

JUSTICES' CLERKS' SOCIETY

Domestic Violence Protection Notices and Domestic Violence Protection Orders

March 2014

JCS

The professional society for
lawyers who advise magistrates

Domestic Violence Protection Notices and Domestic Violence Protection Orders

Background	Page 4
Summary	Page 5
Domestic Violence Protection Notices	Page 6
Terms of Domestic Violence Protection Notices	Page 7
Breach of Domestic Violence Protection Notices	Page 7
Application for a Domestic Violence Protection Order	Page 8
Procedure at Domestic Violence Protection Order Hearings	Page 8
Listing Domestic Violence Protection Order Hearings	Page 9
No Power to Order Witness Summons	Page 9
Hearsay Evidence	Page 9
Conditions for and contents of a Domestic Violence Protection Order	Page 9
Who is an associated Person	Page 10
Meaning of molestation	Page 11
Can contact in itself be molestation?	Page 12
Are the terms of a DVPO restricted to particular acts of molestation only?	Page 12
Terms of the Order	Page 15
Determining the Length of the DVPO	Page 16
Proportionality, necessity and the ECHR	Page 16
What if an associated person does not want a Domestic Violence Protection Order?	Page 16
Can a DVPO be varied or revoked?	Page 17
Adjournment of the Domestic Violence Protection Order Application	Page 17
Giving Reasons	Page 17
Service of a Domestic Violence Protection Order	Page 17
Breach of a Domestic Violence Protection Order	Page 17
Sentencing Breaches of Domestic Violence Protection Order	Page 18
Credit for Admitting Breach of a Domestic Violence Protection Order	Page 21
Costs	Page 22

Miscellaneous	Page 23
Resulting on Libra	Page 24
Further Reading	Page 25
Domestic Violence Disclosure Scheme (Clare's law)	Page 26
The Crime and Security Act 2010, sections 24-31	Page 27
The Family Law Act 1996, section 62	Page 33
Magistrates' Courts (Domestic Violence Protection Order Proceedings) Rules 2011	Page 35

Background

More than one in four women in England and Wales aged 16 years and over have been affected by domestic abuse at some point in their lifetime.¹

On balance women are the main victims and survivors of domestic abuse. Researchers have found that there “are 120,000 victims in any year who are at high risk of being killed or seriously injured as a result of domestic abuse; 69% of high risk victims have children.”²

Work began in 2009 to identify gaps in the powers available to deal with Domestic Violence. Home Office interim guidance³ on Domestic Violence Protection Orders refers to research which highlights that a large proportion of cases involving domestic violence incidents ‘fall out’ as they progress through the criminal justice system. There are concerns over suspected offenders (those neither charged or otherwise on bail) being able to return to the scene of the alleged abuse within very short periods of time. Furthermore, in many circumstances a victim of domestic violence is unable or unwilling to make life changing decisions in relation to their relationship, their home, their children’s welfare and their financial security at the time of the police investigation into the abuse against them. This could be due to their health and the emotional and physical distress that they are experiencing at the time. Even if the police do have sufficient evidence for a charging decision to be made, the alleged victim may be unable or unwilling to continue to support a prosecution and the case against the alleged perpetrator may fail.

Civil orders are an alternative to prosecution (e.g. non-molestation orders or occupation orders). However, this can be a complex process and the guidance tells us that it is frequently necessary for victims to leave their home before attempting to apply for such orders; the risks to the victims at this period are increased.

It was with this background in mind that the new legislation was introduced. The Crime and Security Act 2010 allows for the police to issue Domestic Violence Protection Notices (hereafter “DVPN”) and apply for Domestic Violence Protection Orders (“DVPO”). Where the Magistrates’ Court makes an order, it affords the alleged victims of domestic violence a period of time in which to be able to consider the options available to them, in the knowledge they have legal protection from the alleged perpetrator. DVPNs and DVPOs have been successfully piloted in Wiltshire, West Mercia and Greater Manchester since June 2011. From 8th March 2014, the legislation comes into force nationally. It is expected that procedures will be in place in each Local Justice Area so that applications can be made by June 2014, if not before.

This guidance will take you through the provisions of the Act and aims to answer any common questions that the Court may have. The guidance is broken down into multiple headings to allow for easy reference in Court. However, the Society also urges that (Assistant) Justices’ Clerks do spend considerable time digesting and understanding the provisions prior to any application being made.

¹ According to Home Office Research (2011). Chaplin, R. Flatley, J. and Smith, K (2011) Crime in England and Wales 2010–11, London: Home Office.

² Munro, E. (2011) The Munro Review of Child Protection. Final report: A child-centered system, London

³ Available at: <https://www.gov.uk/government/publications/domestic-violence-protection-orders>

Summary

The Police will be able to issue a DVPN prohibiting an alleged perpetrator ('P') of domestic violence from molesting the alleged victim ('V') and, in some cases, prohibiting P from returning to the premises or preventing P from evicting V.

A breach of a DVPN will make P liable to immediate arrest. They must be brought before a Magistrates' Court within 24 hours beginning with the time of their arrest. That court will then hear an application for a DVPO.

The DVPN and the DVPO are designed to afford the victim of domestic violence immediate protection so that they have time in which to consider what options they have. It is imperative that appropriate support should be given during the period of a DVPO from the police and other agencies.

A DVPO application must be heard within 48 hours of the issue of the DVPN. If the court makes a DVPO it lasts for between 14 and 28 days. It must contain provision to prohibit P from molesting the person for whose protection it is made, and may make provision prohibiting P from returning to the premises or preventing P from evicting V where appropriate.

A breach of a DVPO will make P liable to immediate arrest and an appearance before the court. If the court finds that a breach has been committed, it *may* commit the P to a term of imprisonment or impose a fine.

The proceedings are civil.

Legal aid is available for P appearing before the court for breach of a DVPN, an application for a DVPO and a breach of a DVPO.

The application is by its very nature an urgent one, and courts should be prepared to hear and determine them at the first hearing, even where contested. Hearsay evidence is admissible at that hearing as the usual hearsay notice provisions are disapplied.

Legal Advisers will need to brief Benches prior to court hearings where these matters appear in the list.

Domestic Violence Protection Notices – section 24 Crime and Security Act 2010

A DVPN provides immediate protection for the alleged victim of domestic violence. It prohibits the perpetrator from molesting the victim. It may also include a requirement that the perpetrator does not return to the premises in which the violence was committed, and/or prohibit them from evicting or excluding the victim from the premises, where the parties live together.

Following the issue of a DVPN the police must make an application for a DVPO. This application must be heard within 48 hours of the notice being served.

A DVPN may only be issued by a member of a police force not below the rank of superintendent (“the authorising officer”). Processes will need to be in place so superintendents are available to make these decisions.

A DVPN may be issued to a person (“P”) aged 18 years or over if the authorising officer has reasonable grounds for believing that -

- (a) P has been violent towards, or has threatened violence towards, an associated person, and
- (b) the issue of the DVPN is necessary to protect that person from violence or a threat of violence by P.

Before issuing a DVPN, the authorising officer must, in particular, consider –

- (a) the welfare of any person under the age of 18 years whose interests the officer considers relevant to the issuing of the DVPN (whether or not that person is an associated person),
- (b) the opinion of the person, for whose protection the DVPN would be issued, as to the issuing of the DVPN⁴.
- (c) any representations made by P as to the issuing of the DVPN.

These are very complex issues for the authorising officer to consider; this is one reason why decisions must be taken by members of police forces not below the rank of superintendent. It is imperative that such officers have appropriate training and a detailed understanding of the issues involved in domestic violence.

