

Annex A: Implementation- Domestic Abuse Act 2021

Stage 1: April – October 2021

Since Royal Assent in April, the following protections for victims have come into effect:

- **Rough sex defence (section 71 – 29 April):** the ‘rough sex’ provisions clarify that it is not a defence to claim that a person consented to serious harm for the purpose of sexual gratification.
- **Revenge porn (section 69 – 29 June):** the so called ‘revenge porn’ offence in section 33 of the Criminal Justice and Courts Act 2015 has been extended to cover the threat to disclose private sexual photographs and films with the intention to cause distress.
- **Extraterritorial jurisdiction (sections 72, 74(1) & (2), and Parts 1 & 2 of Schedule 3 – 29 June):** the extraterritorial jurisdiction of the criminal courts in England, Wales, and Scotland has been extended so that, where appropriate, UK nationals and those habitually resident in England, Wales, or Scotland who commit certain violent and sexual offences outside the UK may be brought to trial here. The 2021 Act contains corresponding provisions for Northern Ireland (sections 73, 74(3) and Part 3 of Schedule 3) which are also expected to be commenced shortly.
- **Polygraph testing (section 76 – 5 July):** a three-year pilot has commenced in four probation areas covering 13 police force areas¹ for mandatory polygraph examinations on domestic abuse perpetrators released on licence identified as being at high or very high risk of causing serious harm.
- **Homelessness (section 78 – 5 July):** those who are homeless as a result of domestic abuse now have priority need status where eligible for local authority accommodation.

The following measures will also come into effect within six months of Royal Assent and on 1 October 2021:

- **Definition of domestic abuse (sections 1-2):** the new definition emphasises that domestic abuse is not just physical violence, but can also take other forms such as emotional, controlling and coercive behaviour, and economic abuse between two people aged 16 or over who are personally connected. Section 3 of the 2021 Act, recognising children as victims, will be commenced in the second stage (see below). The Home Office has launched a [public consultation](#) on the statutory guidance which will accompany the statutory definition of domestic abuse. The guidance expands further on the different types of abuse and the forms they can take and how the definition can be implemented. The consultation closes on 14 September 2021. If you would like to provide views, you can respond [online](#) or complete a [response form](#) and email it to domesticabuseconsultation@homeoffice.gov.uk. The intention is to

¹ North West (Cheshire, Merseyside, Lancashire, and Cumbria police); Greater Manchester (Greater Manchester Police); North East (Durham Constabulary, Cleveland and Northumbria police); and Yorkshire and Humber (South Yorkshire, West Yorkshire, North Yorkshire, Lincolnshire, and Humberside police)

publish the final guidance in November/December 2021, subject to the number of responses received.

- **Local Authority support (sections 57-61):** Tier 1 Local Authorities in England will have new duties relating to the provision of support to victims of domestic abuse and their children in safe accommodation such as refuges. The Ministry of Housing, Communities & Local Government is currently analysing the consultation responses to its draft [guidance](#) which will assist local authorities in exercising their new functions, the final version of which will be published shortly.
- **Special Measures in the Family Court (section 63):** rules of court will put in place an assumption that the quality of a person's evidence and/or their ability to participate in family proceedings will be diminished by reason of vulnerability where they are a victim of domestic abuse. This builds on a requirement already set out in rules of court to requiring it to consider the use of special measures, such as giving evidence via video link or from behind a screen, where it considers a person vulnerable. However, the rules will also provide an exception for instances where a person does not wish to be deemed eligible for special measures.
- **Prohibition on GP charging (section 80):** specified healthcare professionals will be prohibited from charging a victim of domestic abuse for a letter to support an application for legal aid.

Stage 2: November 2021 – May 2022

The majority of measures will be in force within about a year of Royal Assent. Building on the progress made during the first six months since Royal Assent, we intend to commence the following provisions in November 2021:

- **Domestic Abuse Commissioner (sections 4-21):** The Commissioner, Nicole Jacobs' role will be put on a statutory footing as set out in the 2021 Act. Aside from her key role in encouraging good practice in tackling domestic abuse, including by overseeing and monitoring the provision of domestic abuse services in England and Wales, Government ministers and specified public bodies will have a duty to respond to any recommendations made in a report published by the Commissioner.
- **Secure tenancies (section 79):** local authorities, when re-housing an existing lifetime social tenant, or offering them a new sole tenancy in their own home, will grant a new lifetime tenancy if the local authority is satisfied that the tenant or a member of their household has been a victim of domestic abuse and the new tenancy is granted in connection with that abuse.

