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The year of the  
DAPO – how  
far will a change  
of letter go to  
protect victims of  
domestic abuse?

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**Emma Clarke (pupil barrister) discusses the new definition of domestic abuse and considers the implications of the anticipated replacement of domestic violence protection orders (DVPOs) with domestic abuse protection orders (DAPOs) in 2022. It also explains what a DAPO is, who can apply for one, when they can be made, and what the consequences of breaching an order will be.**

### **The History of Domestic Abuse**

Recent history has seen a significant shift towards domestic abuse being viewed both as a social and public problem in the United Kingdom. It was not until the twentieth century that it was afforded a legal definition, given by Lord Scarman in *Davis*<sup>1</sup>, stating that it is “conduct by a family partner which puts at risk the security, or sense of security, of the other partner in the home” and recognising that “physical violence, or the threat of it, is clearly within the mischief. But there is more to it than that.”<sup>2</sup> The legislative definition of coercive control<sup>3</sup> somewhat reflects the latter part of Lord Scarman’s definition, but does not define domestic abuse as a stand-alone offence. Leaving the lasting impression that violence and control are separate issues, and the line is drawn there.

The various disjointed provisions that collectively govern domestic abuse in the United Kingdom have been subject to criticism for a number of years. So too have the public bodies’ response to the increase in domestic-abuse related crimes. In the year ending March 2021, police recorded 845,734 domestic abuse related crimes, and made 33 arrests per 100 of these. In the same year, the CPS charging rate decreased for the third year in a row, and the number of domestic-abuse related CPS prosecutions decreased, for the fifth year in a row.<sup>4</sup>

It is all too often the case that if parties reconcile (either voluntarily or through coercion) criminal charges are dropped. Indeed, some victims may not even self-identify as being in an abusive or controlling relationship. It is common for victims to be convinced, because of the psychological abuse that they have suffered, that they are to blame for the perpetrator’s actions.

### **The Domestic Abuse Act 2021**

Acknowledging these issues, the UK Government has committed to developing a greater recognition of domestic abuse amongst the public and within the justice system. This has been displayed in the publication of the Domestic Abuse Act, which sets the much more comprehensive and modern definition of domestic abuse, encompassing a wide range of issues that have not previously been granted legal recognition.<sup>5</sup>

The Act has therefore been hailed as a ground-breaking piece of legislation, which outlines proposals that would revolutionise the recognition of all types of domestic abuse within the justice system and unify disjointed legislation. It was trumpeted as the first dedicated law and policy to domestic abuse that ‘recognises the complex nature of these horrific crimes’ and ‘puts the needs of the victims and their families at the forefront.’<sup>6</sup>

### **The current approach**

The police approach to domestic abuse was strengthened in 2014 with the introduction of the Domestic Violence Disclosure Scheme (DVDS), Domestic Violence Protection Orders (DVPOs) and Domestic Violence Protection Notices (DVPNs).

The DVDS allows a person to ask the police for information about whether their partner has a previous history of domestic violence, however, it was not originally set out in legislation. The Domestic Abuse Act has therefore created a statutory basis for the scheme, which places duties on enforcement agencies to disclose information if an individual may be at risk of domestic abuse.<sup>7</sup>

The framework for DVPNs and DVPOs is currently contained in ss24–30 of the Crime and Security Act 2010. Only a member of the police force, not below the rank of superintendent, can issue a DVPN. They are intended to give immediate protection to those at risk of harm and give them time to consider what to do next. A DVPN must be brought before a magistrates’ court for approval within 48 hours of being served. If the court approves, the restrictions contained within the DVPN may be extended up to 28 days in the form of a DVPO. This allows time for the victim to reflect and have space and, it is hoped, make a clear decision on whether to press charges on the perpetrator. In the year ending March 2020, around 4,468 DVPNs were issued and 6,267 DVPOs were granted.<sup>8</sup>

The effectiveness of the current DVPO can be criticised for its limitations; it has a maximum duration of just 28 days, and there is an absence of criminal sanctions if the order is breached. Currently, breach of a DVPO is treated as a civil contempt of court, meaning the maximum penalty is a £5,000 fine or 2 months imprisonment.<sup>9</sup> The concern therefore is that DVPOs are subject to inappropriate use as a substitute for the criminal law, with police opting to use them instead of investigating alleged crimes, leading to prosecution.

There are of course a range of existing orders in addition to DVPOs that can currently be used in domestic abuse cases, such as Non-Molestation Orders, Occupation Orders, and Restraining Orders. These vary widely in terms of who can apply for them, the conditions that can be attached and the consequences of breach. Crucially, there is no single order that is accessible across the criminal,

family and civil courts. This can lead to confusion for victims and practitioners in domestic abuse cases and problems with enforcement.

### **From DVPO to DAPO – what’s in a change of letter?**

In 2018, a government consultation proposed that protective orders should remain, but expand to include all forms of domestic abuse as captured in the new statutory definition.<sup>10</sup> DVPOs were therefore replaced with new DAPOs in order to reflect this. Other protective orders, such as Non-Molestation Orders and Restraining Orders, still remain in place.

