

PROJET DE LOI

ENTITLED

The Domestic Abuse and Related Provisions (Bailiwick of Guernsey) Law, 2024

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The Domestic Abuse and Related Provisions (Bailiwick of Guernsey) Law, 2024

THE STATES, in pursuance of their Resolution of 27th September 2023^a, have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

CRIMINAL OFFENCES

CHAPTER I

DOMESTIC ABUSE

The domestic abuse offence.

1. (1) A person ("D") commits an offence if -
 - (a) D engages in behaviour that is abusive of another person ("V"),
 - (b) D and V are personally connected to each other at the time, and

^a Article I of Billet d'État No. XIV of 2023.

- (c) both of the further conditions in subsection (2) are met.
- (2) The further conditions referred to in subsection (1)(c) are -
- (a) that a reasonable person would consider the behaviour to be likely to cause V to suffer physical or psychological harm, and
 - (b) that D -
 - (i) intends the behaviour to cause V to suffer physical or psychological harm, or
 - (ii) is reckless as to whether the behaviour causes V to suffer physical or psychological harm.
- (3) The references in this section to psychological harm include fear, alarm and distress.
- (4) The offence under this section is to be known as "**the domestic abuse offence**".
- (5) The domestic abuse offence may be charged as a single incident or as a course of conduct.

What constitutes abusive behaviour.

2. (1) This section contains provision for determining for the purposes of this Chapter when behaviour of a person ("D") is abusive of another person ("V").
- (2) Behaviour that is abusive of V includes (in particular) -

- (a) behaviour directed at V that is violent,
 - (b) behaviour directed at V that is threatening,
 - (c) behaviour directed at V, at a child of V or at someone else, that -
 - (i) has as its purpose (or among its purposes) one or more of the relevant effects referred to 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 referred to in subsection (2)(c) are of -
- (a) making V dependent on, or subordinate to, D,
 - (b) isolating V from friends, family members or other sources of social interaction or support,
 - (c) controlling, regulating or monitoring V's day-to-day activities,
 - (d) depriving V of, or restricting, V's freedom of action,
 - (e) making V 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 who is under 18 years of age.

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

(6) Where the domestic abuse offence is charged as a course of conduct, it is the cumulative effect, or likely cumulative effect, of all of the acts and failures to act that is relevant for the purpose of this Chapter, rather than the effect of each act or failure to act in isolation.

Meaning of behaviour etc.

3. (1) Throughout this Chapter, "**behaviour**" means behaviour of any kind, including (for example) -

- (a) doing something, saying something or otherwise communicating something,
- (b) intentionally failing to do something, say something or otherwise communicate something.

(2) Behaviour is directed at a person if it is directed at the person in any way, including (for example) -

- (a) through conduct relating to the person's ability to acquire, use or maintain money or other property or the person's ability to obtain goods or services,

- (b) through other conduct concerning or towards property (including animals), or
- (c) by making use of a third party,

as well as behaviour in a personal or direct manner.

Impact of behaviour on victim.

4. (1) The domestic abuse offence can be committed whether or not D's behaviour actually causes V to suffer harm of the sort referred to in section 1(2).

(2) D's behaviour can be abusive of V by virtue of section 2(2)(c) whether or not D's behaviour actually has one or more of the relevant effects set out in section 2(3).

(3) Nothing in this Chapter prevents evidence from being led in proceedings for the domestic abuse offence about -

- (a) harm actually suffered by V as a result of D's behaviour,
- (b) effects that D's behaviour actually had on V.

(4) In this section, "D" and "V" are as referred to in section 1 or (as the case may be) 2.

Meaning of "personally connected".

5. (1) For the purpose of this Chapter, two people ("D" and "V") are personally connected to each other if any of these 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 spouses of each other,
- (d) they are, or have been, otherwise in an intimate personal relationship with each other, or
- (e) they are members of the same family.

(2) D and V are members of the same family for the purpose of subsection (1)(e) -

- (a) if D is V's parent, grandparent, child, grandchild, brother or sister, or
- (b) if -
 - (i) one of them is in a relevant relationship with someone else ("E"), and
 - (ii) the other of them is E's parent, grandparent, child, grandchild, brother or sister.

(3) A person is in a relevant relationship with E for the purpose of subsection (2)(b)(i) if -

- (a) they are married to, or are the civil partner of, E, or
- (b) they are living with E as if they are E's spouse.

- (4) In determining family membership under this section -
- (a) a relationship of the half blood or a relationship by affinity is to be treated as a relationship of the whole blood, and
 - (b) a stepchild or an adopted child of a person is to be treated as the person's child.
- (5) In this section -
- (a) "**grandchild**" includes great-grandchild,
 - (b) "**grandparent**" includes great-grandparent,
 - (c) "**relationship by affinity**" refers to a relationship that exists between two or more people as a result of a marriage or civil partnership.

Presumption as to personal connection.

6. (1) Subject to subsection (4), in proceedings for the domestic abuse offence, the matter of D and V being personally connected at the date of the commission of the alleged offence is to be taken as established according to the stating of the matter in the charge or indictment, unless the matter is challenged by D, as provided for in subsection (2).