⁴ And the opinion of any other associated person who lives on the premises, where appropriate – see section 24(3) (d) and (8).

Terms of the DVPN- section 25 Crime and Security Act 2010

It must contain a provision to prohibit P from molesting the person for whose protection it is issued. Molestation may be expressed in general terms in the DVPN or particularised.

If P is living in premises which are also lived in by a person for whose protection a DVPN is issued, the DVPN may contain provision:

- (a) to prohibit P from evicting or excluding from the premises those persons for whose protection the DVPN was issued
- (b) to prohibit P from entering the premises
- (c) to require P to leave the premises or
- (d) to prohibit P from going within such distance of the premises as may be specified in the DVPN.

There are provisions relating to serving military personnel and “service living accommodation” contained in sections 24(10) and (11) of the Act.

The DVPN must state the following:

- the grounds on which it is issued
- that a police constable may arrest P without a warrant if there are reasonable grounds for believing that P is in breach of the DVPN
- that an application for a DVPO will be heard within 48 hours of the time of service of the DVPN and that a notice of the hearing will be given to P
- that the DVPN continues to have effect until that application has been determined, and
- the provisions that the magistrates’ court may include in a DVPO.

A DVPN must be in writing and must be served on P personally by a constable.

Breach of a DVPN – section 26

A person arrested for breach of a DVPN must be held in custody and brought before a magistrates’ court which will then hear the application for the DVPO within 24 hours from arrest.

There is no need to take a formal plea to the alleged breach of the DVPN. The breach of DVPN provisions create a process whereby P is arrested and brought to court in custody.

At that hearing, the court will usually hear the application for the DVPO. In making its decision as to whether to impose a DVPO, the court will of course be able to take into account any evidence in relation to the alleged breach of the DVPN.

Where the court does not determine the application for a DVPO at this hearing, the court may remand the arrested person in custody or on bail. See section 30 of the Crime and Security Act 2010 for further details.

Application for a DVPO – section 27 Crime and Security Act 2010

If a DVPN has been issued, a constable must apply to a magistrates' court for a DVPO. The application must be made by complaint. It must be heard by the court not later than 48 hours after the DVPN was served. This period excludes Christmas Day, Good Friday, a Sunday and Bank Holidays.

The Police must give to P a notice of the hearing for the application for a DVPO. Usually this will be contained within the DVPN papers served on P. If it is not, the police must serve a separate notice on P and it is deemed served by leaving it at the address that P provided to the police. If P did not provide an address, the court may hear the application if it is satisfied that the police have made reasonable efforts to give P notice.

Following representations from the Justices' Clerks' Society prior to enactment of the legislation a rule was drafted regarding the commencement of proceedings. The Police Applicant is deemed to be the complainant, the respondent to be a defendant and the notice of the hearing to be a summons.⁵ Failure to answer such notice does not enable a warrant of arrest to be issued.

Procedure at DVPO Hearings

DVPOs are a civil procedure. The Court will hear the full application at the first hearing and there may be cases where P does not wish to contest the making of the DVPO or its proposed length. If the court is satisfied that the criteria are met, it will go on to make the appropriate order.

There will also be cases where P does wish to contest the making of the order and / or its length. The Court does have the power to adjourn the application.⁶ However, the Society suggests this should not routinely take place, even in contested cases.

Where an application is adjourned the DVPN and its conditions continue in effect until the application has been determined⁷. The Court will need to bear in mind that any DVPO can only be made for a maximum of 28 days. Therefore should an adjournment be granted, it should be for the absolute minimum period, counted in hours or days rather than weeks.

Where possible, the Court should deal with the contested hearing there and then. These are civil proceedings and hearsay evidence (without notice) is admissible. There can be no witness summons issued to compel V to give evidence (subject to the criteria in section 27 (10) Crime and Security Act 2010). Live evidence can of course be given as appropriate during the Applicant's case or the Respondent's.

The Police make the application for a DVPO. This can be via an officer themselves, the force legal team, other authorised person⁸, or an instructed lawyer. The CPS are not involved.

⁵ Magistrates' Courts (Domestic Violence Protection Order Proceedings) Rules 2011, Rule 6.

⁶ Section 27 (8) Crime and Security Act 2010

⁷ Section 27 (9) Crime and Security Act 2010

⁸ A complaint may be made by a complainant in person, their solicitor or Counsel, or other person authorised on their behalf. Magistrates' Courts Rules 1981, Rule 4 (1)

Listing DVPO Hearings

By their very nature DVPO hearings are something of an emergency. The Society advises courts to liaise with the police force in relation to listing matters in advance. It may be that certain court houses on certain days may be better equipped to deal with the applications (subject to reasonable travelling distances). It may be that 2pm or 4pm on a certain day may be more appropriate than agreeing to list them at the start of the day.

We would advise that the court reaches a standard agreement with the police which specifies when the applications should be heard in relation to when the notice was issued.⁹

These are cases which do not need to be heard in CPS courts. Indeed, it would be preferable if they could be heard elsewhere to avoid wasted time for the CPS Prosecutor.

Family Courts (although sitting as public magistrates' courts in this instance) and non-CPS courts where available would be well suited to hear them.

No power to order witness summons

Except where V has given oral or written evidence at the hearing, there is no power for the court to issue a witness summons or warrant under section 97 of the Magistrates' Courts Act 1980 in respect of a person for whose protection the DVPO would be made.¹⁰ This provision is designed to ensure that the purposes of the legislation are met; one of those being to provide the victim of domestic violence with a period of time in which to be able to consider their options safely, in the knowledge that they have some legal protection from their abuser. It would defeat the purpose to require them to attend a DVPO hearing and to confront P in the courtroom.

Hearsay Evidence

The provisions of the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 and section 2 Civil Evidence Act 1995 are expressly disappplied from an application for a DVPO and a breach of a DVPO.¹¹ This means that the usual requirement on a party to give not less than 21 days notice of hearsay evidence shall not apply. Hearsay evidence is admissible immediately without prior notice.

Conditions for and contents of a DVPO – section 28 Crime and Security Act 2010

The court may make a DVPO if the following two conditions are met:

- the court is satisfied on the balance of probabilities that P has been violent towards, or has threatened violence towards, an associated person and
- the court thinks that making the DVPO is necessary to protect that person from violence or a threat of violence by P.

Before making a DVPO, the court must, in particular, consider:

⁹ See draft schedule attached with this communication

¹⁰ Section 27 (10) Crime and Security Act 2010

¹¹ See Rule 4 and 5 of the Magistrates' Courts (Domestic Violence Protection Order Proceedings) Rules 2011

- (a) the welfare of any person under the age of 18 years whose interests the court considers relevant to the making of the DVPO (whether or not that person is an associated person), and
- (b) any opinion of which the court is made aware:
- (i) of the person for whose protection the DVPO would be made, and
 - (ii) in the case of provision included by virtue of subsection (8), of any other associated person who lives in the premises to which the provision would relate.

A DVPO must contain a provision to prohibit P from molesting the person for whose protection it is made. This provision may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.

If P lives in premises which are also lived in by the person for whose protection a DVPO is made, the DVPO may contain provision:

- (a) to prohibit P from evicting or excluding from the premises those persons for whose protection the DVPN was issued
- (b) to prohibit P from entering the premises
- (c) to require P to leave the premises or
- (d) to prohibit P from going within such distance of the premises as may be specified in the DVPN.

A DVPO must contain the period for which it is to be in force. It must also contain a provision that a constable may arrest P without a warrant if the constable has reasonable grounds for believing that P is in breach of the DVPO.