The Domestic Abuse Act does more than simply change the name of these protective orders. In short, the new DAPO is wider in scope, includes a broader range of restrictions that can be imposed on the perpetrator, and offers harsher sanctions for breaching an order. The framework governing the new DAPO is found in ss22–40 of the Domestic Abuse Act. Of particular note is the sanction for breach of a DAPO, which now amounts to a criminal offence and not a contempt of court. Breach is subject on indictment to a maximum penalty of 5 years imprisonment.<sup>11</sup> DAPOs grant courts power to use electronic monitoring alongside them, and will also carry with them notification requirements; the person subject to the order will be required to notify the police of their name and home address.<sup>12</sup> Such requirements will no doubt assist police with monitoring the perpetrator’s movements and any future risk they pose to the victim. Breach of such notification requirement is also a criminal offence.<sup>13</sup>

Accessibility is clearly at the forefront of the Domestic Abuse Act. This is reflected in the extension that the Act grants to parties who are permitted to apply for a DAPO, which now extends beyond the police, to include the victim, or someone representing their interests.<sup>14</sup> Thus, a victim is no longer required proactively to secure their own protection through civil law remedies, and any pressure from the perpetrator to stop court action is defused. Similarly, the Act enables the police, and victims applying for themselves, to apply without leave of the court. The Act also includes provision ‘for other persons as specified in regulations’ to be able to apply without leave.<sup>15</sup> These third parties could include, for example, local authorities. To ensure that the new orders are accessible, victims will not have to pay a fee to apply for a DAPO. Legal aid will also be made available for civil representation for victims applying for an order, and for representation for respondents in criminal courts.<sup>16</sup>

Whilst a the previous DVPO merely prevented a perpetrator from molesting a victim, or in some cases from coming within specified distances of a victim, provisions that can be made by a DAPO include both prohibitions and positive requirements on perpetrators. These include prohibiting the

perpetrator from coming within a specified distance of specified premises, alongside requiring the perpetrator to attend certain rehabilitation programmes.<sup>17</sup>

Finally, a DAPO affords much more flexibility than its predecessor. While DVPOs are barred by a limit of 28 days, the new DAPO has a flexible duration, enabling long-term protection to be provided where necessary and proportionate.<sup>18</sup> In addition, an order made under a DAPO can be varied at any point, allowing further protection to be granted if the perpetrator is posing a significant risk to the victim.<sup>19</sup>

### **Commentary**

On the outset, it is abundantly clear that the new legislative provisions under the Domestic Abuse Act bring together the strongest elements of existing protective orders into a single comprehensive, flexible order which will provide more effective and longer-term protection to victims of domestic abuse and their children, but that is not to say that they are entirely without fault.

The fact that the Act seemingly creates a criminal sanction for breach of a civil order, is not without controversy, particularly as these protective orders, in certain circumstances can be made without the victim's consent. If a victim, for example, felt disempowered by a decision such as this, they may be resistant to contacting the police on future occasions and increasing their risk of more serious harm by the perpetrator.

It has been argued that 'the most important part of any legislation is how decision-makers put the provisions of the statutes into practice--unfortunately, once legislation is passed, it is mistakenly credited with solving the problem.'<sup>20</sup> In this regard, what will make the new protective system under the Domestic Abuse Act particularly useful is its multi-agency function. Whilst not mandatory, upon making a notice or order, the victim is referred to support services. It is hoped that the new protective measures, combined with assistance from public bodies, will enable victims to empower themselves, escape from coercion and end the cycle of abuse.

The government has stated that it will pilot the new regime for DAPNs and DAPOs in a small number of areas across the UK to assess the effectiveness and impact prior to national roll out. Time will tell if the act delivers on its promises.

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## Endnotes

- 1 *Davis v Johnson* [1979] A.C 264 UKHL
- 2 Ibid at 348
- 3 Serious Crime Act 2015 s.76
- 4 **Office for National Statistics, Domestic Abuse and the Criminal Justice System, England and Wales: November 2021**
- 5 Such as economic, psychological, and emotional abuse, and a new offence of strangulation.
- 6 Victoria Atkins, Minister of State for Crime, Safeguarding and Vulnerability.
- 7 Domestic abuse act, s77
- 8 **<https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-protection-notices-orders-factsheet>**
- 9 Magistrates' Courts Act 1980 s63
- 10 *HM Government, Transforming the Response to Domestic Abuse: Government Consultation* (2018), p.34, **<https://consult.justice.gov.uk/homeoffice-moj/domestic-abuse-consultation>**
- 11 Domestic Abuse Act 2021 s39(5)
- 12 Ibid, s36(7)
- 13 Ibid, s39(5)
- 14 Ibid s28(2)
- 15 Ibid
- 16 *HM Government, Domestic Abuse Protection Notices/Orders Factsheet* (2022), **<https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-protection-notices-orders-factsheet#what-provision-is-there-for-positive-requirements-like-accredited-perpetrator-programmes>**
- 17 Domestic Abuse Act 2021 ss35–37
- 18 Ibid s38
- 19 Ibid s44
- 20 E Stanko, *Intimate Intrusions (Routledge Revivals): Women's Experience of Male Violence* (London, Routledge 2013) 165.