- (2) The matter is challenged by D by -
- (a) including the particulars of that challenge in a defence case statement given in accordance with the Criminal

Justice (Defence Case Statements) (Bailiwick of Guernsey) Ordinance, 2023^b, or

- (b) if the court has dispensed with the requirement to give a defence case statement under section 3(8) of that ordinance, by notifying the prosecution in writing, at least 14 days prior the date of the trial, that D challenges the matter.

(3) If the matter is challenged by D in accordance with subsection (2), or if the court proceeds as though D had complied with that subsection in accordance with subsection (4), it is for the prosecution to prove, beyond reasonable doubt, that D and V were personally connected at the date of the commission of the alleged offence.

(4) If, in proceedings for the domestic abuse offence, the matter of D and V being personally connected at the date of the commission of the alleged offence is challenged by D despite a failure to comply with subsection (2), the court may, after considering the matters listed in subsection (5) and if it is in the interests of justice to do so, proceed as though D had complied with subsection (2).

(5) The matters referred to in subsection (4) are –

- (a) the reason why there was a failure by D to comply with subsection (2) and the reason for any subsequent delay in notifying the prosecution of the challenge,

^b Ordinance No. XXVIII of 2023.

- (b) the reason why D now challenges the matter of D and V being personally connected at the date of the commission of the alleged offence,
 - (c) whether proceeding as though D had complied with subsection (2) would require the trial to be adjourned to give the prosecution an opportunity to adduce evidence or additional evidence of that personal connection, and
 - (d) any other matter that the court considers to be relevant.
- (6) In this section -
- (a) "D" is the person accused of the offence, and
 - (b) "V" is the person in relation to whom the offence is alleged to have been committed.

Exception where a person has parental responsibility for a child.

7. (1) Notwithstanding the provisions of this Chapter, a person ("D") does not commit the domestic abuse offence in relation to another person ("V") by engaging in behaviour that is abusive of V at a time when -

- (a) V is under 16 years of age, and
- (b) D has parental responsibility for V.

(2) If this section is raised as an issue in criminal proceedings, it is for D to prove, on the balance of probabilities, that they had parental responsibility for V at the material time.

Extra-territorial jurisdiction

8. (1) If -

- (a) a person's behaviour consists of or includes behaviour occurring in a country outside the Bailiwick,
- (b) the domestic abuse offence would be constituted by virtue of the behaviour if it occurred in the Bailiwick, and
- (c) the person is ordinarily resident in the Bailiwick,

the person commits the domestic abuse offence as if the behaviour occurred in the Bailiwick.

(2) If the behaviour described in subsection (1) occurs wholly outside the Bailiwick of Guernsey -

- (a) the person may be prosecuted, tried and punished for the offence as if the offence has been committed entirely in the island in which the person ordinarily resides, and
- (b) the offence is, for all things incidental to or consequential on trial and punishment, deemed to have been committed entirely in that island.

(3) For the purpose of this section, a person ("D") is "**ordinarily resident in the Bailiwick**" if D's abode is in the Bailiwick and that abode has been adopted voluntarily by D and for settled purposes as part of the regular order of D's life for the time being, whether of short or of long duration.

Defence on grounds of reasonableness.

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

(2) The defence in subsection (1) is established if -

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

Alternative available for conviction.

10. (1) In proceedings in respect of a charge against a person ("D") of the domestic abuse offence, D may be convicted of an alternative offence if the facts proved against D -

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

(2) For the purposes of subsection (1), the "**alternative offences**" are -

- (a) an offence under section 2 of the Protection from Harassment (Bailiwick of Guernsey) Law, 2005^c (harassment),
- (b) an offence under section 3 of that Law (putting people in fear of violence),
- (c) an offence under section 4 of the Public Order (Bailiwick of Guernsey) Law, 2006^d (fear or provocation of violence), and
- (d) an offence under section 12 of this Law (child cruelty).

Penalty for the domestic abuse offence.

11. A person who commits the domestic abuse offence is liable to imprisonment for a term not exceeding 14 years or a fine (or both).

CHAPTER II
CHILD CRUELTY

Offence of child cruelty.

12. (1) If any person who has attained 16 years of age and has responsibility for any child, wilfully assaults, ill-treats (whether physically or otherwise), neglects, abandons, or exposes the child, or causes or procures that child to be assaulted, ill-treated (whether physically or otherwise), neglected, abandoned, or exposed, in a manner likely to cause that child unnecessary suffering or injury to

^c Order in Council No. VI of 2006.

^d Order in Council No. XXI of 2009.

health (whether the suffering or injury is of a physical or a psychological nature), that person shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable to imprisonment for a term not exceeding 14 years or a fine (or both).

(3) For the purposes of this section -

(a) a parent or other person legally liable to maintain a child, or the legal guardian of a child, shall be deemed to have neglected that child in a manner likely to cause injury to that child's health if that person has failed to provide adequate food, clothing, medical aid or lodging for that child, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, that person has failed to take steps to procure it to be provided under the enactments applicable in that behalf, and

(b) where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of that infant) while that infant was in bed with some other person who has attained 16 years of age ("**D**"), D shall, if D was, when D went to bed or at any later time before the suffocation, under the influence of drink or a prohibited drug, be deemed to have neglected that infant in a manner likely to cause injury to that infant's health.

(4) The reference in subsection (3)(b) to the infant being "**in bed**" with D includes a reference to the infant lying next to D in or on any kind of furniture or surface being used by D for the purpose of sleeping (and the reference to the time when D "**went to bed**" is to be read accordingly).