Who is an ‘Associated Person’?

Section 24(9) Crime and Security Act 2010 states that an associated person is a person who is associated with P within the meaning of Section 62 of the Family Law Act 1996.

This will include those persons who:

- are or have been married to each other or civil partners
- are Cohabitants or former cohabitants (living together as husband and wife or civil partners)
- live or have lived together in the same household, otherwise than merely by reason of one of them being the other’s employee, tenant, lodger or boarder
- are relatives
- have agreed to marry one another or enter into a civil partnership (whether or not that agreement has been terminated)
- have or have had an intimate personal relationship with each other which was of significant duration

Provisions are also made in respect of associated persons and children.¹²

Meaning of Molestation

Section 24 (6) and (7) and similarly section 28 (6) and (7) state that a DVPN or a DVPO must contain provision to prohibit P from molesting the person for whose protection it is made. This may be expressed “so as to refer to molestation in general, to particular acts of molestation, or to both”.

The wording used in the above sections is the same as that used in relation to non-molestation orders.¹³ This is not surprising. Domestic Violence Protection Orders bear many similarities to non-molestation orders, except of course it is the police who apply for a DVPO, rather than the alleged victim. In relation to DVPOs, whilst V’s opinion is considered, the ultimate decision is taken out of their hands.

At the time of writing there are no reported decisions on Domestic Violence Protection Orders. It is therefore useful to look at the background to the Family Law 1996, and related cases on the meaning of molestation.

Considering statutory reforms the Law Commission in 1992¹⁴ reflected on the meaning of molestation, and whether it should be defined in statute. The Commission considered previous case law and found that molestation is an umbrella term which covers a wide range of behaviour. Clearly it covers violence. However molestation may take place without the threat or use of violence.¹⁵ Examples of molestation from case law include:

- Rifling through a handbag¹⁶
- Writing abusive letters and shouting obscenities¹⁷
- Writing anonymous letters and pressing one’s face against a window whilst brandishing papers¹⁸
- Calling at V’s house at morning and night and following her to her place of work when he knew she was frightened of him¹⁹

The Law Commission also referred to other examples of non-violent molestation including persistent pestering and intimidation through shouting, denigration, threats and argument, nuisance calls, damaging property, and following V around.

Home Office Interim guidance refers to the dictionary definition: ‘the act of disturbing, annoying or tormenting someone with persistent behaviour and to pester in a hostile way.’ It goes on to suggest that particular acts of molestation may include coming near or entering the victim’s premises, even in cases where P and V are not co-habiting.²⁰

Ultimately, what amounts to molestation in any particular case is for the Court to decide, based on the history of the relationship. The Law Commission in 1992 recommended that

¹² Family Law Act, section 62, subsection (3) (f) to subsection (7)

¹³ See Family Law Act 1996, section 42 (6)

¹⁴ Law Com. No. 277, Family Law, Domestic Violence and Occupation of the Family Home, 1992, para 3.1

¹⁵ See for example *Davis v Johnson* 1979 AC 264

¹⁶ *Spencer v Camacho* 1983 4 FLR 662

¹⁷ *George v George* 1986 2 FLR 347

¹⁸ *Smith v Smith* 1988 1 FLR 179

¹⁹ *Vaughn v Vaughn* 1973 1 WLR 1159 at page 1162

²⁰ Para 5.2.9 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97864/DV-protection-orders.pdf

there should be no statutory definition of molestation, and that the matter should be left to the courts. Molestation is therefore not defined in the Family Law Act 1996, nor in the Crime and Security Act 2010. The lack of definition is quite deliberate; to define the word may allow loopholes to be exploited.

Any serious pestering or harassment will certainly be regarded as molestation. However, other behaviour which may not ordinarily constitute molestation between persons may in fact be molestation, depending on the history of the relationship and the impact on V.

Clearly, as technology advances, so does molestation. Molestation can occur in digital forms over email or the internet for example.

Can contact in itself be molestation?

Ordinary contact *per se* with a person does not usually amount to molestation. However, in the context of a relationship affected by domestic violence, it *may* be that contact, otherwise unobjectionable, would have such a harmful effect on P that it could in fact amount to molestation in those circumstances. It will depend on the case.

Stephenson LJ considers whether communication can be molestation in the case of Vaughan and Vaughan. Readers may find the following passage useful:

'Molest' is a wide, plain word which I should be reluctant to define or paraphrase. If I had to find one synonym for it, I should select 'pester.' Whether communication amounts to molestation is a question of fact and degree.²¹

Vaughan and Vaughan was a case where the wife had obtained a non-molestation injunction. The husband was prohibited from molesting her. He breached the injunction a number of times. The matter subject to the appeal was whether his actions constituted molestation on this occasion. He had been pestering the wife to go out with him, to see him and to speak to him. He had called at her house and her work, but committed no acts of violence. The Court of appeal stated that this form of pestering:

by a man of whom she was frightened and who had on occasions used violence towards her, when the last thing she wanted was to have anything to do with him, must have had a deleterious effect on her health... It seems to me that, in the circumstances of this case, taking into consideration this lady's health, of which the husband was to some degree aware, and taking into consideration the fact he knew she was frightened of him, molestation has plainly been made out in the present case...

Contact which may not normally be regarded as molestation may be so regarded depending on the history of the relationship.

Are the terms of a DVPO restricted to particular acts of molestation only?

The legislation states that a DVPO must contain provision to prohibit P from molesting V, and that this may be expressed to refer to molestation in general, to particular acts of molestation, or both. Without further research, it might appear that a DVPO may only prohibit objectionable acts which would in themselves constitute molestation.

²¹ 1973 3 All ER 449. This case contains useful commentary on the word, molestation

As there are currently no reported cases on DVPOs we need to look further afield to related case law and practice to further investigate this point. In 1992 the Law Commission commented on the practice of imposing non-contact terms into non-molestation orders:

at the moment it is common practice to include in non-molestation orders a provision that the respondent shall not communicate with the applicant in any way except through the applicant's solicitor...

Exclusion zones are also sometimes used through the terms of a non-molestation order, as members will be aware. The wording of a non-molestation order is very similar to a DVPO, in that it may prohibit molestation in general, or particular acts of molestation, or both. Clarke, Hall and Morrison describe the current position as:

a non-molestation order may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both. Exercising its powers to make specific orders a court could, for example, prohibit the respondent from telephoning the applicant (or child) or from loitering outside his or her work place or from coming within a specified distance of the family home²².

It is therefore apparent that courts are inserting terms into non-molestation orders which do not in themselves constitute molestation.²³ Rather, the terms aim to **prevent** molestation. How can the Court justify imposing these terms when the behaviour itself²⁴ does not constitute molestation?

It is helpful to look at the case law in relation to civil injunctions. Sir Thomas Bingham, Master of the Rolls, considered the position in 1995 in the case of *Burris v Azadani*.²⁵ This was a case where the Defendant was subject to an injunction which, *inter alia*, restrained him from a) assaulting or harassing the Plaintiff; b) communicating with her; and c) coming within 250 yards of her home. He was found to be in breach of c) by twice cycling past the Plaintiff's home, and was then sentenced to imprisonment. He appealed, arguing that entry to a specified area is not in itself tortious or otherwise unlawful, and therefore the exclusion zone was unlawful. This argument was rejected by the Court of Appeal:

Neither statute nor authority in my view precludes the making of an "exclusion zone" order. But that does not mean that such orders should be made at all readily, or without very good reason. There are two interests to be reconciled. One is that of the defendant. His liberty must be respected up to the point at which his conduct infringes, or threatens to infringe, the rights of the plaintiff. No restraint should be placed on him which is not judged to be necessary to protect the rights of the plaintiff. But the plaintiff has an interest which the court must be astute to protect. The rule of law requires that those whose rights are infringed should seek the aid of the court, and respect for the legal process can only suffer if those who need protection fail to get it. That, in part, at least, is why disobedience to orders of the court has always earned severe punishment. Respect for the freedom of the aggressor should never lead the court to deny necessary protection to the victim.

