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**Command Paper on a draft Bill for an Act to  
make provision in relation to domestic abuse  
and for connected purposes.**

**Presented to Parliament by  
the Minister for Justice, Equality, Health and Care  
by Command of Her Majesty  
25th November 2020**

Comments on this Command Paper should be:

(a) sent by email to [commandpapers@gibraltar.gov.gi](mailto:commandpapers@gibraltar.gov.gi), or

(b) delivered to:

Command Paper Consultation C04/2020  
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Any comments received later than **noon on Wednesday 13th January 2021** may not be taken into account for the purposes of the consultation.

**BILL**

**FOR**

AN Act to make provision in relation to domestic abuse and for connected purposes.

ENACTED by the Legislature of Gibraltar.

**Title and commencement**

1. This Act may be cited as the Domestic Abuse Act 2021 and comes into operation on the day appointed by the Minister with responsibility for justice by notice in the Gazette and different days may be appointed for different purposes.

**PART 1**

**DOMESTIC ABUSE OFFENCE**

**The domestic abuse offence**

- 2.(1) A person (“A”) commits an offence if—
- (a) A engages in a course of behaviour that is abusive of another person (“B”) (see section 3),
  - (b) A and B are personally connected to each other at the time (see section 5), and
  - (c) the conditions in subsection (2) are met.
- (2) The conditions referred to in subsection (1)(c) are—
- (a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm, and
  - (b) that A—

- (i) intends the course of behaviour to cause B to suffer physical or psychological harm, or
  - (ii) is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.
- (3) For the purposes of this Part—
  - (a) a course of behaviour involves behaviour on at least two occasions;
  - (b) “psychological harm” includes fear, alarm and distress.
- (4) An offence under this section can be committed whether or not A’s behaviour actually causes B to suffer any physical or psychological harm. But this does not prevent evidence from being led in proceedings for an offence under this section about any harm actually suffered by B as a result of the behaviour.
- (5) The offence under this section is to be known as the domestic abuse offence.
- (6) See also—
  - (a) section 6 (behaviour occurring outside Gibraltar),
  - (b) section 7 (exception for persons having responsibility for children), and
  - (c) section 8 (defence on grounds of reasonableness).

**What constitutes “abusive” behaviour**

3.(1) This section contains provision for determining for the purposes of this Part when the behaviour of a person (“A”) is abusive of another person (“B”).

- (2) Behaviour that is abusive of B includes (among other things)—
  - (a) behaviour directed at B that is violent;

- (b) behaviour directed at B that is threatening;
  - (c) behaviour directed at B, at a child of B or at another person that—
    - (i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or
    - (ii) would be considered by a reasonable person to be likely to have one or more of those relevant effects.
- (3) The relevant effects are of—
- (a) making B dependent on, or subordinate to, A;
  - (b) isolating B from friends, family members or other sources of social interaction or support;
  - (c) controlling, regulating or monitoring B's day-to-day activities;
  - (d) depriving B of, or restricting B's, freedom of action;
  - (e) making B feel frightened, humiliated, degraded, punished or intimidated.
- (4) In subsection (2)—
- (a) the reference in paragraph (a) to violent behaviour includes both sexual violence and physical violence;
  - (b) in paragraph (c) "child" means a person under the age of 18.
- (5) Behaviour can be abusive of B as a result of subsection (2)(c) whether or not the behaviour actually has on B any of the relevant effects set out in subsection (3). But this does not prevent evidence from being led in proceedings for the domestic abuse offence about any effects which the behaviour actually had on B.

(6) None of the paragraphs of subsection (2) or (as the case may be) subsection (3) is to be taken to limit the meaning of any other paragraph of that subsection.

**Further provision about “behaviour”**

4.(1) This section has effect for the purposes of this Part.

(2) “Behaviour” means behaviour of any kind, including (for example)—

- (a) saying or otherwise communicating something as well as doing something;
- (b) intentionally failing—
  - (i) to do something, or
  - (ii) to say or otherwise communicate something.

(3) Behaviour is “directed at” a person if it is directed at the person in any way, including (for example)—

- (a) by way of conduct relating to the person’s ability to acquire, use or maintain money or other property or to obtain goods or services,
- (b) by way of other conduct towards property, or
- (c) by making use of a third party,

as well as in a personal or direct manner.

**Definition of “personally connected”**

5.(1) For the purposes of this Act, two people (“A” and “B”) 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 are living together, or have lived together, as if married or in a civil partnership;
  - (d) they are, or have been, otherwise in an intimate personal relationship with each other;
  - (e) they are members of the same family (see subsections (2) and (3)).
- (2) A and B are members of the same family if B is A's parent, grandparent, child, grandchild, brother or sister.
- (3) A and B are also members of the same family if—
- (a) one of them is in a relevant relationship with another person ("C"), and
  - (b) the other of them is C's parent, grandparent, child, grandchild, brother or sister.
- (4) The reference in subsection (3)(a) to being in a relevant relationship is a reference to—
- (a) being married or in a civil partnership, or
  - (b) living together as if married or in a civil partnership.
- (5) For the purposes of subsections (2) and (3)—
- (a) a relationship of the half blood or by affinity is to be treated as a relationship of the whole blood, and
  - (b) the stepchild of a person is to be treated as that person's child.

**Behaviour occurring outside Gibraltar**

6.(1) If—

- (a) a person's course of behaviour consists of or includes behaviour occurring outside Gibraltar,
- (b) the course of behaviour would constitute the domestic abuse offence if it occurred in Gibraltar, and
- (c) the person is a Gibraltarian (within the meaning of the Gibraltarian Status Act) or is habitually resident in Gibraltar,

the person commits the domestic abuse offence.