(5) A drug is a prohibited drug for the purposes of subsection (3)(b) in relation to D if D's possession of the drug immediately before taking it constituted an offence under section 4(2) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974^e.

- (6) A person may be convicted of an offence under this section -
- (a) notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person,
 - (b) notwithstanding the death of the child in question.

(7) In subsection (3), "**legal guardian**" means a person appointed, according to law, to be a child's guardian by deed or will, or by order of a Court of competent jurisdiction.

(8) Throughout this Chapter, a "**child**" is a person under 16 years of age.

Contents of charge or indictment.

13. Where a person is prosecuted for an offence under section 12, the same charge or indictment may allege the offences of assault, ill-treatment, neglect,

^e Ordres en Conseil Vol. XXIV, p. 273; this enactment has been amended.

abandonment or exposure, together or separately, and may charge that person with committing all or any of those offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together, but when those offences are charged together the person charged shall not be liable to a separate penalty for each.

Presumption as to responsibility.

14. (1) For the purposes of this Chapter, the following shall be presumed to have responsibility for a child -

- (a) any person who -
 - (i) has parental responsibility for the child, or
 - (ii) is otherwise legally liable to maintain the child,
and
- (b) any person who has care of the child.

(2) A person who is presumed to be responsible for a child by virtue of subsection (1)(a) shall not be taken to have ceased to be responsible for that child by reason only that the person does not have care of them.

Presumption as to age.

15. (1) Subject to subsection (4), in proceedings for an offence under section 12, the matter of the person in respect of whom the offence is alleged to have been committed ("V") being a child at the date of the commission of the alleged offence is to be taken as established according to the stating of the matter in the charge or indictment, unless the matter is challenged by the defendant ("D"), as provided for in subsection (2).

(2) The matter is challenged by D by –

- (a) including the particulars of that challenge in a defence case statement given in accordance with the Criminal Justice (Defence Case Statements) (Bailiwick of Guernsey) Ordinance, 2023^f, or
- (b) if the court has dispensed with the requirement to give a defence case statement under section 3(8) of that ordinance, by notifying the prosecution in writing, at least 14 days prior the date of the trial, that D challenges the matter.

(3) If the matter is challenged by D in accordance with subsection (2), or if the court proceeds as though D had complied with that subsection in accordance with subsection (4), it is for the prosecution to prove, beyond reasonable doubt, that V was a child at the date of the commission of the alleged offence.

(4) If, in proceedings for an offence under section 12, the matter of V being a child at the date of the commission of the alleged offence is challenged by D despite a failure to comply with subsection (2), the court may, after considering the matters listed in subsection (5) and if it is in the interests of justice to do so, proceed as though D had complied with subsection (2).

(5) The matters referred to are in subsection (4) are –

- (a) the reason why there was a failure by D to comply with subsection (2), and the reason for any subsequent delay in notifying the prosecution of the challenge,

^f Ordinance No. XXVIII of 2023.

- (b) the reason why D now challenges the matter of V being a child at the date of the commission of the alleged offence,
- (c) whether proceeding as though D had complied with subsection (2) would require the trial to be adjourned to give the prosecution an opportunity to adduce evidence or additional evidence of V's age at that date, and
- (d) any other matter that the court considers to be relevant.

Continuity of child cruelty law.

16. (1) This section applies where, in any proceedings -
- (a) a person ("D") is charged in respect of the same conduct both with an offence under section 12 ("**the section 12 offence**") and with an offence specified in subsection (2) ("**the pre-commencement offence**"),
 - (b) the only thing preventing D from being found guilty of the section 12 offence is the fact that it has not been proved beyond a reasonable doubt that the time when the conduct took place was after the coming into force of the enactment providing for the offence, and
 - (c) the only thing preventing D from being found guilty of the pre-commencement offence is the fact that it has not been proved beyond a reasonable doubt that that

time was before the coming into force of the repeal of the enactment providing for the offence.

- (2) The offences referred to in subsection (1)(a) are –
- (a) article 7 of the Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes of 1917^g, and
 - (b) section 2 of the Child Protection (Alderney) Law, 1953^h.

(3) For the purpose of determining the guilt of the defendant it shall be conclusively presumed that the time when the conduct took place was a time before the coming into force of the repeal of the enactment providing for the pre-commencement offence.

(4) A reference in this section to the section 12 offence or to an offence specified in subsection (2) includes a reference to -

- (a) inciting the commission of that offence,
- (b) conspiracy to commit that offence, and
- (c) attempting to commit that offence,

and, in relation to an offence falling within paragraphs (a) to (c), a reference in this section to the enactment providing for the offence so falling has effect as a reference

^g Ordres en Conseil Vol. V, p. 342; this enactment has been amended.

^h Ordres en Conseil Vol. XV, p. 413; this enactment has been amended.

to the enactment providing for the section 12 offence or, as the case may be, for the offence so specified.

(5) This section applies to any proceedings, whenever commenced, other than proceedings in which the defendant has been convicted or acquitted of the pre-commencement offence before the commencement of this section.

CHAPTER III
CAUSING OR ALLOWING DEATH OR SERIOUS
PHYSICAL HARM IN THE HOUSEHOLD

Causing or allowing death or serious physical harm in the household.