Ordinarily, the victim will be adequately protected by an injunction which restrains the tort which has been or is likely to be committed, whether trespass to the person or to land, interference with goods, harassment, intimidation or as the case may be. But it may be clear on the facts that if the defendant approaches the vicinity of the plaintiff's home he will succumb to the temptation to enter it, or to abuse or harass the plaintiff; or that he may loiter outside the house, watching and besetting it, in a manner which might be highly stressful and

²² Clarke, Hall and Morrison on Children 2014, Division 4, Chapter 2, C3 – *The Terms of the Order*

²³ For one example in case law, see *Gull v Gull* 2007 EWCA Civ 900 where a non-molestation order prohibited Mr Gull from returning to, entering or attempting to enter his mother's address.

²⁴ i.e. contact *per se* or entering an exclusion zone

²⁵ 1996 1 FCR 618

disturbing to a plaintiff. In such a situation the court may properly judge that in the plaintiff's interest - and also, but indirectly, the defendant's - a wider measure of restraint is called for.

In *Re T (a child: murdered parent)*²⁶ the High Court considered the position of exclusion zones in relation to non-molestation orders:

Depending upon the context, to describe as "molestation" the act of going within a defined radius of a particular location does not seem to me to exceed the ambit of the meaning of that word. Section 42(5) provides that "In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being." In this case there can be no doubt of the need to secure the health, safety and well-being of MS, GS, T, J and K. That is precisely the purpose of the proposed exclusion zone order.

The Queen's Bench Division in Northern Ireland considered the issue in 2002, and whilst not binding, the Society respectfully considers the reasoning very persuasive.²⁷ As with non-molestation orders and DVPOs in England and Wales, the law in Northern Ireland allowed the Courts to impose a non-molestation order which referred to molestation in general, to particular acts of molestation, or to both.²⁸ The Court held that there is a power to include exclusion zones in non-molestation orders. Its reasons included:

The order of the court may prohibit molestation in general or a particular form of it, but if it finds that it takes a form which can be dealt with effectively only by imposing an exclusion zone provision then the court must have that power to make its order effective. It also has the effect of making an order more readily understood and therefore more readily enforceable... If the Order was to be read in any other way it would have the effect of requiring a court to make an Order which did not secure the health, safety or wellbeing of the applicant or a child, i.e. was ineffective, so that respect for the law would suffer as those who need its protection would not receive it.

I am satisfied that when a Magistrate makes a Non-Molestation Order he has jurisdiction to include within it an exclusion zone provision. There is nothing in the Act to say he cannot do it and I consider that ordinary principles of statutory interpretation show the wording of the Order to be wide enough to permit it. It thus enables the court to make an effective order and thereby to promote the purposes of the legislation which are to secure for the applicant a life as free from molestation as possible and thereby to secure his/her health, welfare and wellbeing.

The Society respectfully agrees with McLaughlin J's wording in *Re Glennon*, and also advises members that the principles apply equally to DVPOs. DVPOs, like civil injunctions or non-molestation orders, are prospective²⁹. They are designed to prevent acts of molestation, and accordingly provisions may prohibit conduct which is not in itself objectionable, but which are imposed to prevent molestation. The Society's view is that a DVPO may therefore include terms prohibiting contact altogether, or impose exclusion zones.³⁰

However the Court must act proportionately. There must always be compelling reasons to restrict a person's freedom. The Court must therefore:

- establish the facts carefully, including the nature and extent of the actual or perceived threat

²⁶ 2011 EWHC 1185 (Fam)

²⁷ *Re Glennon's Application for Judicial Review*, 28 June 2002, unreported

²⁸ Family Homes and Domestic Violence (Northern Ireland) Order 1998, Article 20

²⁹ For an interesting commentary on the prospective nature of civil injunctions, as compared with the retrospective nature of the criminal law, see *The University of Oxford and others v Broughton and others* 2004 EWHC 2543 (QB).

³⁰ Where these are not already provided for under section 28 (8) Crime and Security Act 2010

- determine whether any term is necessary to protect V
- balance the competing interests of P and V being particularly aware of the right to freedom which a person would usually enjoy
- if satisfied that such a term is necessary, draft it to ensure it is proportionate to the level of threat. Care should be taken to ensure that any term does not preclude P from being able to attend work, visit friends or family or engage in normal social or domestic tasks, unless it is necessary to achieve the aims of the legislation

The intention of Parliament in England and Wales is certainly that an absolute prohibition on contact may be imposed where appropriate. The Home Secretary issued the following statement in 2013:

Domestic Violence Protection Orders are a new power introduced by the Crime and Security Act 2010, and enable the police to put in place protection for the victim in the immediate aftermath of a domestic violence incident. Under DVPOs, the perpetrator can be prevented from returning to a residence and from having contact with the victim for up to 28 days, allowing the victim a level of breathing space to consider their options, with the help of a support agency.³¹

Terms of the Order

The Order may prohibit molestation generally if the case so demands.

The Society also advises prohibiting particular acts of molestation. This is for the reason that it is modern best practice to make orders as specific as possible.³² Molestation is somewhat of an unusual word which has been considered in many cases; an order which prohibits only general molestation carries a risk that P may not know exactly what they are prohibited from doing. P and V should both be very clear as to what the prohibitions are.

The terms of a DVPO will depend on the case. A DVPN will have previously been issued. However, upon the making of a DVPO the Court must not simply extend the terms of the DVPN without consideration. It must consider what is necessary to protect V in each case. P could be prohibited from:

- Contacting V, either in person, through text, letter, phone or any other means...³³
- Coming within x metres of an address³⁴
- Using or threatening violence towards... (and must not instruct, encourage or in any way suggest that any other person should do so)
- Threatening...
- Intimidating, harassing or pestering... (and must not instruct, encourage or in any way suggest that any other person should do so)
- Any other action which, in the court's view, would amount to molestation.

³¹ Theresa May, Home Secretary, 25 November 2013

³² See for example, R v Boness 2005 EWHC 2395, dealing with the need for Anti-Social Behaviour Orders to be clear, precise and easily understood

³³ See above for commentary. Contact between persons would usually be unobjectionable; prior to imposing this term the court would have to be persuaded that contact *in itself* would amount to molestation or that a prohibition on contact is necessary to prevent molestation

³⁴ This is already expressly provided for in Section 28 (8) of the Crime and Security Act 2010 where P lives in the same premises as V. The Society suggests it may also be imposed if section 28 (8) does not apply where this is proportionate to prevent acts of molestation.

Where P lives in the same premises as V conditions may also be included:³⁵

- To prohibit P from evicting or excluding V from the premises
- To prohibit P from entering the premises
- To require P to leave the premises
- To prohibit P from coming within such distance of the premises as may be specified

Determining the length of DVPO

Where made, a DVPO runs for not less than 14 days and not more than 28 days. Results from the pilot areas have shown that most courts have tended to make orders for 28 days, to allow V time to make appropriate arrangements or seek assistance from agencies.³⁶

An application for a DVPO must be heard by a court within 48 hours of the DVPN being served. At this time V may not have been able to properly consider the options available to them, nor may they have been able to fully access organisations and assistance. At the time of the application for a DVPO the Police may have little, if any, additional information about V's circumstances. However the court should ensure that, whatever information the Police do have, it is given to it because it is this information that may be relevant to the length of a DVPO.