- (2) If the course of behaviour occurs wholly outside Gibraltar—
  - (a) proceedings for the offence may be taken in Gibraltar, and
  - (b) the offence may for incidental purposes be treated as having been committed in Gibraltar.

**Exception for persons having responsibility for children**

7.(1) A person ("A") does not commit the domestic abuse offence in relation to another person ("B") by engaging in any behaviour that is abusive of B at a time when—

- (a) B is under the age of 18, and
- (b) A has responsibility for B.

(2) For the purposes of this section the following shall be presumed to have responsibility B-

- (a) any person who—
  - (i) has parental responsibility for him (within the meaning of the Children Act 2009); or
  - (ii) is otherwise legally liable to maintain him; and
- (b) any person who has care of him.



(3) A person who is presumed to be responsible for a child or young person by virtue of subsection (2)(a) shall not be taken to have ceased to be responsible for him by reason only that he does not have care of him.

**Defence on grounds of reasonableness**

8.(1) In proceedings in respect of a charge of the domestic abuse offence, it is a defence for a person to show that the course of behaviour was reasonable in the particular circumstances.

(2) That is shown if—

- (a) evidence adduced is enough to raise an issue as to whether the course of behaviour was as described in subsection (1), and
- (b) the prosecution does not prove beyond reasonable doubt that the course of behaviour was not as described in subsection (1).

**Alternative available for conviction**

9.(1) In proceedings in respect of a charge against a person (“A”) of the domestic abuse offence, A may be convicted of an alternative offence if the facts proved against A—

- (a) do not amount to the domestic abuse offence, but
- (b) do amount to the alternative offence.

(2) For the purposes of subsection (1) the alternative offences are—

- (a) an offence under section 89 of the Crimes Act 2011 (harassment, alarm or distress);
- (b) an offence under section 92 of that Act (harassing conduct);

- (c) an offence under section 94 of that Act (putting people in fear of violence).

**Penalty for the offence**

- 10. A person who commits the domestic abuse offence is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine, or both.

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

11. (1) A charge of the domestic abuse offence against a person (“A”) may include an allegation that the offence is aggravated by reason of the person in relation to whom the offence is alleged to have been committed (“B”) having been under the age of 18 at the time of any of the behaviour constituting the offence.

- (2) Subsection (3) applies where—
  - (a) A is charged as mentioned in subsection (1), and
  - (b) the charge is proved.
- (3) The court must—
  - (a) state on conviction that the offence is aggravated by reason of B having been under the age of 18 as mentioned in subsection (1),
  - (b) record the conviction in a way that shows that the offence is so aggravated,
  - (c) in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence, and

- (d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.
- (4) If the charge—
  - (a) is not proved as respects the allegation of aggravation, but
  - (b) is otherwise proved,

A may be convicted of the charge under deletion of the allegation of aggravation.

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

12.(1) A charge of the domestic abuse offence against a person (“A”) may include an allegation that the offence is aggravated by reason of involving a relevant child.

(2) For the purposes of this section, “relevant child” means a person under the age of 18 who is not A or B. In this section “B” is the person in relation to whom the offence is alleged to have been committed.

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

- (a) at any time in the commission of the offence—
  - (i) A directed or threatened to direct behaviour at the child, or
  - (ii) A made use of the child in directing behaviour at B, or
- (b) the child saw or heard, or was present during, an incident of behaviour which A directed at B as part of the course of behaviour, or
- (c) a reasonable person would consider the course of behaviour, or an incident of A’s behaviour that forms part

of the course of behaviour, to be likely to adversely affect the child.

(4) For it to be proved that the offence is so aggravated, there does not need to be evidence that a child –

- (a) has ever had any awareness or understanding of A's behaviour, or
- (b) has ever been adversely affected by A's behaviour.

(5) Nothing in this subsection prevents evidence from being led about—

- (a) a child's observations of, or feelings as to, A's behaviour, or
- (b) a child's situation so far as arising because of A's behaviour.'

(6) Subsection (7) applies where—

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

(7) The court must—

- (a) state on conviction that the offence is aggravated by reason of involving a relevant child,
- (b) record the conviction in a way that shows that the offence is so aggravated,
- (c) in determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence, and
- (d) in imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.

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

A may be convicted of the charge under deletion of the allegation of aggravation.

**Relationship taken as established if not challenged**

13.(1) In proceedings in respect of a charge of the domestic abuse offence against a person (“A”), the prosecutor may serve notice on A, or A’s solicitor, proposing that the matter of A and B being personally connected, as required for the proof of the charge, be taken as established for the purposes of the proceedings. In this subsection “B” is the person in relation to whom the offence is alleged to have been committed.

(2) A notice under subsection (1) must be served no later than the point in the proceedings when the prosecutor complies with section 239 of the Criminal Procedure and Evidence Act 2011 or purports to comply with it.

(3) If a notice under subsection (1) is served in accordance with this section, the matter is to be taken as so established unless it is challenged as provided for in subsection (4).

- (4) The matter is challenged by—
  - (a) A or A’s solicitor serving on the Director of Public Prosecutions, not later than the seventh day after the day of the service of the prosecutor’s notice under subsection (1), a notice of objection stating the reason for objection, or
  - (b) such later objection as the court allows in special circumstances.
- (5) A notice for the purposes of this section must be in writing.