17. (1) A person ("D") is guilty of an offence if -
- (a) a child or vulnerable adult ("V") dies or suffers serious physical harm as a result of the unlawful act of a person who -
 - (i) was a member of the same household as V, and
 - (ii) had frequent contact with V,
 - (b) D was such a person at the time of that act,
 - (c) at that time there was a significant risk of serious physical harm being caused to V by the unlawful act of such a person, and
 - (d) either -

- (i) D was the person whose act caused the death or serious physical harm, or
- (ii) alternatively that -
 - (A) D was, or ought to have been, aware of the risk mentioned in paragraph (c),
 - (B) D failed to take such steps as D could reasonably have been expected to take to protect V from the risk, and
 - (C) the act occurred in circumstances of the kind that D foresaw or ought to have foreseen.

(2) The prosecution does not have to prove whether it is the first alternative (in subsection (1)(d)(i)) or the second alternative (in subsection (1)(d)(ii)) that applies.

(3) If D was not the mother or father of V -

- (a) D may not be charged with an offence under this section if D was under 16 years of age at the time of the act that caused the death or serious physical harm,
- (b) for the purposes of subsection (1)(d)(ii)(B), D could not have been expected to take any such step as is referred to there before attaining that age.

(4) For the purposes of this section -

- (a) a person is to be regarded as a "**member**" of a particular household, even if that person does not live in that household, if that person visits it so often and for such periods of time that it is reasonable to regard that person as a member of it,
 - (b) where V lived in different households at different times, "**the same household as V**" refers to the household in which V was living at the time of the act that caused the death or serious physical harm.
- (5) For the purposes of this section an "**unlawful**" act is one that -
- (a) constitutes an offence, or
 - (b) would constitute an offence but for being the act of -
 - (i) a child under the age of criminal responsibility, or
 - (ii) a person entitled to rely on a defence of insanity,

but paragraph (b) does not apply to an act of D and the reference in subsection (1)(a) to an unlawful act does not include an act that (or so much of an act as) occurs before the commencement of this section.

(6) A person guilty of an offence under this section of causing or allowing a person's death is liable on conviction on indictment to imprisonment for

life or to a fine, or to both, and such an offence is to be treated as an offence of homicide for the purpose of section 8(a) of the Magistrate's Court (Guernsey) Law, 2008ⁱ.

(7) A person guilty of an offence under this section of causing or allowing a person to suffer serious physical harm is liable on conviction to imprisonment for a term not exceeding 14 years or to a fine, or to both.

(8) In this section -

"**act**" includes a course of conduct and also includes omission,

"**child**" means a person under 16 years of age,

"**serious physical harm**" means harm that amounts to grievous bodily harm, and

"**vulnerable adult**" means a person 16 years of age or over whose ability to protect themselves from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise.

Evidence and procedure in cases of death.

18. (1) Subsections (2) to (4) apply where a person ("**D**") is charged in the same proceedings with an offence of murder or manslaughter and with an offence under section 17 ("**the section 17 offence**") in respect of the same death.

(2) Where this subsection applies and the case is before the Magistrate's Court for committal proceedings under section 11 or 25(4) of the

ⁱ Order in Council No. XVIII of 2009; this enactment has been amended.

Magistrate's Court (Guernsey) Law, 2008^j, the court may not decline to commit the accused for trial before the Royal Court of the murder or manslaughter charge (as the case may be) on the basis that there is no prima facie case to answer in respect of that charge, unless the court also declines to commit the accused for trial before the Royal Court of the charge of the section 17 offence on the basis that there is no prima facie case to answer in respect of the charge of the section 17 offence.

(3) Where this subsection applies and the case is before the Court of Alderney for proceedings under section 12 of the Government of Alderney Law, 2004^k, the court may not decline to transfer the murder or manslaughter charge (as the case may be) to the Royal Court on the basis that there is no prima facie case to answer in respect of that charge, unless the court also declines to transfer the charge of the section 17 offence on the basis that there is no prima facie case to answer in respect of the charge of the section 17 offence.

(4) Where this subsection applies, at D's trial the question of whether there is a case for D to answer on the charge of murder or manslaughter is not to be considered before the close of all the evidence or, if at some earlier time D ceases to be charged with the section 17 offence, before that earlier time.

Evidence and procedure in cases of serious harm.

19. (1) Subsections (3) to (5) apply where a person ("D") is charged in the same proceedings with a relevant offence and with an offence under section 17 ("**the section 17 offence**") in respect of the same harm.

^j Order in Council No. XVIII of 2009; this enactment has been amended.

^k Order in Council No. III of 2005; this enactment has been amended.

- (2) In this section "**relevant offence**" means -
- (a) unlawful wounding,
 - (b) unlawful wounding with intent,
 - (c) inflicting grievous bodily harm,
 - (d) inflicting grievous bodily harm with intent,
 - (e) an offence under section 1(1) of the Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006¹ of attempting to commit murder.

(3) Where this subsection applies and the case is before the Magistrate's Court for committal proceedings under section 11 or 25(4) of the Magistrate's Court (Guernsey) Law, 2008, the court may not decline to commit the accused for trial before the Royal Court of the charge of the relevant offence on the basis that there is no prima facie case to answer in respect of that charge, unless the court also declines to commit the accused for trial before the Royal Court of the charge of the section 17 offence on the basis that there is no prima facie case to answer in respect of the charge of the section 17 offence.