Proportionality, Necessity and the European Convention on Human Rights

Making a DVPO engages Article 8 of the European Convention on Human Rights. A person would usually have the right to a free and uninterrupted family life.

It may also engage Article 3, the right to be free from inhumane or degrading treatment. The Home Office interim guidance gives the example of P having nowhere to live, not having shelter from the elements or basic hygiene facilities etc. This situation may be heightened if P has a medical condition requiring treatment.

Any Court making an order must be satisfied that the order, its terms and its length are necessary and proportionate. An order is likely to be necessary and proportionate where it is not possible to safeguard V by alternatives which would constitute a lesser interference with P's rights.

What if an Associated Person does not want the order?

The court may make a DVPO in circumstances where the person for whose protection it is made does not consent to its making.³⁷

³⁵ Section 28 (8), Crime and Security Act 2010

³⁶ In a study of 414 DVPOs ordered, "over three quarters of DVPOs were put in place for the full period of 28 days. See the Evaluation of the DVPO pilot, page 4, available at: <https://www.gov.uk/government/publications/evaluation-of-the-pilot-of-domestic-violence-protection-orders>

³⁷ Section 28 (5) Crime and Security Act 2010. In this way, DVPO legislation differs from case law in relation to restraining orders (eg R v Brown 2012 EWCA Crim 1152, where it was held that a victim's views could prohibit the making of a restraining order in a domestic abuse setting). Parliament is supreme. Accordingly, a DVPO may be made where V does not consent.

Can a DVPO / DVPN be varied or revoked?

The Act contains no provision for varying or revoking a DVPO or DVPN. A DVPN will continue until a DVPO application has been determined. A DVPO will lapse at the end of the period granted. There is no power to extend or vary.

Adjournment of the DVPO Application

Ordinarily, the application will be heard and determined at the first hearing. Whilst the Society advises that adjournments should not routinely occur (even in contested cases) there may be compelling reasons for doing so, such as the inability of the court to hear and determine the application due to the needs of other business.

If the court adjourns the DVPO application, the provisions of the DVPN continue until the application has been determined.

An adjournment should be for the shortest possible period necessary for work to be undertaken by either party for the preparation of the application, or to accommodate the court's listing schedule. Where a court adjourns an application it should remind P that the provisions of the DVPN remain in force until the application for the DVPO has been determined by the court.

Giving Reasons

A Justices' Reasons Form is annexed to this guidance.

Applications under sections 24-31 of the Crime and Security Act 2010 are civil applications. The court must give its reasons for making or refusing to make a DVPO. (Assistant) Justices' Clerks dealing with an application should make notes of the evidence adduced and the representations made at the hearing.

Service of a DVPO

Where P has attended a hearing and the court makes a DVPO, HMCTS are responsible for ensuring that P is served with the DVPO before they leave the courthouse. We advise that a copy of the DVPO be endorsed with the time, date, place and method of the service (personal), signed by the member of HMCTS staff and retained in the court file.

Where P is not at a hearing and a DVPO is made, the Court must ensure that the order is completed and retained in the court file and a copy posted to P at the address given to the police, or an address that P has subsequently notified to the court.

The Police representative at the hearing must be given a copy of the DVPO.

Breach of a DVPO – Section 29 Crime and Security Act 2010

A person arrested for a breach of a DVPO must be held in custody and brought before a magistrates' court within the period of 24 hours beginning with the time of arrest. This period

excludes Christmas Day, Good Friday, any Sunday and any day which is a Bank Holiday in England and Wales.

Breaches are prosecuted by the Police. Legal Aid may be applied for. Alternatively the Duty Solicitor scheme may assist. Bearing in mind the overriding objectives in the Justice system, lack of Legal Aid is unlikely to be a reason to adjourn cases.

However, if it is not determined at this hearing, the court may remand P. An adjournment to a date following the cessation of the order does not preclude the court from hearing and determining the breach application. There is no power of the court to vary or revoke the DVPO when hearing and determining a breach application.

As a DVPO is a civil order, P will be asked to admit or deny the breach allegation.

If denied, hearsay evidence without notice is admissible. The Court will make a decision as to whether it is satisfied that a breach of the order has occurred.

Breaches are dealt with under Section 63(3) of the Magistrates' Courts Act 1980:

Where any person disobeys an order of a magistrates' court made under an Act passed after 31st December 1879 to do anything other than the payment of money or to abstain from doing anything, the court may—

(a) order him to pay a sum not exceeding £50 for every day during which he is in default or a sum not exceeding £5,000; or

(b) commit him to custody until he has remedied his default or for a period not exceeding 2 months;

but a person who is ordered to pay a sum for every day during which he is in default, or who is committed to custody until he has remedied his default, shall not by virtue of this section be ordered to pay more than £1,000 or be committed for more than 2 months in all for doing, or abstaining from doing, the same thing contrary to the order (without prejudice to the operation of this section in relation to any subsequent default).

A person will only be in contempt of an order under section 63 Magistrates' Courts Act 1980 if they have deliberately and wilfully disobeyed the order.³⁸ Contempt of court involves the element of fault; the liberty of P is at stake. The act or omission must be carried out with the knowledge of the obligation to do or to refrain from doing something.

Sentencing Breaches of a DVPO

A breach of a DVPO is not a criminal offence, and there are no authorities yet in relation to sentencing breaches of DVPOs. On breach (alongside any ancillary costs order) the Court may order P to pay a fine as described above or commit him to custody.

Whilst not all of the comments are relevant to the Magistrates' Courts, the case of *Hale v Tanner*³⁹ (dealing with breaches of non-molestation orders prior to those becoming criminal offences) does provide some useful principles:

On an application to commit a contemnor to prison for contempt of court in family cases, it might be appropriate for the court to take the following factors into consideration:

³⁸ P v W (Access Order: Breach) 1984 Fam. 32.

³⁹ 2000 3 FCR 62

(i) that imprisonment was not the automatic consequence of the breach of an order, and there was no principle that it should be imposed on the first occasion;

(ii) that in an appropriate case, particularly if no actual violence had been proved, there were a range of options to consider: the court could make no order, adjourn the case, impose a fine, requisition assets, or make a mental health order;⁴⁰

(iii) that if imprisonment was appropriate, the length of the committal should be decided without reference to whether or not it was to be suspended⁴¹;

(iv) that since the length of the committal reflected the court's disapproval of the disobedience to its order and was to secure compliance in the future, the seriousness of what had taken place had to be viewed in that light;

(v) that the length of the committal had to bear some reasonable relationship to the maximum sentence of two years' imprisonment;⁴²

(vi) ...

(vii) ...

(viii) that the context of the case, which could be aggravating or mitigating, had to be borne in mind;

(ix) that any concurrent proceedings, based on either the same facts or some of the same facts, in another court should be borne in mind and the outcome might have to be taken into account in considering what the practical effect was upon the contempt proceedings; and

(x) that it would usually be desirable to explain very briefly the reasons for the choices made in the particular case. In most cases it would be appropriate for the contemnor to know why he was being sentenced to a period of imprisonment; why it was the length it was; and if it was suspended, why the suspension was as it was, so that he understood the importance of keeping court orders, of not breaking them and the likely consequences if they were broken.

Where the court does commit to custody, this may not be suspended. Whilst prison is the destination of a person committed to custody under section 63, such a committal is not the same as sentence of imprisonment imposed under the criminal law.⁴³ Consecutive sentences are not available either for multiple breaches under section 63 dealt with on the same occasion.⁴⁴ Every committal takes effect on the day the order is made.