**Service of notices under section 13**

14.(1) This section contains provision about the service of notices under section 13.

(2) References in this section to a person's proper address are to—

- (a) where the person is the person charged, the person's usual or last known address;
- (b) where the person is—
  - (i) the solicitor of the person charged, or
  - (ii) the Director of Public Prosecutions,  
the address of the person's office.

(3) Notice is served on a person by—

- (a) handing it to the person,
- (b) leaving it at the person's proper address,
- (c) sending it by post to the person at the person's proper address, or
- (d) where subsection (4) applies, sending it to the person by electronic means.

(4) This subsection applies where—

- (a) the person on whom the notice is to be served has indicated that it may be served on the person by being sent to an electronic address and in an electronic form specified for that purpose, and
- (b) the notice is sent to that address in that form.

(5) In subsection (4)(a) “electronic address” means any number or address used for the purposes of sending or receiving documents or information by electronic means.

(6) A notice sent by electronic means is, unless the contrary is proved, to be treated as having been served at 9 a.m. on the working day immediately following the day on which it was sent.

(7) In subsection (6) “working day” means a day other than a Saturday, Sunday or a public holiday.

#### **No cross-examination by accused in person**

15. (1) The Criminal Procedure and Evidence Act 2011 is amended in accordance with this section.

(2) In section 427 after the definition of “child witness” insert the following definition-

“the domestic abuse offence” has the same meaning as in the Domestic Abuse Act 2019;”.

(3) In section 429(4) (witnesses eligible for assistance on grounds of fear or distress about testifying) after “a sexual offence” insert “or the domestic abuse offence”.

(4) In section 438(4)(a) (evidence given in private) after “a sexual offence” insert “or the domestic abuse offence”.

(5) In section 450 (complainants in proceedings for sexual offences), after “a sexual offence” insert “or the domestic abuse offence”.

(6) In section 451 (child complainants and other child witnesses), in subsection (3)(a) after “any sexual offence” insert, the domestic abuse offence or any”.

#### **Guidance about investigation of offences**

16.(1) The Minister with responsibility for justice may issue guidance about the investigation of the domestic abuse offence to whatever persons he considers appropriate.

(2) The Minister with responsibility for justice may revise any guidance issued under this section.

(3) The Minister with responsibility for justice must arrange for any guidance issued or revised under this section to be published.

## **PART 2**

### **POWERS FOR DEALING WITH DOMESTIC ABUSE**

#### **Domestic abuse protection notices**

##### **Power to give a domestic abuse protection notice**

17.(1) A senior police officer may give a domestic abuse protection notice to a person ("P") if conditions A and B are met.

(2) A domestic abuse protection notice is a notice prohibiting P from being abusive towards a person aged 16 or over to whom P is personally connected. (Section 18 contains further provision about the provision that may be made by notices.)

(3) Condition A is that the senior police officer has reasonable grounds for believing that P has been abusive towards a person aged 16 or over to whom P is personally connected.

(4) Condition B is that the senior police officer has reasonable grounds for believing that it is necessary to give the notice to protect that person from domestic abuse, or the risk of domestic abuse, carried out by P.

(5) It does not matter whether the abusive behaviour referred to in subsection (3) took place in Gibraltar or elsewhere.

(6) A domestic abuse protection notice may not be given to a person who is under the age of 18.



(7) In this Part “senior police officer” means a member of the Royal Gibraltar Police who is of at least the rank of chief inspector.

**Provision that may be made by notices**

18.(1) A domestic abuse protection notice may provide that the person to whom the notice is given (“P”)—

- (a) may not contact the person for whose protection the notice is given;
- (b) may not come within a specified distance of any premises in Gibraltar in which that person lives.

“Specified” means specified in the notice.

(2) If P lives in premises in Gibraltar in which the person for whose protection the notice is given also lives, the notice may also contain provision—

- (a) prohibiting P from evicting or excluding that person from the premises;
- (b) prohibiting P from entering the premises;
- (c) requiring P to leave the premises.

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

19.(1) Before giving a domestic abuse protection notice to a person (“P”), a senior police officer must, among other things, consider the following—

- (a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the giving of the notice (whether or not that person and P are personally connected);
- (b) the opinion of the person for whose protection the notice would be given as to the giving of the notice;

- (c) any representations made by P about the giving of the notice;
  - (d) in a case where the notice includes provision relating to premises lived in by the person for whose protection the notice would be given, the opinion of any relevant occupant as to the giving of the notice.
- (2) In subsection (1)(d) “relevant occupant” means a person other than P or the person for whose protection the notice would be given—
- (a) who lives in the premises, and
  - (b) who is personally connected to—
    - (i) the person for whose protection the notice would be given, or
    - (ii) if P also lives in the premises, P.
- (3) The officer must take reasonable steps to discover the opinions mentioned in subsection (1).
- (4) It is not necessary for the person for whose protection a domestic abuse protection notice is given to consent to the giving of the notice.