(4) Where this subsection applies and the case is before the Court of Alderney for proceedings under section 12 of the Government of Alderney Law, 2004, the court may not decline to transfer the charge of the relevant offence to the Royal Court on the basis that there is no prima facie case to answer in respect of that charge, unless the court also declines to transfer the charge of the section 17 offence

¹ Order in Council No. XII of 2006; this enactment has been amended.

on the basis that there is no prima facie case to answer in respect of the charge of the section 17 offence.

(5) Where this subsection applies, at D's trial the question of whether there is a case for D to answer on the charge of the relevant offence is not to be considered before the close of all the evidence or, if at some earlier time D ceases to be charged with the section 17 offence, before that earlier time.

CHAPTER IV

THREATENING TO DISCLOSE PRIVATE SEXUAL PHOTOGRAPHS AND FILMS

Threatening to disclose private sexual photographs and films.

20. (1) Section 65 of the Sexual Offences (Bailiwick of Guernsey) Law, 2020^m (disclosing private sexual photographs and films with intent to cause distress) is amended in accordance with this section.

(2) In the heading, immediately after "Disclosing" insert ", or threatening to disclose,".

(3) For subsection (1) substitute -

"(1) Subject to subsection (2), a person ("A") commits an offence if -

(a) A discloses, or threatens to disclose, a private sexual photograph or film in which another individual ("B") appears,

^m Order in Council No. VII of 2021.

- (b) the disclosure is, or would be, made -
 - (i) to a person other than B, and
 - (ii) without the consent of B, and
- (c) by so doing, A intends to cause distress, humiliation or alarm to B or another."

(4) In subsection (2) -

- (a) immediately after "disclosed" insert ", or to have threatened to disclose," and
- (b) immediately after "disclosure" insert " or threat".

(5) Immediately after subsection (2) insert the following subsection -

"(2A) Where a person is charged with an offence under this section of threatening to disclose a private sexual photograph or film, it is not necessary for the prosecution to prove -

- (a) that the photograph or film referred to in the threat exists, or
- (b) if it does exist, that it is in fact a private sexual photograph or film."

(6) In subsection (3)(b)(i), immediately after "disclosure" insert ", or threat to disclose,".

(7) In subsection (5)(a) delete the word "and".

(8) In subsection (5)(b) substitute a comma for the full stop.

(9) Immediately after subsection (5)(b) insert the following paragraphs -

"(c) a person "**discloses**" something to a person if, by any means, he or she gives or shows it to the person or makes it available to the person,

(d) something that is given, shown or made available to a person is disclosed -

(i) whether or not it is given, shown or made available for reward, and

(ii) whether or not it has previously been given, shown or made available to the person,

(e) "**photograph or film**" means a still or moving image in any form that -

(i) appears to consist of or include one or more photographed or filmed images, and

(ii) in fact consists of or includes one or more photographed or filmed images, whether or not they have been altered in any way,

- (f) "**photographed or filmed image**" means a still or moving image that -
 - (i) was originally captured by photography or filming, or
 - (ii) is part of an image originally captured by photography or filming,
- (g) "**filming**" means making a recording, on any medium, from which a moving image may be produced by any means, and
- (h) references to a photograph or film include -
 - (i) a negative version of an image described in paragraph (e), and
 - (ii) data stored by any means which is capable of conversion into an image described in paragraph (e)."

PART II

DOMESTIC ABUSE PROTECTION NOTICES AND ORDERS

CHAPTER I

DOMESTIC ABUSE PROTECTION NOTICES

Power to give a DAPN.

21. (1) A domestic abuse protection notice ("DAPN") is a notice prohibiting a person ("R") from being abusive towards a person of 16 years of age or over to whom R is personally connected ("C"), and provision may be made by a DAPN in accordance with section 22.

(2) A DAPN may only be given to R with the consent of a senior police officer, and the senior police officer may only give such consent if conditions A and B are met (as set out in subsections (3) and (4)).

(3) Condition A is that the senior police officer has reasonable grounds for believing that R has been abusive towards C.

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

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

(6) A DAPN may not be given to a person who is under 16 years of age.

(7) A DAPN has effect in all parts of the Bailiwick.

(8) A DAPN terminates if -

- (a) the relevant summary court determines an application for a domestic abuse protection order ("DAPO") in respect of the same matter under Chapter II of this Part,
or

(b) such an application is withdrawn under section 28(8).

(9) Behaviour is "**abusive**", or amounts to "**abuse**", for the purposes of this Part if such behaviour would constitute an offence under section 1.

Provision that may be made by a DAPN.

22. (1) A DAPN may provide that the person to whom the notice is given ("**R**") -

(a) may not contact the person for whose protection the DAPN is given ("**C**"),

(b) may not come within a distance (specified in the DAPN) of any premises in the Bailiwick in which C lives.

(2) If R lives in premises in the Bailiwick in which C also lives, the DAPN may also contain provision -

(a) prohibiting R from evicting or excluding C from the premises,

(b) prohibiting R from entering the premises,

(c) requiring R to leave the premises.

Matters to be considered before giving a DAPN.