When sentencing P for the breach, the Court will need to take into account the circumstances of the case. In a case dealing with breaches of non-molestation orders (prior to those breaches becoming a criminal offence) the Court of Appeal (Civil Division) considered whether *criminal law* principles applied to sentencing breaches of civil orders⁴⁵. The Court held that the purposes of sentence in the criminal law can be very relevant in the area of civil breaches. Those purposes are:

⁴⁰ The Magistrates' Court would not have the options of requisitioning assets or making a mental health order

⁴¹ Committal to custody under section 63 Magistrates' Courts Act 1980 cannot be suspended

⁴² The maximum in the Magistrates' Courts would be 2 months under s63 MCA 1980

⁴³ See *B (BPM) v B (MM)* 1969 1 All ER 891, a case dealing with similar provisions under section 54 Magistrates' Courts Act 1952.

⁴⁴ *Head v Head* 1982 3 All ER 14

⁴⁵ *Murray v Robinson* 2005 EWCA Civ 935

- (a) the punishment of offenders;
- (b) the reduction of crime;
- (c) the reform and rehabilitation of offenders;
- (d) the protection of the public; and
- (e) the making of reparation by offenders to persons affected by their offences.⁴⁶

The Court stated:

*the purposes that I have already identified as being those of criminal proceedings in s 142(1) can be seen as being very relevant in this area as well. Their purpose is to punish offenders. The court should be concerned to reduce crime. The breach of an order of the court in this context is a crime. The reform and rehabilitation of those who offend is important. The court must be mindful of the need to protect the public. If it is seen to ignore acts of contempt in this context, the message will be sent out that other partners will be at risk in the same way as the victim in this case. It is also true that the making of reparation is desirable, but that may be more difficult to achieve in this context*⁴⁷

The Court went on to say that section 143 of the Criminal Justice Act 2003 may also be relevant. Members will be aware that this section requires the court to consider the seriousness of any offence in light of culpability of the Defendant and the harm caused.

When dealing with sentence under section 63 Magistrates' Courts Act 1980, Courts need to be aware that there is no Sentencing Council *starting point* to refer to, although the Society suggests the factors overleaf *could* be relevant.⁴⁸

⁴⁶ Criminal Justice Act 2003, section 142

⁴⁷ Paragraph 20 of Murray v Robinson

⁴⁸ The suggested aggravating and mitigating factors are largely derived from the Sentencing Council's guidelines in relation to breaching criminal orders. It is for the Court to decide in any case what factors to take into account.

Aggravating Factors	Mitigating Factors
More than one breach	Single breach involving no / minimal contact
Violence or threats of violence	Occurred near the end of the order (where appropriate to reflect this)
Significant physical or psychological harm caused	V initiated contact
Using contact arrangements with child to instigate breach	Impulsive, unplanned, chance meeting
History of disobedience with court orders	Evidence of genuine remorse
Breach committed immediately after or soon after DVPO made	Any other factor indicating low culpability and / or little harm caused.
V is particularly vulnerable	
Significant impact on children	
V is forced to leave home	
Committed under the influence of alcohol or drugs	
Planned breach	
Presence of others e.g. children	
Any other factor indicating high culpability and / or significant harm caused.	

Credit for Admitting Breach of DVPO

These are not criminal proceedings and the credit for guilty plea provisions do not apply. However, "it is desirable that a person who breaches a civil order should show repentance and remorse."⁴⁹ One way they can do that is by admitting responsibility. The Society therefore suggests that such an admission can be taken into account when dealing with a breach.

⁴⁹ Murray v Robinson 2005 EWCA Civ 935 in the context of breaching non-molestation orders (prior to breaches of those orders being criminalised)

Costs

On the hearing of a complaint, a magistrates' court shall have power in its discretion to make such order as to costs –

- a) on making the order for which the complaint is made, to be paid by the defendant to the complainant
- b) on dismissing the complainant, to be paid by the complainant to the defendant,

as it thinks just and reasonable. Costs are enforceable as a civil debt.⁵⁰

Any sum ordered should not be in excess of the proper costs incurred; it is not a punishment.⁵¹

What the court will think just and reasonable will depend on the circumstances of the case before the court. The Court may think it reasonable that costs should follow the event, but need not think so in all cases.

Where an administrative decision has been made by the police or another regulatory body, in the exercise of their public duty, acting honestly, reasonably, properly and on grounds that reasonably appeared to be sound, and that decision is successfully challenged before magistrates, when the court comes to deal with the issue of costs it should consider, in addition to any other relevant facts or circumstances, both (a) the financial prejudice to the particular complainant in the particular circumstances if he is not awarded his costs, and (b) the need to encourage the public bodies to make and stand by honest, reasonable and apparently sound administrative decisions made in the public interest, without fear of exposure to undue financial prejudice if the decision is successfully challenged.⁵²

The Court of Appeal made further comments in 2010 in relation to applicants successfully challenging applications by the police:

The effect of our decision is that a person in the position of the Appellant, who has done nothing wrong, may normally not be able to recover the costs of vindicating her rights against the police in proceedings under s 298 of POCA, where the police have behaved reasonably. In my view, this means that Magistrates should exercise particular care when considering whether the police have acted reasonably in a case where there is an application for costs against them under s 64. It would be wrong to invoke the wisdom of hindsight or to set too exacting a standard, but, particularly given the understandable resentment felt by a person in the position of the Appellant if no order for costs is made, and the general standards of behaviour that can properly be expected from the police, it must be right to scrutinise their behaviour in relation to the seizure, the detention, and the confiscation proceedings, with some care when deciding whether they acted reasonably and properly.⁵³

⁵⁰ See section 64 Magistrates' Courts Act 1980

⁵¹ R v Highgate Justices, ex p Petrou 1954 1 All ER 406

⁵² Bradford Metropolitan District Council v Booth 2000 164 JP 485

⁵³ Lord Neuberger, R (on the application of Perinpanathan) v City of Westminster Magistrates Court and another 2010 EWCA Civ 40, paragraph 77.

In the 2010 case the magistrates' court had dismissed an application for forfeiture of seized cash (£153,000). Although the Defendant was successful in the magistrates' court and the money returned, no award for costs was made as the application had been brought reasonably. The Court of Appeal dismissed the appeal against this decision.

Miscellaneous

Legal Aid

SI 2011/1453 brings breach of a DVPN, applications for a DVPO and breach of a DVPO into 'prescribed proceedings' for legal aid purposes. This means that they may be funded in the magistrates' court under means tested representation orders.⁵⁴

Application Fees

The Police are required to pay a fee of £200 for a DVPO application. Where an application is contested the Police must pay another fee of £500.

What support will there be for the alleged victim?

The issue of a DVPN and the subsequent making of a DVPO will not necessarily be sufficient to support V in considering the options available to them to prevent a recurrence of the violence. The Police will engage in a multi-agency approach to provide additional support for the victim, including contributing to Multi-Agency Risk Assessment Conferences (MARACs) and signposting V towards Independent Domestic Violence Advocates and other appropriate agencies.

What support will there be for the alleged perpetrator?

It is understood that P will be given generic information when the DVPN is issued. If the provisions of the DVPN prevent P from returning to their home, the Police may signpost them towards statutory and voluntary organisations that may be able to assist them. Where the Police perceive P as particularly vulnerable due to mental health or learning difficulties, they will ensure that the ACPO Guidance on Responding to People with Mental Health or Learning Difficulties 2010 is referred to and appropriate action is taken.