We will also commence **special Measures in the Criminal Court (section 62)** in late autumn / winter 2021-22 with the exact timings currently being finalised: it will provide automatic eligibility for complainants of offences relating to domestic abuse to be considered for special measures in criminal proceedings, on the basis that they will now be regarded as intimidated witnesses (under section 17(4) of the Youth Justice and Criminal Evidence Act 1999 (the 1999 Act) and as a result will not have to demonstrate fear or distress to be eligible for special measures. This will bring complainants of domestic abuse in line with witnesses who are

already eligible under the 1999 Act such as complainants of sex and modern-day slavery offences. Granting special measures applications remains a judicial decision.

We intend to commence the following provisions in January 2022:

- **Children as victims of domestic abuse (section 3):** following the commencement of the new and wider definition of domestic abuse in October 2021, children will also be explicitly recognised in law as victims of domestic abuse where they see, hear or experience the effects of such abuse.
- **Placing the guidance supporting the Domestic Violence Disclosure Scheme (“Clare’s law”) on a statutory footing (section 77):** enabling the police to disclose information to a victim or potential victim of domestic abuse about their partner’s or ex-partner’s previous abusive or violent offending. The guidance for the Scheme will be placed on a statutory footing which will place a duty on the police to have regard to the guidance to strengthen the visibility and consistent operation of the scheme.

We intend to commence the following provisions by May 2022:

- **Special Measures in the Civil Court (section 64):** to provide protections similar to those in the family and criminal courts, in civil proceedings. Rules of court must enable the use of special measures to protect victims and those at risk of being victims of domestic abuse, and victims and alleged victims of specified offences (to be set out in regulations). Rules of court will enable the use of special measures in such cases where necessary if the quality of evidence or a person’s participation in proceedings is likely to be diminished because of their vulnerability.
- **Prohibition of cross-examination in family and civil proceedings (sections 65 and 66):** cross-examination of, or by, a vulnerable party or witness may be prohibited. Where this occurs, the Court must consider whether there are satisfactory alternative means to cross-examine the witness (e.g. by using special measures), or alternative means of obtaining evidence other than cross-examination. The Court will be required to appoint a court-appointed qualified legal representative to conduct cross-examination where no alternative exists. The prohibition of cross-examination will be automatic for specified offences, protective injunctions, and when wider evidence criteria are met (all to be laid out in regulations by early 2022). The Court may also prohibit cross-examination where it considers the quality of evidence would be affected or the level of distress would be unjustified. The Lord Chancellor will also publish statutory guidance on the role of the advocate whose fees will be set through regulations.
- **Use of ‘barring orders’ in the family courts (section 67):** existing provisions in section 91(14) of the Children Act 1989 to make a ‘barring order’ to prevent further proceedings without the court’s permission, will be clarified to stop vexatious family proceedings that can further traumatise victims and their children.
- **Extending the controlling or coercive behaviour offence to cover post-separation abuse (section 68):** the existing criminal offence for controlling or coercive behaviour (CCB) provided in section 76 of the Serious Crime Act 2015 will be expanded so that it is no longer a requirement for abusers and victims to live together. Currently the offence applies to intimate and former intimate partners, and family members, who live together. However, as a result of this change, post-separation and familial abuse where the parties do not live together will be within scope of the 2021 Act.

- **Creating a new offence of non-fatal strangulation (section 70):** this new criminal offence will apply in all cases of intentional strangulation or suffocation, including in the context of domestic abuse. Contained in sections 75A and 75B of the Serious Crime Act 2015, it applies to offences committed in England and Wales, and to those committed abroad by a person who is a UK national (as defined in section 75B(2) of the 2021 Act) or who is habitually resident in England and Wales but commits an act of strangulation or suffocation in a country outside the United Kingdom. The maximum penalty for the offence is five years imprisonment and/or a fine.

Stage 3: Early 2023

- **Domestic Abuse Protection Notices and Domestic Abuse Protection Orders:** we will be piloting both the Domestic Abuse Protection Notices and Domestic Abuse Protection Orders in a small number of areas across England and Wales. In preparation, we are developing specifications for police forces and courts that will be used to select suitable pilot areas. The pilot is expected to commence in 2023 and will run for approximately two years ahead of national roll out.