23. (1) Before giving consent for a DAPN to be given to a person ("**R**"), a senior police officer must, among other things, consider the following -

- (a) the welfare of any vulnerable adult and that of any person under 18 years of age whose interests the officer considers relevant to the giving of the DAPN (whether or not that person and R are personally connected),
- (b) the opinion of the person for whose protection the DAPN would be given ("C") as to the giving of the DAPN,
- (c) any representations made by R about the giving of the DAPN, and
- (d) in a case where the DAPN includes provision relating to premises lived in by C, the opinion of any relevant occupant as to the giving of the DAPN.

(2) In subsection (1)(d) "**relevant occupant**" means a person other than R or C -

- (a) who lives in the premises, and
- (b) who is personally connected to -
 - (i) C, or
 - (ii) if R also lives in the premises, R.

(3) The senior police officer must take reasonable steps to discover the opinions mentioned in subsection (1).

(4) For the avoidance of doubt, it is not necessary for C to consent to the giving of the DAPN.

Further requirements in relation to a DAPN.

24. (1) A DAPN must be in writing.
- (2) A DAPN given to a person ("R") must state -
- (a) the grounds on which the DAPN has been given,
 - (b) that R commits an offence if, without reasonable excuse, R fails to comply with any requirement imposed by the DAPN,
 - (c) that an application for a DAPO under section 27 will be heard by the relevant summary court within 72 hours of the time of giving the DAPN (but calculated in accordance with section 28(3)) and that a notice of the hearing will be given to R,
 - (d) that the DAPN continues in effect until the application for a DAPO is –
 - (i) withdrawn under 28(8), or
 - (ii) determined by the relevant summary court.
 - (e) the provision that the relevant summary court may include in a DAPO.

(3) The DAPN must be given to R personally by a police officer by handing it to R or (if R refuses to take the DAPN) leaving it with R, after which R is to be treated as subject to the DAPN.

(4) On giving the DAPN to R, the police officer must ask R for an address at which R may be given the notice of the hearing of the application for the DAPO.

Breach of a DAPN.

25. (1) Subject to subsection (2), a person who is subject to a DAPN commits an offence if the person fails to comply with any requirement imposed by the DAPN.

(2) It is a defence for a person charged with an offence under subsection (1) to prove, on the balance of probabilities, that they had a reasonable excuse for the failure to comply with the requirement.

(3) A person guilty of an offence under this section is liable to imprisonment for a term not exceeding 12 months, or to a fine, or both.

CHAPTER II

DOMESTIC ABUSE PROTECTION ORDERS

Power to make a DAPO.

26. (1) A DAPO is an order which, for the purpose of preventing a person ("R") from being abusive towards a person of 16 years of age or over to whom R is personally connected, -

- (a) prohibits R from doing things described in the DAPO,
- or

- (b) requires R to do things described in the DAPO.
- (2) A DAPO may be made -
 - (a) on application (see section 27), or
 - (b) following criminal proceedings (see section 29).
- (3) Section 30 sets out the conditions for making a DAPO.

DAPO on application.

27. (1) A court may make a DAPO under this section against a person ("R") on an application made to it in accordance with this section.

- (2) An application for a DAPO under this section may be made by -
 - (a) His Majesty's Procureur,
 - (b) a police officer, or
 - (c) the person for whose protection the DAPO is sought ("C").

(3) Where R is given a DAPN by a police officer in accordance with section 24(3), His Majesty's Procureur or a police officer must apply to the relevant summary court for a DAPO against R in accordance with the further provisions in section 28, unless the application is withdrawn in accordance with section 28(8).

(4) A police officer may only apply for a DAPO if they have the written consent of His Majesty's Procureur.

(5) An application under subsection (2)(c) must be made to the relevant summary court.

(6) The relevant summary court may transfer an application under subsection (2)(c) to the Royal Court if –

- (a) R and C are both parties in the same civil proceedings that have already commenced,
- (b) those civil proceedings are before the Royal Court, and
- (c) the relevant summary court, having considered the nature of those civil proceedings, considers that it would be appropriate for the Royal Court to determine the application.

(7) If an application is transferred to the Royal Court in accordance with subsection (6), the Royal Court may –

- (a) determine the application, or
- (b) order that the matter shall be reheard and determined by the relevant summary court.

(8) No appeal shall lie from –

- (a) a decision of the relevant summary court to transfer the application to the Royal Court under subsection (6), or

- (b) a decision of the Royal Court to order that the matter be reheard and determined by the relevant summary court under subsection (7)(b).

Applications for a DAPO where a DAPN has been given.

28. (1) This section applies where, as a result of a person ("R") being given a DAPN by a police officer in accordance with section 24(3), His Majesty's Procureur or a police officer is required by section 27(3) to apply for a DAPO against R.

(2) Subject to subsections (3) and (8), the first hearing for an application for a DAPO must take place in the relevant summary court not later than 72 hours after the DAPN was given to R.

(3) If the period of 72 hours mentioned in subsection (2) –

- (a) ends before 10:00 on a business day, the period is instead deemed to end at 10:00 on that day,
- (b) ends on a day other than a business day, or ends after 16:00 on a business day, the period is instead deemed to end at 10:00 on the next business day after the day that the period would have ended but for this paragraph.

(4) Subject to subsection (6), R must be given a notice of the first 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 R under section 24(4).