⁵⁴ See <http://www.legislation.gov.uk/uksi/2011/1453/made>

Resulting on Libra

There are two input codes for DVPOs:

CS10501 - Application for a Domestic Violence Protection Order

CS10502 - Breach of a Domestic Violence Protection Order.

Both should be entered with the Case type, *Civil*, and an Initiation type of *Summons*. The applicant / informant will be the police.

Applications for DVPOs can be resulted with *ORD*.

For breaches of DVPOs - if the Defendant admits the breach the civil plea code *ADM* will be used rather than the criminal *ADB*.

Further Reading

For those members of the Society who wish to conduct further research on the subject, the below may be of interest.

Home Office Interim Guidelines

<https://www.gov.uk/government/publications/domestic-violence-protection-orders>

Evaluation of the pilot of Domestic Violence Protection Orders

<https://www.gov.uk/government/publications/evaluation-of-the-pilot-of-domestic-violence-protection-orders>

Government Internet page on Domestic Violence

<https://www.gov.uk/domestic-violence-and-abuse>

Crime and Security Act 2010 (Commencement No. 7) Order 2014

http://www.legislation.gov.uk/uksi/2014/478/pdfs/uksi_20140478_en.pdf

Domestic Violence Disclosure Scheme (Clare's Law)

This section is for information only. The Domestic Violence Disclosure Scheme, also known as Clare's law, has been piloted since 2012 in certain areas. It will be extended throughout England and Wales from 2014.

The scheme is often referred to as Clare's Law, named after Clare Wood, who was murdered by her ex-boyfriend in 2009. She had met her murderer on Facebook, unaware of his violent past which included harassment and the knifepoint kidnapping of another ex-girlfriend.

There are two functions of the scheme:

Right to ask – this enables someone to ask the police about their partner's previous history of domestic violence or violent acts.

Right to know – police can proactively disclose information in prescribed circumstances.

All requests made under the scheme are checked by a panel made up of police, probation and other agencies to ensure information is only passed on where it is lawful, proportionate and necessary. Where information is supplied, support is provided.

Crime and Security Act 2010, sections 24 to 31

24 Power to issue a domestic violence protection notice

- (1) A member of a police force not below the rank of superintendent (“the authorising officer”) may issue a domestic violence protection notice (“a DVPN”) under this section.
- (2) A DVPN may be issued to a person (“P”) aged 18 years or over if the authorising officer has reasonable grounds for believing that—
 - (a) P has been violent towards, or has threatened violence towards, an associated person, and
 - (b) the issue of the DVPN is necessary to protect that person from violence or a threat of violence by P.
- (3) Before issuing a DVPN, the authorising officer must, in particular, consider—
 - (a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the issuing of the DVPN (whether or not that person is an associated person),
 - (b) the opinion of the person for whose protection the DVPN would be issued as to the issuing of the DVPN,
 - (c) any representations made by P as to the issuing of the DVPN, and
 - (d) in the case of provision included by virtue of subsection (8), the opinion of any other associated person who lives in the premises to which the provision would relate.
- (4) The authorising officer must take reasonable steps to discover the opinions mentioned in subsection (3).
- (5) But the authorising officer may issue a DVPN in circumstances where the person for whose protection it is issued does not consent to the issuing of the DVPN.
- (6) A DVPN must contain provision to prohibit P from molesting the person for whose protection it is issued.
- (7) Provision required to be included by virtue of subsection (6) may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.
- (8) If P lives in premises which are also lived in by a person for whose protection the DVPN is issued, the DVPN may also contain provision—
 - (a) to prohibit P from evicting or excluding from the premises the person for whose protection the DVPN is issued,
 - (b) to prohibit P from entering the premises,

- (c) to require P to leave the premises, or
- (d) to prohibit P from coming within such distance of the premises as may be specified in the DVPN.

(9) An “associated person” means a person who is associated with P within the meaning of section 62 of the Family Law Act 1996.

(10) Subsection (11) applies where a DVPN includes provision in relation to premises by virtue of subsection (8)(b) or (8)(c) and the authorising officer believes that—

- (a) P is a person subject to service law in accordance with sections 367 to 369 of the Armed Forces Act 2006, and
- (b) the premises fall within paragraph (a) of the definition of “service living accommodation” in section 96(1) of that Act.

(11) The authorising officer must make reasonable efforts to inform P's commanding officer (within the meaning of section 360 of the Armed Forces Act 2006) of the issuing of the notice.

25 Contents and service of a domestic violence protection notice

(1) A DVPN must state—

- (a) the grounds on which it has been issued,
- (b) that a constable may arrest P without warrant if the constable has reasonable grounds for believing that P is in breach of the DVPN,
- (c) that an application for a domestic violence protection order under section 27 will be heard within 48 hours of the time of service of the DVPN and a notice of the hearing will be given to P,
- (d) that the DVPN continues in effect until that application has been determined, and
- (e) the provision that a magistrates' court may include in a domestic violence protection order.

(2) A DVPN must be in writing and must be served on P personally by a constable.

(3) On serving P with a DVPN, the constable must ask P for an address for the purposes of being given the notice of the hearing of the application for the domestic violence protection order.

26 Breach of a domestic violence protection notice

- (1) A person arrested by virtue of section 25(1)(b) for a breach of a DVPN must be held in custody and brought before the magistrates' court which will hear the application for the DVPO under section 27—
 - (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 that application.
- (2) If the person is brought before the court by virtue of subsection (1)(a), the court may remand the person.
- (3) If the court adjourns the hearing of the application by virtue of section 27(8), the court may remand the person.
- (4) In calculating when the period of 24 hours mentioned in subsection (1)(a) ends, Christmas Day, Good Friday, any Sunday and any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 are to be disregarded.

27 Application for a domestic violence protection order

- (1) If a DVPN has been issued, a constable must apply for a domestic violence protection order ("a DVPO").
- (2) The application must be made by complaint to a magistrates' court.
- (3) The application must be heard by the magistrates' court not later than 48 hours after the DVPN was served pursuant to section 25(2).
- (4) In calculating when the period of 48 hours mentioned in subsection (3) ends, Christmas Day, Good Friday, any Sunday and any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 are to be disregarded.
- (5) A notice of the hearing of the application must be given to P.
- (6) The notice is deemed given if it has been left at the address given by P under section 25(3).
- (7) But if the notice has not been given because no address was given by P under section 25(3), the court may hear the application for the DVPO if the court is satisfied that the constable applying for the DVPO has made reasonable efforts to give P the notice.
- (8) The magistrates' court may adjourn the hearing of the application.
- (9) If the court adjourns the hearing, the DVPN continues in effect until the application has been determined.
- (10) On the hearing of an application for a DVPO, section 97 of the Magistrates' Courts Act 1980 (summons to witness and warrant for his arrest) does not apply in relation to a person for whose protection the DVPO would be made, except where the person has given oral or written evidence at the hearing.