**Further requirements in relation to notices**

- 20.(1) A domestic abuse protection notice must be in writing.
- (2) A domestic abuse protection notice given to a person (“P”) must state—
- (a) the grounds on which it has been given,
  - (b) that a police officer may arrest P without warrant if the police officer has reasonable grounds for believing that P is in breach of the notice,

- (c) that an application for a domestic abuse protection order under section 23 will be heard by the magistrates' court within 48 hours of the time of giving the notice (disregarding any days mentioned in section 24(3)) and a notice of the hearing will be given to P,
  - (d) that the notice continues in effect until that application has been determined or withdrawn, and
  - (e) the provision that the magistrates' court may include in a domestic abuse protection order.
- (3) The notice must be served on P personally by a police officer.
- (4) On serving the notice on P, the police officer must ask P for an address at which P may be given the notice of the hearing of the application for the domestic abuse protection order.
- (5) Subsection (6) applies where—
- (a) a senior police officer gives a domestic abuse protection notice to a person (“P”) who the officer believes is a person subject to service law in accordance with section 2(2) of the Armed Forces (Gibraltar) Act 2018,
  - (b) the notice includes provision by virtue of section 20(2) prohibiting P from entering premises, or requiring P to leave premises, and
  - (c) the officer believes that the premises fall within paragraph (a) of the definition of “service living accommodation” in section 96(1) of the Armed Forces Act 2006, as it applies to Gibraltar by virtue of the Armed Forces (Gibraltar) Act 2018.
- (6) The officer must make reasonable efforts to inform P's commanding officer (within the meaning of section 360 of the Armed Forces Act 2006, as it applies to Gibraltar by virtue of the Armed Forces (Gibraltar) Act 2018) of the issuing of the notice.

**Breach of notice**

21.(1) If a police officer has reasonable grounds for believing that a person is in breach of a domestic abuse protection notice, the police officer may arrest the person without warrant.

(2) A person arrested by virtue of subsection (1) must be held in custody and brought before the magistrates' court—

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

(3) In calculating when the period of 24 hours mentioned in subsection (2)(a) ends, the following days are to be disregarded—

- (a) any Saturday or Sunday,
- (b) Christmas Day,
- (c) Good Friday, and
- (d) any day which is a bank holiday in Gibraltar under the Banking and Financial Dealings Act.

(5) If the person is brought before the court as mentioned in subsection (2)(a), the court may remand the person. (For power to remand a person brought before the court as mentioned in subsection (2)(b), see section 24(8).)

(6) The court may, when remanding the person on bail, require the person to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

(7) In section 21(1) of the Criminal Procedure and Evidence Act 2011 (entry for purpose of arrest etc), after paragraph (e) insert—

- “(ea) of arresting a person who the police officer has reasonable grounds for believing is in breach of a domestic abuse protection notice given under section 17 of the Domestic Abuse Act 2021;”.

*Domestic abuse protection orders*

**Meaning of “domestic abuse protection order”**

22.(1) In this Part a “domestic abuse protection order” is an order which, for the purpose of preventing a person (“P”) from being abusive towards a person aged 16 or over to whom P is personally connected—

- (a) prohibits P from doing things described in the order, or
  - (b) requires P to do things described in the order.
- (2) A domestic abuse protection order may be made—
- (a) on application (see section 23), or
  - (b) in the course of certain proceedings (see section 26).

(3) Section 27 sets out the conditions for making a domestic abuse protection order.

**Domestic abuse protection orders on application**

23.(1) A court may make a domestic abuse protection order under this section against a person (“P”) on an application made to it in accordance with this section.

- (2) An application for an order under this section may be made by—
- (a) the person for whose protection the order is sought;
  - (b) the Commissioner of Police;
  - (c) a person specified in regulations made by the Minister with responsibility for justice;

- (d) any other person with the leave of the court to which the application is to be made.

(3) Where P is given a domestic abuse protection notice by an officer of the Royal Gibraltar Police under section 17, the Commissioner of Police must apply for a domestic abuse protection order against P. (For further provision about such applications, see section 24.)

(4) An application for an order under this section must be made to the Supreme Court, except where subsection (5) or (6) applies.

(5) An application made by the Commissioner of Police for an order under this section must be made by complaint to the magistrates' court.

(6) 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 26 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.

(7) Where an application is made to the magistrates' court in accordance with this section—

- (a) the magistrates' court may adjourn the hearing of the application;
- (b) on the hearing of the application, section 28 of the Magistrates' Courts Act (recalcitrant witnesses) does not apply in relation to the person for whose protection the order is sought, except where the person has given oral or written evidence at the hearing.

**Applications where domestic abuse protection notice has been given**

24.(1) This section applies where, as a result of a person (“P”) being given a domestic abuse protection notice under section 17, the Commissioner of Police is required by section 23(3) to apply for a domestic abuse protection order against P.

(2) The application must be heard by the magistrates’ court not later than 48 hours after the notice was given to P.

(3) In calculating when the period of 48 hours mentioned in subsection (2) ends, the following days are to be disregarded—

- (a) any Saturday and Sunday,
- (b) Christmas Day,
- (c) Good Friday, and
- (d) any day which is a bank holiday in Gibraltar under the Banking and Financial Dealings Act.

(4) P must be given a notice of the hearing of the application.

(5) The notice under subsection (4) is to be treated as having been given if it has been left at the address given by P under section 20(4).

(6) But if the notice has not been given because P did not give an address under section 20(4), the court may hear the application if satisfied that the Commissioner of Police has made reasonable efforts to give P the notice.

(7) If the court adjourns the hearing of the application, the notice continues in effect until the application has been determined or withdrawn.

(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

21(1) (arrest for breach of domestic abuse protection notice), and

(b) the court adjourns the hearing,

the court may remand P.

**Remand under section 24(8) of person arrested for breach of notice**

25.(1) This section applies where—

(a) as a result of a person being given a domestic abuse protection notice under section 17, the Commissioner of Police has applied for a domestic abuse protection order against the person, and

(b) the magistrates' court remands the person under section 24(8).

