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The Domestic Abuse Act 2021

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Discussion Format

This discussion will be divided into 4 parts:

1. Definitions within the Act
2. Introduction to DAPNs and DAPOs
3. Vulnerable Witnesses
4. Local Authority Support

PART 1: Definitions

3 key definitions introduced within the Act:

- Domestic abuse, including economic abuse
 - Personally connected persons
 - Children as victims of domestic abuse
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- Point for discussion: how will introducing these definitions impact our everyday practices?

Definition of Domestic Abuse

Section 1(2):

Behaviour of a person (“A”) towards another person (“B”) is “domestic abuse” if—

- (a) A and B are each aged 16 or over and are personally connected to each other, and
- (b) the behaviour is abusive.

Section 1(3):

Behaviour is “abusive” if it consists of any of the following—

- (a) physical or sexual abuse;
- (b) violent or threatening behaviour;
- (c) controlling or coercive behaviour;
- (d) economic abuse;
- (e) psychological, emotional or other abuse;

It does not matter whether the behaviour consists of a single incident or a course of conduct.

Definition of Personally Connected

Section 2(1)

two people are “personally connected” to each other if any of the following applies—

- (a) they are, or have been, married to each other;
- (b) they are, or have been, civil partners of each other;
- (c) they have agreed to marry one another;
- (d) they have entered into a civil partnership agreement;
- (e) they are, or have been, in an intimate personal relationship with each other;

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- (f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child;
- (g) they are relatives;
- (h) A is a carer for B who is a disabled person.

Children as Victims of Domestic Abuse

Any reference within the Act to a victim of domestic abuse includes a reference to a child who—

- (a) sees or hears, or experiences the effects of, the abuse, and
- (b) is related to A or B.

PART 2: DAPNs & DAPOs

Domestic abuse protection notices (DAPNs)

What is a DAPN?

- A domestic abuse protection notice is a notice prohibiting P from being abusive towards a person aged 16 or over to whom P is personally connected.

- Operates in the criminal law jurisdiction

What powers does a DAPN have?

- May contain no contact provision (s.21(1)(a))
- May contain zonal prohibition (s.21(1)(b))
- If the connected persons share a household, DAPN may:
 - Prohibit eviction or exclusion of protected person (s.20(2)(a))
 - Prohibit P from entering premises (*ibid*, (b))
 - Require P to leave the premises (*ibid*, (c))

Domestic abuse protection orders (DAPOs)

What is a DAPO?

- An order which prevents a person (“P”) from being abusive towards a person aged 16 or over to whom P is personally connected.

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- It may prohibit P from doing activities or by requiring P to undertake activities described within the order.

How is a DAPO obtained?

- By freestanding application or in the course of proceedings (s.27(2))
- May be made without notice (s.34(1))

The order bites back

- Criminal offence punishable by fine and/or imprisonment
- Warrant for arrest if non-compliance
- Notification requirements

The Legal Test

The court may make an order if both conditions A and B are met:

- **Condition A:** the court is satisfied, on the balance of probabilities, that P has been abusive towards a person aged 16 or over to whom P is personally connected (s.32(2))

- **Condition B:** the order is necessary and proportionate to protect that person from domestic abuse, or the risk of domestic abuse, carried out by P (s.32(3))

Considerations to which the court must have regard to before making an order:

- The welfare of any person under the age of 18 whose interests the court considers relevant to the making of the order
- The opinion of the person for whose protection the order would be made
- **(very important!)** it is not necessary for the person whose protection the order is made to consent to the making of the order

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- If the order contains provision relating to premises occupied by the protected person, the opinion of any relevant occupant

Requirements under a DAPO

• All power to the court:

The court may impose any requirements that the court considers necessary to protect the person from domestic abuse or the risk of domestic abuse (s.35(1)).

- Requirements include mandatory and prohibitory activities.
 - Limitation on the court's power to impose requirements and time limitations
- Final thoughts on DAPOs
- Appeal, variation, and discharge
 - Points for discussion:

Public law:

How will the use of DAPOs interplay with care proceedings, particularly at interim placement hearings?

Private law:

How do DAPOs sit with and compare to injunctions under FLA 1996?

Part 3: Vulnerable Witnesses

Special measures

Rules of court must provide that where P is, or is at risk of being, a victim of domestic abuse carried out by a person listed in subsection (3), it is to be assumed that the following matters are likely to be diminished by reason of vulnerability

- (a) the quality of P's evidence;
- (b) where P is a party to the proceedings, P's participation in the proceedings.

- Subsection (3)
- (a) a party to the proceedings;

(b) a relative of a party to the proceedings (other than P);

(c) a witness in the proceedings.