28 Conditions for and contents of a domestic violence protection order

- (1) The court may make a DVPO if two conditions are met.
- (2) The first condition is that the court is satisfied on the balance of probabilities that P has been violent towards, or has threatened violence towards, an associated person.
- (3) The second condition is that the court thinks that making the DVPO is necessary to protect that person from violence or a threat of violence by P.
- (4) Before making a DVPO, the court must, in particular, consider—
 - (a) the welfare of any person under the age of 18 whose interests the court considers relevant to the making of the DVPO (whether or not that person is an associated person), and
 - (b) any opinion of which the court is made aware—
 - (i) of the person for whose protection the DVPO would be made, and
 - (ii) in the case of provision included by virtue of subsection (8), of any other associated person who lives in the premises to which the provision would relate.
- (5) But the court may make a DVPO in circumstances where the person for whose protection it is made does not consent to the making of the DVPO.
- (6) A DVPO must contain provision to prohibit P from molesting the person for whose protection it is made.
- (7) Provision required to be included by virtue of subsection (6) may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.
- (8) If P lives in premises which are also lived in by a person for whose protection the DVPO is made, the DVPO may also contain provision—
 - (a) to prohibit P from evicting or excluding from the premises the person for whose protection the DVPO is made,
 - (b) to prohibit P from entering the premises,
 - (c) to require P to leave the premises, or
 - (d) to prohibit P from coming within such distance of the premises as may be specified in the DVPO.
- (9) A DVPO must state that a constable may arrest P without warrant if the constable has reasonable grounds for believing that P is in breach of the DVPO.
- (10) A DVPO may be in force for—
 - (a) no fewer than 14 days beginning with the day on which it is made, and
 - (b) no more than 28 days beginning with that day.
- (11) A DVPO must state the period for which it is to be in force.

29 Breach of a domestic violence protection order

- (1) A person arrested by virtue of section 28(9) for a breach of a DVPO must be held in custody and brought before a magistrates' court within the period of 24 hours beginning with the time of the arrest.
- (2) If the matter is not disposed of when the person is brought before the court, the court may remand the person.
- (3) In calculating when the period of 24 hours mentioned in subsection (1) ends, Christmas Day, Good Friday, any Sunday and any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 are to be disregarded.

30 Further provision about remand

- (1) This section applies for the purposes of the remand of a person by a magistrates' court under section 26(2) or (3) or 29(2).
- (2) In the application of section 128(6) of the Magistrates' Courts Act 1980 for those purposes, the reference to the "other party" is to be read—
 - (a) in the case of a remand prior to the hearing of an application for a DVPO, as a reference to the authorising officer,
 - (b) in any other case, as a reference to the constable who applied for the DVPO.
- (3) If the court has reason to suspect that a medical report will be required, the power to remand a person may be exercised for the purpose of enabling a medical examination to take place and a report to be made.
- (4) If the person is remanded in custody for that purpose, the adjournment may not be for more than 3 weeks at a time.
- (5) If the person is remanded on bail for that purpose, the adjournment may not be for more than 4 weeks at a time.
- (6) If the court has reason to suspect that the person is suffering from a mental disorder within the meaning of the Mental Health Act 1983, the court has the same power to make an order under section 35 of that Act (remand to hospital for medical report) as it has under that section in the case of an accused person (within the meaning of that section).
- (7) The court may, when remanding the person on bail, require the person to comply, before release on bail or later, with such requirements as appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

31 Guidance

- (1) The Secretary of State may from time to time issue guidance relating to the exercise by a constable of functions under sections 24 to 30.
- (2) A constable must have regard to any guidance issued under subsection (1) when exercising a function to which the guidance relates.
- (3) Before issuing guidance under this section, the Secretary of State must consult—
 - (a) the Association of Chief Police Officers, and
 - (b) . . .
 - (c) such other persons as the Secretary of State thinks fit.

Family Law Act 1996

62 Meaning of “cohabitants”, “relevant child” and “associated persons”

- (1) For the purposes of this Part—
 - (a) “cohabitants” are two persons who are neither married to each other nor civil partners of each other but are living together as husband and wife or as if they were civil partners; and
 - (b) “cohabit” and “former cohabitants” are to be read accordingly, but the latter expression does not include cohabitants who have subsequently married each other or become civil partners of each other.
- (2) In this Part, “relevant child”, in relation to any proceedings under this Part, means—
 - (a) any child who is living with or might reasonably be expected to live with either party to the proceedings;
 - (b) any child in relation to whom an order under the Adoption Act 1976, the Adoption and Children Act 2002 or the Children Act 1989 is in question in the proceedings; and
 - (c) any other child whose interests the court considers relevant.
- (3) For the purposes of this Part, a person is associated with another person if—
 - (a) they are or have been married to each other;
 - (aa) they are or have been civil partners of each other;
 - (b) they are cohabitants or former cohabitants;
 - (c) they live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;
 - (d) they are relatives;
 - (e) they have agreed to marry one another (whether or not that agreement has been terminated);
 - (eza) they have entered into a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated);
 - (ea) they have or have had an intimate personal relationship with each other which is or was of significant duration;
 - (f) in relation to any child, they are both persons falling within subsection (4);
or
 - (g) they are parties to the same family proceedings (other than proceedings under this Part).
- (4) A person falls within this subsection in relation to a child if—
 - (a) he is a parent of the child; or

(b) he has or has had parental responsibility for the child.

(5) If a child has been adopted or falls within subsection (7), two persons are also associated with each other for the purposes of this Part if—

(a) one is a natural parent of the child or a parent of such a natural parent; and

(b) the other is the child or any person—

(i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or

(ii) with whom the child has at any time been placed for adoption.

(6) A body corporate and another person are not, by virtue of subsection (3)(f) or (g), to be regarded for the purposes of this Part as associated with each other.

(7) A child falls within this subsection if—

(a) an adoption agency, within the meaning of section 2 of the Adoption and Children Act 2002, has power to place him for adoption under section 19 of that Act (placing children with parental consent) or he has become the subject of an order under section 21 of that Act (placement orders), or

(b) he is freed for adoption by virtue of an order made—

(i) in England and Wales, under section 18 of the Adoption Act 1976,

(ii) . . .

(iii) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987[, or

(c) he is the subject of a Scottish permanence order which includes provision granting authority to adopt.

[(8) In subsection (7)(c) “Scottish permanence order” means a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4) (including a deemed permanence order having effect by virtue of article 13(1), 14(2), 17(1) or 19(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No 4, Transitional and Savings Provisions) Order 2009 (SSI 2009/267)).]

Magistrates' Courts (Domestic Violence Protection Order Proceedings) Rules 2011

Application and Interpretation

2 In these rules—

“the 1995 Act” means the Civil Evidence Act 1995;

“the 1999 Rules” means the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999;

“the 2010 Act” means the Crime and Security Act 2010;

“DVPO” means a Domestic Violence Protection Order made in accordance with section 28 (conditions for and contents of a domestic violence protection order) of the 2010 Act; and

“DVPO proceedings” means proceedings under any of sections 26 (breach of domestic violence protection notice) 27 (application for a domestic violence protection order) and 29 (breach of domestic violence protection order) of the 2010 Act.

3 These Rules shall apply to DVPO proceedings in magistrates' courts.

Disapplication of section 2(1) the 1995 Act

4 Section 2(1) (notice of proposal to adduce hearsay evidence) of the 1995 Act does not apply to DVPO proceedings.

Exclusion of the 1999 Rules

5 (1) Rule 2 (application and interpretation) of the 1999 Rules is amended as follows.

(2) After rule 2(3) insert—

“(4) These rules shall not apply to Domestic Violence Protection Order proceedings as defined in “DVPO proceedings” under rule 2 (application and interpretation) of the Magistrates' Courts (Domestic Violence Protection Order Proceedings) Rules 2011.”

Application for a DVPO in the magistrates' court

6 In an application for a DVPO, the application, in accordance with section 27(2) of the 2010 Act, must be made by complaint and, accordingly, when an application for a DVPO is made, the applicant shall be deemed to be a complainant, the respondent to be a defendant and any notice given under section 27(5) of the 2010 Act to be a summons, but nothing in this rule shall be construed as enabling a warrant of arrest to be issued for failure to appear in answer to any such notice.