(2) If the court has reason to suspect that a medical report will be required, the power to remand the person may be exercised for the purpose of enabling a medical examination to take place and a report to be made.

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

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

(5) If the court has reason to suspect that the person is suffering from mental disorder within the meaning of the Mental Health Act 2016, the court has the same power to make an order under section 664 of the Criminal Procedure and Evidence Act 2011 (remand to hospital for report on accused's mental condition) as it has under that section in the case of a defendant within that section).

(6) The court may, when remanding the person on bail, require the person to comply, before release on bail or later, with any requirements



that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

### **Domestic abuse protection orders otherwise than on application**

26.(1) A court may make a domestic abuse protection order under this section in any of the cases set out below.

#### *Family proceedings*

(2) A court may make a domestic abuse protection order against a person ("P") in any family proceedings to which both P and the person for whose protection the order would be made are parties.

#### *Criminal proceedings*

(3) Where a person ("P") has been convicted of an offence, the court dealing with P for that offence may (as well as sentencing P or dealing with P in any other way) make a domestic abuse protection order against P.

(4) But subsection (3) does not apply where the Court of Appeal is dealing with a person for an offence.

(5) A court by or before which a person is acquitted of an offence may make a domestic abuse protection order against the person.

(6) Where the Supreme Court allows a person's appeal against a conviction for an offence, the Supreme Court may make a domestic abuse protection order against the person.

#### *Civil proceedings*

(7) A court may make a domestic abuse protection order against a person ("P") in any relevant proceedings to which both P and the person for whose protection the order would be made are parties.

(8) In subsection (7) "relevant proceedings" means proceedings of a description specified in regulations made by the Minister with responsibility for justice.

### **Conditions for making an order**

27.(1) The court may make a domestic abuse protection order under section 23 or 26 against a person (“P”) if conditions A and B are met.

(2) Condition A is that 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.

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

(4) It does not matter—

- (a) whether the abusive behaviour referred to in subsection (2) took place in Gibraltar or elsewhere, or
- (b) whether it took place before or after the coming into force of this section.

(5) A domestic abuse protection order may not be made against a person who is under the age of 18.

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

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

- (a) the welfare 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 and P are 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—
  - (i) which relates to the making of the order, and
  - (ii) 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 would be 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.

**Making of orders without notice**

29.(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 has not been given such notice of the proceedings as would otherwise be required by rules of court.

(2) Subsection (1) does not apply in relation to the making of an order under section 23 on an application made in accordance with subsection (3) of that section (see instead section 24(4) to (6)).

(3) In deciding whether to exercise its powers under subsection (1), the court must have regard to all the circumstances, including—

- (a) any risk that, if the order is not made immediately, P will cause significant harm to the person for whose protection the order would be made,
  - (b) in a case where an application for the order has been made, whether it is likely that the person making the application will be deterred or prevented from pursuing the application if an order is not made immediately, and
  - (c) whether there is reason to believe that—
    - (i) P is aware of the proceedings but is deliberately evading service, and
    - (ii) the delay involved in effecting substituted service will cause serious prejudice to the person for whose protection the order would be made.
- (4) If a court makes an order against a person by virtue of subsection (1), it must give the person an opportunity to make representations about the order—
- (a) as soon as just and convenient, and
  - (b) at a hearing of which notice has been given to all the parties in accordance with rules of court.

**Provision that may be made by orders**

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

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

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

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

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

“Specified” means specified in the order.

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

- (a) prohibiting P from evicting or excluding that person from the premises;
- (b) prohibiting P from entering the premises;
- (c) requiring P to leave the premises.

(7) Section 31 contains further provision about the requirements that may be imposed by a domestic abuse protection order.

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

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

- (a) conflict with the person’s religious beliefs;
- (b) interference with any times at which the person normally works or attends an educational establishment;

- (c) conflict with the requirements of any other court order or injunction to which the person may be subject.
- (2) A domestic abuse protection order that imposes a requirement to do something on a person (“P”) must specify the person who is to be responsible for supervising compliance with that requirement.
- (3) Before including such a requirement in a domestic abuse protection order, the court must receive evidence about its suitability and enforceability from the person to be specified under subsection (2).
- (4) It is the duty of a person specified under subsection (2)—
- (a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (the “relevant requirements”);
  - (b) to promote P’s compliance with the relevant requirements;
  - (c) if the person considers that—
    - (i) P has complied with all the relevant requirements, or
    - (ii) P has failed to comply with a relevant requirement,to inform the Commissioner of Police.
- (5) A person (“P”) who is subject to a requirement imposed by a domestic abuse protection order—
- (a) must keep in touch with the person specified under subsection (2) in relation to that requirement, in accordance with any instructions given by that person from time to time;
  - (b) if P changes home address, must notify the person specified under subsection (2) of the new home address;

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

These obligations have effect as requirements of the order.

#### **Duration and geographical application of orders**

32.(1) A domestic abuse protection order takes effect on the day on which it is made. This is subject to subsection (2).

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

- (3) A domestic abuse protection order has effect—
  - (a) for a specified period,
  - (b) until the occurrence of a specified event, or
  - (c) until further order.

“Specified” means specified in the order.

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

#### **Breach of order**

33.(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.

(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 behaviour engaged in at a time when the person was aware of the existence of the order.

(See also section 39(5) and (6), 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 behaviour, that behaviour 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 behaviour which has been punished as a contempt of court.

- (5) A person guilty of an offence under this section is liable—
- (a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or both.

(6) 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.