Cross examination in family proceedings

- Clause 65 Domestic Abuse Bill.
- This clause inserts new Part 4B into the Matrimonial and Family Proceedings Act 1984 to **automatically** prohibit perpetrators or alleged perpetrators of abuse from cross-examining their victims in person in the family courts in certain circumstances in England and Wales, and vice versa, and give such courts **discretion** to prevent cross-examination in person in other circumstances where it would affect the quality of the witness' evidence or cause significant distress.
- Power to appoint a publicly-funded qualified legal representative to conduct cross-examination in the interests of the party prohibited or prevented from cross-examining in person.

31R 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.

Section 31R

- Section 31R provides that any person involved in family proceedings who has an unspent conviction or caution or who is charged with, a "Specified offence" cannot cross-examine in person the victim of that offence, or alleged offence, during the course of the family proceedings.
- The section also provides that the victim or alleged victim cannot, in person, cross examine the perpetrator or alleged perpetrator.

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- It is intended to use regulations to specify a comprehensive list of domestic abuse-related and other violent and sexual offences, including child abuse offences.

31S Prohibition of cross-examination in person:

Persons protected by Injunctions.

- (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) The person who is protected by the injunction may not be cross-examined directly by the person against whom the injunction is in force, and the person against whom the injunction is in force may not be cross-examined directly by the person protected by the injunction.
- (4) “On notice”. The first instance is where the court is satisfied that there has been a hearing at which the person against whom the injunction was made had a chance to ask for it to be varied or set aside. This might occur where the court has made an injunction to last for a given period, without the person against whom it was made having been told that the court was considering making the injunction (a “without notice” injunction). **If there has since been a hearing which the person against whom the injunction was made was informed about, and at which that person could have asked the court to vary or remove the order, then that injunction will be considered “on notice” for the purpose of this section.**
- The second instance is where the injunction was made at a hearing and the court is satisfied that both the person protected by the injunction and the person against whom it was made had been informed about the hearing.

Section 31T - Other evidence of domestic abuse

- Section 31T makes provision for a prohibition on cross-examination in person where “specified evidence” is adduced that a witness in the proceedings has been the victim of domestic abuse perpetrated by a party to the proceedings (or vice versa).

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- It is intended to broadly replicate the list of evidence that is currently specified for the purposes of accessing civil legal aid.
- Such evidence includes, for example, a copy of a finding of fact made in legal proceedings in the UK, a letter or report from a health professional, a letter from any person who is a member of a local safeguarding forum or a letter from an independent domestic violence advisor.

Discretionary prohibitions of cross examination

- The provisions will further give the court a power to prohibit cross examination in person where it would be likely to **either diminish the quality of the witness’s evidence or cause significant distress to the witness or party.**
- The court can prohibit the cross-examination in person if it is satisfied that **either the “quality condition” or the “significant distress condition” is met and that it will not be contrary to the interests of justice** to direct that cross-examination by a party in person is prohibited.

Quality and Significant Distress Conditions

- The **“quality condition”** will be met if the quality of the witness’s evidence on cross-examination would be **likely to be diminished** if the cross examination is conducted by a party in person, **and** that the **quality of the evidence would likely be improved** if the court prohibited that cross examination in person.
- The **“significant distress condition”** will be met if the cross-examination in person would be **likely to cause significant distress** to the witness or the party conducting the cross-examination **and** the **distress caused is likely to be greater** than if the witness were cross-examined other than by the party in person.
- Circumstances in which this condition might be met could include, for example, instances where domestic abuse is alleged but the automatic prohibition doesn’t apply or where the direct cross-examination by a party of an expert witness would be likely to cause the party significant distress.

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Section 31U(5) - Factors

- (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;
- (d) any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or in any other proceedings;
- (e) any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or in any other proceedings;
- (f) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness;
- (g) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party;
- (h) any relationship (of whatever nature) between the witness and the party.
- (i) Any reference in this section to the quality of a witness's evidence is to its quality in terms of completeness, coherence and accuracy.

**New section 31W – Alternatives to cross-examination in person.
NB. 31 R-T (move straight to this stage). Other cases (apply 31U criteria first)**

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- Firstly, the court must consider whether there is a **“satisfactory alternative”**. An example of this might include the judge putting questions to the witness, where appropriate.
- If no satisfactory alternative means available, the court will ask the party who has been prohibited from direct cross-examination to arrange, **within a specified time, a qualified legal representative to cross-examine the witness on their behalf, and to notify the court of the arrangements.**
- If, after the specified time, the party has either notified the court that there is no qualified legal representative to act for them for the purposes of cross-examining the witness, or the court has not received any notification and it appears to the court that no legal representative will cross-examine the witness, **then the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a court-appointed qualified legal representative.**
- If the court decides it is **necessary in the interests of justice, then it must appoint such a qualified legal representative to cross-examine the witness in the interests of the party.** This legal representative, **appointed by the court, is not responsible to the party.**

New section 31X – Costs of legal representatives appointed under section 31W(6)

- Payment out of central funds of fees and costs of a qualified legal representative appointed under section 31W(6) and to cover related costs connected to their appointment.
- New section 31Y – Guidance for legal representatives appointed under section 31W(6). Lord Chancellor to issue guidance about the scope and nature of the role of a court-appointed qualified legal representative.
- The intention is that the guidance will set out further practical detail about the scope of this new statutory role.