(6) If the notice has not been given because R did not give an address under section 24(4), the court may hear the application if satisfied that reasonable effort has been made to give R the notice.

(7) Where an application for a DAPO is made to the relevant summary court in accordance with this section, the relevant summary court may adjourn the hearing of the application, and if it does so -

- (a) a hearing date for the determination of the application must be identified and such a hearing date must be as soon as reasonably practicable,
- (b) the court may hold interim hearings for the purpose of case management,
- (c) if R is not present at the hearing in which a decision is made by the court to adjourn, the court must give directions for giving R notice of any future hearing dates, and subsections (5) and (6) apply to such a notice as they would apply to a notice of the first hearing under subsection (4),
- (d) the DAPN continues in effect until the application has been determined by the court or withdrawn under subsection (8),
- (e) the court may issue such directions concerning the disclosure of material by the applicant to R as the court deems necessary to ensure that R is able to respond to the application.

(8) Prior to the relevant summary court determining an application for a DAPO under this section, His Majesty's Procureur may withdraw the application, in which case reasonable steps must be taken as soon as reasonably practicable to inform R in writing, that –

- (a) the application has been withdrawn, and
- (b) the DAPN has therefore terminated in accordance with section 21(8)(b).

(9) The person for whose protection the DAPO is sought cannot be compelled to attend any hearing to which this section applies, irrespective of any rule of customary law or any provision in any enactment to the contrary.

DAPOs made following criminal proceedings.

29. (1) Where a person ("R") has been convicted of an offence, the court dealing with R for that offence may (after passing sentence on R or dealing with R in any other way) make a DAPO against R.

(2) A court by or before which a person is acquitted of an offence may, after delivering that judgment, make a DAPO against the person.

(3) Subsections (1) and (2) do not apply to the Court of Appeal.

(4) The Royal Court may make a DAPO against a person where –

- (a) the Royal Court has allowed the person's appeal against a conviction for an offence, or
- (b) a case is remitted to the Royal Court under subsection (5).

(5) Where the Court of Appeal allows an appeal against conviction it may remit the case to the Royal Court to consider whether to proceed under subsection (4)(b).

(6) Before exercising its power under subsections (1), (2) or (4), the court must give the prosecution and the defence an opportunity to make representations on the making of a DAPO and may receive further evidence (for which see section 46(2)).

Conditions for making a DAPO.

30. (1) Subject to subsection (5), the court may make a DAPO under section 27 or 29 against a person ("R") if conditions A and B, as set out in subsections (2) and (3), are met.

(2) Condition A is that the court is satisfied on the balance of probabilities that R has been abusive towards a person of 16 years of age or over to whom R is personally connected ("C").

(3) Condition B is that the DAPO is necessary and proportionate to protect C from abuse, or the risk of abuse, carried out by R.

(4) For the purposes of making a DAPO, it does not matter -

(a) whether the abusive behaviour referred to in subsection (2) took place in the Bailiwick or elsewhere,
or

(b) whether it took place before or after the coming into force of this section.

(5) A DAPO may not be made against a person who is under 16 years of age.

(6) Behaviour is "**abusive**", or amounts to "**abuse**", for the purposes of this section if such behaviour would constitute an offence under section 1.

Matters to be considered before making a DAPO.

31. (1) Before making a DAPO against a person ("**R**"), the court must, among other things, consider the following -

(a) the welfare of any vulnerable adult and that of any person under 18 years of age whose interests the court considers relevant to the making of the DAPO (whether or not that person and R are personally connected),

(b) any opinion of the person for whose protection the DAPO would be made ("**C**") -

(i) which relates to the making of the DAPO, and

(ii) of which the court is made aware,

(c) in a case where the DAPO includes provision relating to premises lived in by C, any opinion of a relevant occupant -

(i) which relates to the making of the DAPO, and

(ii) of which the court is made aware.

(2) In subsection (1)(c) "**relevant occupant**" means a person other than R or C -

(a) who lives in the premises, and

(b) who is personally connected to -

(i) C, or

(ii) if R also lives in the premises, R.

(3) For the avoidance of doubt, it is not necessary for C to consent to the making of the DAPO.

Making of DAPOs without notice.

32. (1) A court may, in any case where it is just and convenient to do so, make a DAPO against a person ("**R**") even though R has not been given notice of the proceedings.

(2) Subsection (1) does not apply in relation to the making of a DAPO under section 27 on an application made in accordance with subsection (3) of that section (see instead sections 28(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 DAPO is not made immediately, R will cause significant harm to the person for whose protection the DAPO would be made ("**C**"),

(b) in a case where an application for the DAPO has been made, whether it is likely that the person making the application will be deterred or prevented from pursuing the application if a DAPO is not made immediately, and

(c) whether there is reason to believe that -

(i) R is aware of the proceedings but is deliberately evading service, and

(ii) the delay involved in effecting substituted service will cause serious prejudice to C.

(4) If a court makes a DAPO against R by virtue of subsection (1), it must give R an opportunity to make representations about the DAPO -

(a) as soon as is just and convenient, and

(b) at a hearing of which notice has been given to all the parties.

Provision that may be made by a DAPO.

33. (1) A court may by a DAPO impose any requirement (including any prohibition or restriction) that the court considers necessary to protect the person for whose protection the DAPO is made ("C") from abuse or the risk of abuse.