(7) In proceedings for an offence under this section, a copy of the original domestic abuse protection order, certified by an 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.

#### **Arrest for breach of order**

34.(1) This section applies where a relevant court has made a domestic abuse protection order against a person (“P”).

- (2) In this section “relevant court” means—
- (a) the Supreme Court, or
  - (b) a court which made a domestic abuse protection order against a person in family or civil proceedings.



(3) A person mentioned in subsection (4) may apply to the relevant judge for the issue of a warrant for P's arrest if the person considers that P has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(4) The persons referred to in subsection (3) are—

- (a) the person for whose protection the order was made;
- (b) where the order was made under section 23, the person who applied for the order (if different);
- (c) any other person with the leave of the relevant judge.

(5) The relevant judge may issue a warrant on an application under subsection (3) only if—

- (a) the application is substantiated on oath, and
- (b) the relevant judge has reasonable grounds for believing that P has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(6) If—

- (a) P is brought before a relevant court as a result of a warrant issued under this section, and
- (b) the court does not immediately dispose of the matter,

the court may remand P.

(7) Schedule 1 contains further provision about remand under this section.

(8) In this section “the relevant judge” means—

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

- (b) where the order was made in family proceedings, a judge of the court that made the order;
- (c) where the order was made in civil proceedings, a judge of the court that made the order.

(9) For the power of a police officer to arrest P without warrant for breach of a domestic abuse protection order, see section 42 of the Criminal Procedure and Evidence Act 2011.

#### **Variation and discharge of orders**

35.(1) A court may vary or discharge a domestic abuse protection order made by that or any other court.

This is subject to section 36.

(2) A court may vary or discharge a domestic abuse protection order under this section—

- (a) on the application of a person mentioned in subsection (3), or
- (b) in any case in which it could make a domestic abuse protection order under section 26.

(3) The persons referred to in subsection (2)(a) are—

- (a) the person for whose protection the order was made;
- (b) the person against whom the order was made (“P”);
- (c) where the order was made under section 23, the person who applied for the order;
- (d) the Commissioner of Police.

(4) Before deciding whether to vary or discharge an order under this section, the court must hear from—

- (a) the Commissioner of Police, should he wish to be heard, and
- (b) in a case where the person for whose protection the order was made is seeking to discharge the order, or to remove or make less onerous any requirement imposed by the order, the person for whose protection it was made.

(5) Section 28 (matters to be considered before making an order) applies in relation to the variation or discharge of a domestic abuse protection order as it applies in relation to the making of such an order, but as if references to the person for whose protection the order would be made were references to the person for whose protection the order was made.

(6) Section 29 (making of orders without notice) applies in relation to the variation of a domestic abuse protection order as it applies in relation to the making of such an order, but as if—

- (a) references to the person for whose protection the order would be made were references to the person for whose protection the order was made,
- (b) subsection (2) were omitted, and
- (c) the reference in subsection (4) to making representations about the order were a reference to making representations about the variation.

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

This is subject to subsections (8) to (11).

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

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

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

- (a) may not extend the requirement, and
- (b) must remove the requirement.

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

**Variation and discharge: supplementary**

36.(1) Any application to vary or discharge a domestic abuse protection order under section 35 must be made to the court that made the order.

This is subject to subsection (2).

- (2) Where—
- (a) the order was made under section 26 on an appeal in relation to a person's conviction or sentence for an offence, or
  - (b) the order was made by a court under that section against a person committed or remitted to that court for sentencing for an offence,

any application to vary or discharge the order must be made to the court by or before which the person was convicted.

(3) A domestic abuse protection order made by the Supreme Court may be varied or discharged under section 35 only by the Supreme Court.

(4) An order that has been varied under section 35 remains an order of the court that first made it for the purposes of any further application under that section.

(5) Subsection (6) applies in a case where—

- (a) an order made against a person is varied under section 35 so as to include an additional requirement, or to extend the period for which the order, or a requirement imposed by the order, has effect, and
- (b) the person was not given notice of the proceedings.

(6) The person commits an offence under section 33 only if—

- (a) the behaviour constituting the offence was engaged in at a time when the person was aware of the making of the variation, and
- (b) the behaviour would not have constituted an offence under that section in the absence of the variation.

### **Appeals**

37,(1) A person listed in subsection (2) may appeal against any decision of a court on an application for a domestic abuse protection order under section 23 (to the extent that it would not otherwise be so appealable).

(2) The persons referred to in subsection (1) are—

- (a) the person for whose protection the order was sought,
- (b) the person who applied for the order (if different), and
- (c) where the court made a domestic abuse protection order under section 23, the person against whom it was made.

(3) A person against whom a domestic abuse protection order is made under subsection (3), (5) or (6) of section 26 may appeal against the making of the order (to the extent it would not otherwise be so appealable) as if it were a sentence passed on the person for the offence referred to in that subsection (assuming, in a case within section 26(5) or (6), that the person had been convicted of the offence).

(4) A person against whom a domestic abuse protection order is made may appeal against a variation of the order under section 41 that is made in a case within subsection (3), (5) or (6) of section 28 (to the extent it would not otherwise be so appealable) as if the varied order were a sentence passed on the person for the offence referred to in that subsection (assuming, in a case within section 28(5) or (6), that the person had been convicted of the offence).

(5) A person listed in subsection (6) may appeal against any decision of a court under section 35 in relation to a domestic abuse protection order (to the extent it would not otherwise be so appealable, whether under subsection (4) or otherwise).

