained in Central Registry Act 2018**

17 In the Schedule to the *Central Registry Act 2018*, paragraph 33(13) (which would
18 have repealed entry 12 in Part 1 of Schedule 6 to the Land Registration Act 1982)
19 is repealed.
20

1

SCHEDULE

2

FURTHER PROVISION ABOUT REMAND UNDER SECTION 27

3

[Section 27(7)]

4

1 Introductory

5

This Schedule applies where a court has power to remand a person (referred to below in this Schedule as “**the relevant person**”) under section 27.

6

7

2 Remand in custody or on bail

8

(1) The court may remand the relevant person in custody or on bail.

9

(2) If remanded in custody, the relevant person 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 the relevant person on bail—

14

(a) by taking from the relevant person 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 the relevant person to custody as mentioned in sub-paragraph (2).

17

18

19

20

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

21

22

3 Conditions of recognisance

23

(1) Where the relevant person is remanded on bail, the court may direct that that person’s recognisance be conditioned for his or her 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 the relevant person’s appearance as mentioned in sub-paragraph (1)(b), the fixing of a time for the relevant person 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 the relevant person afresh.

32

1 **4 Period of remand**

2 The court may not remand the relevant person for a period exceeding 8 clear
3 days unless—

- 4 (a) the court adjourns proceedings for the purpose mentioned in
5 paragraph 5(1), or
6 (b) the relevant person is remanded on bail and both the relevant
7 person and the other party to the proceedings consent.

8 This is subject to paragraph 6.

9 **5 Remand for medical report**

10 (1) If the court has reason to suspect that a medical report will be required,
11 the power to remand a person under section 27 may be exercised for the
12 purpose of enabling a medical examination to take place and a report to
13 be made.

14 (2) If the person is remanded in custody for that purpose, the adjournment
15 may not be for more than 3 weeks at a time.

16 (3) If the person is remanded on bail for that purpose, the adjournment may
17 not be for more than 4 weeks at a time.

18 (4) Sub-paragraph (5) applies if there is reason to suspect that a person who
19 has been arrested under a warrant issued on an application made under
20 section 27 is suffering from mental disorder within the meaning of the
21 *Mental Health Act 1998*.

22 (5) The court has the same power to make an order under Schedule 1A to
23 the *Criminal Jurisdiction Act 1993* (remand to hospital for report on
24 accused's mental condition or for treatment) as a Court of General Gaol
25 Delivery has under that Schedule in the case of a person awaiting trial
26 before a court for an offence punishable with custody.

27 **6 Further remand**

28 (1) If the court is satisfied that a person who has been remanded is unable by
29 reason of illness or accident to appear or be brought before the court at
30 the end of the period of remand, the court may further remand the
31 relevant person in the relevant person's absence.

32 (2) The power under sub-paragraph (1) may, in the case of a person who
33 was remanded on bail, be exercised by enlarging the person's
34 recognizance and those of any sureties for the person to a later time.

35 (3) Where a person ("P") remanded on bail is bound to appear before the
36 court at any time and the court has no power to remand the relevant
37 person under sub-paragraph (1), the court may (in the relevant person's
38 absence) enlarge the relevant person's recognizance and those of any
39 sureties for the relevant person to a later time.

1 (4) The enlargement of the relevant person's recognizance is to be treated as
2 a further remand.

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

5 **7 Postponement of taking of recognizance**

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

10 **8 Requirements imposed on remand on bail**

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

IN THE COUNCIL

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.

Brought from the Keys on 28 January
2020

MISS AUGUST-HANSON

JANUARY 2020