PART 4 - LOCAL AUTHORITY SUPPORT

What types of safe accommodation will be covered by the new duty?

- The description of such accommodation to be broad based encompassing dedicated specialist services which provide a safe place to stay for victims and their children fleeing domestic abuse, namely:
 - refuge accommodation
 - specialist safe accommodation
 - dispersed accommodation
 - sanctuary schemes
 - and move-on or second stage accommodation.
- The new duty will cover the provision of support to victims and their children residing in: refuge accommodation; specialist safe accommodation; dispersed accommodation; sanctuary schemes; and move-on or second stage accommodation.

According to the *Explanatory Notes 2020*, such support may include:

- Advocacy support – development of personal safety plans, liaison with other services (for example, GPs and social workers, welfare benefit providers);
- Domestic abuse-prevention advice – support to assist victims to recognise the signs of abusive relationships, to help them remain safe (including online) and to prevent re-victimisation;
- Specialist support for victims with protected characteristics and / or complex needs, for example, interpreters, faith services, mental health advice and support, drug and alcohol advice and support, and immigration advice;
- Children’s support – including play therapy and child advocacy;
- Housing-related support – providing housing-related advice and support, for example, securing a permanent home and advice on how to live safely and independently; and
- Counselling and therapy for both adults and children.
- Clause 58: This clause places a duty on the Secretary of State to issue guidance to local authorities in England relating to the exercise of their functions.

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- Local authorities are under a duty to have regard to the guidance when exercising functions under this Part
- The purpose of this guidance is to assist local authorities in the delivery of support to victims of domestic abuse and their children in safe accommodation.
- Any guidance issued under this clause and any revisions to the guidance must be published.

Secure tenancies - Grant of secure tenancies in cases of domestic abuse.

(1) The local housing authority must grant a secure tenancy that is not a flexible tenancy

if—

(a) the tenancy is offered to a person who was a joint tenant of the dwelling-house under a qualifying tenancy, and

(b) the authority is satisfied that—

(i) the person or a member of the person's household is or has been a victim of domestic abuse carried out by another person, and

(ii) the new tenancy is granted for reasons connected with that abuse.

(2) The local housing authority must grant a secure tenancy that is not a flexible tenancy

if—

(a) the tenancy is offered to a person who is or was a tenant of some other dwellinghouse under a qualifying tenancy

(whether as the sole tenant or as a joint tenant), and

(b) the authority is satisfied that—

(i) the person or a member of the person's household is or has been a victim of domestic abuse carried out by another person, and

(ii) the new tenancy is granted for reasons connected with that abuse.

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Orders under section 91(14) of the Children Act 1989

91A Section 91(14) orders: further provision

(1) This section makes further provision about orders under section 91(14)

(2) The circumstances in which the court may make a section 91(14) order include, among others, where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91(14) order **would put (a) the child concerned, or, (b) another individual (“the relevant individual”), at risk of harm.**

Section 82. Prohibition on charging for the provision of medical evidence of domestic abuse

(1) No person may charge a fee or any other remuneration for the preparation or provision of relevant evidence relating to an assessment of an individual carried out by a relevant health professional in England or Wales under a qualifying medical services contract.

(2) No person may charge a fee or any other remuneration for the preparation or provision of relevant evidence relating to an individual by a relevant health professional in England or Wales if the services provided by the relevant health professional are wholly or mainly services provided under a qualifying medical services contract.

(3) In this section “relevant evidence”, in relation to an individual, means—

- (a) evidence that the individual is, or is at risk of being, a victim of domestic abuse which is intended to support an application by the individual for civil legal services, or
- (b) any other evidence that the individual is, or is at risk of being, a victim of domestic abuse which is of a description specified in regulations made by the Secretary of State.

Section 68 - Training for judiciary.

- (1) The training mentioned in subsection (1)(a) must include but is not limited to
 - training concerning—
 - (a) **the impact** upon victims and witnesses, both adults and children, of the trauma of rape, sexual and domestic abuse and coercive control;
 - (b) **the risks and difficulties for victims and witnesses in giving evidence** and taking part in proceedings concerning rape, sexual, domestic abuse

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and coercive control; and

- (c) the risks and difficulties for victims and witnesses of being involved in proceedings where one or more other parties may be the perpetrators of rape, sexual and domestic abuse and coercive control or persons connected to such perpetrators.
- (2) The Secretary of State shall within six months of the passing of this Act publish—
 - (a) a strategy for providing **specialist training** for all magistrates and judges hearing cases in family proceedings in the Family Courts concerning rape, sexual and domestic abuse and coercive control; and
 - (b) a timetable for the delivery of the training mentioned in paragraph (a), to include the training of all judges and magistrates who are already hearing or who are to be appointed to hear Family cases and to include **continuing professional development training** for all such judges and magistrates.