(6) The persons referred to in subsection (5) are—

- (a) the person for whose protection the order was made;
- (b) the person against whom the order was made (“P”);
- (c) where the order was made under section 23, the person who applied for the order;
- (d) the Commissioner of Police.

(7) An appeal arising by virtue of subsection (1) or (5)—

- (a) in the case of a decision made by a magistrates’ court, is to be made to the Supreme Court;
- (b) in the case of a decision made by the Supreme Court, is to be made to the Court of Appeal.

For the powers of the Supreme Court or Court of Appeal on such an appeal, see section 38(4).

(8) If, in the case of an appeal arising by virtue of subsection (1) or (5) in respect of a decision made by the Supreme Court or a court in family or civil proceedings, the person making the appeal was not a party to the proceedings in that court, the person is to be treated for the purposes of that appeal as if the person had been a party to those proceedings.

#### **Further provision about appeals**

38.(1) Before determining any appeal relating to a domestic abuse protection order (whether or not an appeal under section 37), the court must hear from the Commissioner of Police should he wish to be heard.

(2) Subsection (3) applies to—

- (a) an appeal made to the Supreme Court by virtue of section 37(7)(a);
- (b) an appeal made to the Court of Appeal by virtue of section 37(7)(b).

(3) On an appeal to which this subsection applies, the court may, on a review of the decision appealed against—

- (a) confirm, vary or revoke any part of the decision;
- (b) refer the matter back to the court that made the decision with a direction to reconsider and make a new decision in accordance with its ruling;
- (c) make any order which the court that made the decision appealed against could have made;
- (d) make any incidental or consequential orders that appear to it to be just.

(4) For the purposes of section 36 (variation and discharge: supplementary)—

- (a) a domestic abuse protection order that has been confirmed or varied on an appeal (whether under subsection (3)(a) or otherwise) remains an order of the court that first made it, and
- (b) a domestic abuse protection order made by a court on an appeal (whether under subsection (3)(c) or otherwise) is to be treated as an order made by the court whose decision was appealed against.

#### **PART 4**

### **DOMESTIC HOMICIDE REVIEWS**

#### **Establishment and conduct of reviews**

39.(1) In this section “domestic homicide review” means a review of the circumstances in which the death of a person aged 16 or over has, or appears to have, resulted from violence, abuse or neglect by—

- (a) a person to whom he was related or with whom he was or had been in an intimate personal relationship, or
- (b) a member of the same household as himself,

held with a view to identifying the lessons to be learnt from the death.

(2) The Minister with responsibility for justice may in a particular case direct a specified person or body within subsection (4) to establish, or to participate in, a domestic homicide review.

(3) It is the duty of any person or body within subsection (4) establishing or participating in a domestic homicide review (whether or not held pursuant to a direction under subsection (2)) to have regard to any guidance issued by the Minister as to the establishment and conduct of such reviews.

- (4) The persons and bodies within this subsection are—
  - (a) the Commissioner of Police;



- (b) the Chief Executive Officer of the Care Agency;
  - (c) the Gibraltar Health Authority;
- (5) The Minister with responsibility for justice may by order amend subsection (4).

### **SUPPLEMENTARY AND FINAL PROVISIONS**

#### **Amendment of the Crimes Act 2011**

40.(1) In section 95(1) of the Crimes Act 2011 delete “under section 92, 92A, 94 or 94A”.

(2) After section 167 of the Crimes Act 2011 insert-

#### **“Attempting to choke, etc.**

167A. A person who unlawfully, by any means—

- (a) attempts to choke, suffocate or strangle another person;  
or
- (b) by any means calculated to choke, suffocate or strangle, attempts to render another person insensible, unconscious or incapable of resistance,

commits an offence and is liable—

- (c) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;
- (d) on conviction on indictment to imprisonment for 7 years.”.

#### **Power of Minister with responsibility for justice to make consequential amendments**

41.(1) The Minister with responsibility for justice may by regulations make provision that is consequential on any provision made by this Act.

(2) The power to make regulations under this section may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an Act passed before, or in the same session of Parliament as, this Act.

**Power to make transitional or saving provision**

42.(1) The Minister with responsibility for justice may by regulations make such transitional or saving provision he considers appropriate in connection with the coming into force of any provision of this Act

(2) Regulations under this section may (among other things) make any adaptations of provisions of this Act brought into force that appear to be appropriate in consequence of other provisions of this Act not yet having come into force.

**Regulations**

43. Regulations under this Act may—

- (a) make different provision for different purposes;
- (b) contain supplementary, incidental, consequential, transitional or saving provision.

**SCHEDULE 1**

**Section 34**

**FURTHER PROVISION ABOUT REMAND UNDER SECTION 34**

*Introductory*

1. This Schedule applies where a court has power to remand a person (“P”) under section 34.

*Remand in custody or on bail*

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

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

- (a) at the end of the period of remand, or
- (b) at such earlier time as the court may require.

(3) The court may remand P on bail—

- (a) by taking from P a recognizance (with or without sureties) conditioned as provided in paragraph 3, or
- (b) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 7 and, in the meantime, committing P to custody as mentioned in sub-paragraph (2).

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

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

- (a) before the court at the end of the period of remand, or
- (b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

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

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

4.(1) The court may not remand P for a period exceeding eight clear days unless—

- (a) the court adjourns proceedings for the purpose mentioned in paragraph 5(1), or

- (b) P is remanded on bail and both P and the person who applied for the warrant under section 34 consent.

This is subject to paragraph 6.

(2) Where the court has power to remand P in custody, P may be committed to the custody of a police officer if the remand is for a period not exceeding three clear days.

*Remand for medical examination and report*

5.(1) If the court has reason to suspect that a medical report will be required, the power to remand a person under section 34 may be exercised for the purpose of enabling a medical examination to take place and a report to be made.

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

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

(4) Sub-paragraph (5) applies if there is reason to suspect that a person who has been arrested under a warrant issued on an application made under section 34 is suffering from mental disorder within the meaning of the Mental Health Act 2016.

(5) The court has the same power to make an order under section 664 of the Criminal Procedure and Evidence Act 2011 (remand to hospital for report on accused's mental condition) as it has under that section in the case of a defendant within that section).

*Further remand*

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

(2) The power under sub-paragraph (1) may, in the case of a person who was remanded on bail, be exercised by enlarging the

person's recognizance and those of any sureties for the person to a later time.

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

(4) The enlargement of P's recognizance is to be treated as a further remand.

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

*Postponement of taking of recognizance*

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

*Requirements imposed on remand on bail*

8 The court may, when remanding a person on bail in accordance with this Schedule, require the person to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

### **Explanatory Memorandum**

This draft Bill seeks to create a standalone and consolidated piece of legislation on domestic abuse.

The draft Bill is divided into separate parts. Part 1 creates a new and comprehensive domestic abuse offence which is punishable with up to 14 years' imprisonment.

This offence is committed when a person (A)-

1. engages in a course of behaviour that is abusive of another person (B);
2. A and B are personally connected at the time. (draft clause 5 defines what personally connected means. This includes married persons, civil partners, those who have been in relationships or certain family members. Also note that draft clause 7 makes an exception for cases where B is a child that A has responsibility for; abuse of such persons would still usually be caught under other legislation);
3. a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm; and
4. that A either intends to cause this harm or is reckless as to whether the behaviour causes such harm.

The offence may be committed whether or not the behaviour causes harm to B or not, additionally the fact that harm is not required does not mean that evidence of harm cannot be brought before the court.

The definition of abusive behaviour is set out in draft clause 3 and expanded upon in draft clause 4. This includes violence, threats or coercive or controlling behaviour (such as making the person dependent or subordinate, isolating the person, controlling or regulating day-to-day activities or making the person feel frightened, humiliated, degraded, punished or intimidated). This behaviour includes saying something or communicating something as well as doing it and can include failing to say or do something and that behaviour can be directed at a person in different ways including conduct towards property and using third parties. In certain

circumstances the offence can be committed abroad and still prosecuted in Gibraltar.

Part 1 of the draft Bill includes further provisions relating to the offence including alternative offences which the court may convict A of if the facts do not amount to the new offence and providing for aggravated versions of the offence which will affect sentencing (such as where the victim is a child). There is also provision regarding for a formal agreement that the fact of a relationship is not in dispute and amending the Criminal Procedure and Evidence Act to protect complainants from cross-examination by the defendant and make them eligible for special assistance on the grounds of fear or distress as victims of sexual offences would be.

Part 2 of the draft Bill creates new powers to deal with domestic abuse in Gibraltar these include domestic abuse protection notices (issued by senior RGP officers) and domestic abuse protection orders (issued by the Courts).

Domestic abuse protection notices are issued to persons by police officers of at least the rank of chief inspector where the officer believes that the person has been abusive to a personally connected person and that the notice is necessary to protect that person from abuse or the risk of abuse. This is an immediate notice to bridge the gap between noting the abuse or risk thereof and a formal application for an order before a court. The notice prohibits that person from being abusive to the other person and may include provisions to prohibit contact or stop the person going within a certain distance of the victim's home. If the person lives in Gibraltar other conditions such as prohibiting them from evicting the person from the "family" home and prohibiting P from entering the home or requiring P to leave the home.

Before issuing a notice the officer must take into account- the welfare of any child, the opinion of the victim, representations made by P and the opinion of any other residents of the premises who is also personally connected. The officer needs to take reasonable steps to obtain the above representations and opinions.

If a police officer has reasonable grounds for believing that a person is in breach of a notice, he may arrest the person without a warrant and take him before the magistrates' court.

The domestic abuse protection order is a court issued version of the notice made on application or as a part of other proceedings (including family, criminal and civil actions). The application for an order may be made by the person for whose protection the order is sought or the Commissioner of Police.

The conditions for making the order and the matters to be considered which are similar to those for a notice. The court needs to be satisfied on the balance of probabilities that P has been abusive towards a personally connected person and that the order is necessary and proportionate to protect that person from domestic abuse by P. Applications in emergencies may be made without notice to P.

The draft Bill contains a non-exclusive list of what can be included in the order. What is different to a notice is the requirement that someone be responsible for supervising compliance with the requirement where the requirement means that P must do something. That person has duties under section 31(4) to arrange and promote compliance and report failings to the Commissioner of Police.

A breach of order is a criminal offence with a penalty of up to 5 years' imprisonment.

The final sections of the Act deal with variation and discharge of orders and appeals from them (which can be by the person against whom the order is made, the person applying or the person to be protected). The appeal can be regarding any decision including not making the order.

An amendment to the Crimes Act is also included in the draft Bill creating a new offence of attempting to choke, etc. someone. The use of choking or strangulation as a form of domestic abuse or violence is well documented as is the fact that such behaviour may be undercharged or minimalised if there is no physical injury caused. The new offence has a maximum penalty of seven years on conviction in the Supreme Court. This offence is not limited to persons who are connected.