(2) The court must, in particular, consider what requirements (if any) may be necessary to protect C from different kinds of abusive behaviour.

(3) Subsections (4) and (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 DAPO may provide that the person against whom the DAPO is made ("R") -

- (a) may not contact C,
- (b) may not come within a specified distance of any premises in the Bailiwick in which C lives,
- (c) may not come within a specified distance of any other specified premises, or any other premises of a specified description, in the Bailiwick.

(5) In subsection (4), "**specified**" means specified in the DAPO.

(6) If R lives in premises in the Bailiwick in which C also lives, the DAPO may contain provision -

- (a) prohibiting R from evicting or excluding C from the premises,
- (b) prohibiting R from entering the premises,
- (c) requiring R to leave the premises,

(7) Section 34 contains further provision about the requirements that may be imposed by a DAPO.

Further provisions about requirements that may be imposed by a DAPO.

34. (1) Requirements imposed on a person by a DAPO must, so far as practicable, be such as to avoid -

- (a) conflict with the person's religious beliefs,
- (b) interference with the person's work or with the person's attendance at an educational establishment,
- (c) conflict with the requirements of any other court order or injunction to which the person may be subject.

(2) A DAPO that imposes a requirement to do something on a person ("**R**") must specify the person who is to be responsible for supervising compliance with that requirement ("**the supervisor**").

(3) Before imposing a requirement to do something on R, the court must receive evidence about its suitability and enforceability from the person to be specified as the supervisor.

(4) It is the duty of the supervisor to -

- (a) make any necessary arrangements in connection with the requirements for which the supervisor has responsibility (the "**relevant requirements**"),
- (b) promote R's compliance with the relevant requirements, and
- (c) inform a police officer if the supervisor considers that R has failed to comply with a relevant requirement.

- (5) R must -
- (a) keep in contact with the supervisor in accordance with any instructions given by the supervisor from time to time,
 - (b) if R changes home address, notify the supervisor of the new home address,
 - (c) if R ceases to have any home address, notify the supervisor of that fact.

(6) The obligations specified in subsection (5) have effect as requirements of the DAPO.

Duration and geographical application of DAPOs.

35. (1) Subject to subsection (2), a DAPO takes effect on the day on which it is made.

(2) If, on the day on which a DAPO ("**the new DAPO**") is made against a person, the person is subject to another DAPO ("**the previous DAPO**"), the new DAPO may be made so as to take effect on the previous DAPO ceasing to have effect.

- (3) Subject to subsection (4), a DAPO has effect -
- (a) for a period specified in the DAPO, or
 - (b) until the occurrence of an event specified in the DAPO.

(4) A DAPO may be in force for no more than 2 years beginning with the day on which it is made (regardless of whether or not it takes effect on some later date in accordance with subsection (2)) and, if not discharged prior the end of that period, will automatically terminate at the end of that period.

(5) A DAPO may also specify periods for which particular requirements imposed by the DAPO have effect.

(6) A requirement imposed by a DAPO has effect in all parts of the Bailiwick unless expressly limited to a particular locality.

(7) Following the discharge or termination of a DAPO ("**the previous DAPO**"), nothing in this section prevents a court from making a fresh DAPO ("**the further DAPO**") against the same person in accordance with section 27 or 29 including (for the avoidance of doubt) where the person to be protected by the further DAPO is the same person who was protected by the previous DAPO.

Offence of breaching a DAPO.

36. (1) Subject to the remainder of this section, a person who is subject to a DAPO commits an offence if the person fails to comply with any requirement imposed by the DAPO.

(2) It is a defence for a person charged with an offence under subsection (1) to prove, on the balance of probabilities, that the person had a reasonable excuse for the failure to comply with the requirement.

(3) A person charged with an offence under subsection (1) has a defence if –

- (a) the DAPO was made against the person without that person being given notice of the proceedings, and
- (b) the behaviour constituting a failure to comply with a requirement of the DAPO was engaged in at a time when the person was unaware of the existence of the DAPO,

and section 43 makes similar provision where a DAPO has been varied.

- (4) The defence in subsection (3) is established if—
 - (a) evidence adduced is enough to raise an issue as to whether the circumstances were as described in subsection (3), and
 - (b) the prosecution does not prove beyond reasonable doubt that the circumstances were not as described in subsection (3).

(5) The defence in subsection (3) is without prejudice to the generality of the defence also available in subsection (2).

(6) 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.

(7) 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.

(8) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding 5 years, or to a fine, or both.

(9) In proceedings for an offence under this section, a copy of the original DAPO, signed by the judge who 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.

DAPOs and notifications to be provided to the police.

37. (1) Where a court makes or varies a DAPO against a person ("R"), the relevant person must, as soon as reasonably practicable, ensure that a copy of the DAPO is provided to -

- (a) the Chief Officer of the salaried police force of the Island of Guernsey if –
 - (i) it appears R resides in the island of Guernsey or Alderney, or
 - (ii) it is uncertain where R lives, or it does not appear that R resides in the Bailiwick, and the court that made the DAPO is situated in Guernsey or Alderney,
- (b) the Constable of Sark if -
 - (i) it appears R resides in the Island of Sark, or
 - (ii) it is uncertain where R lives, or it does not appear that R resides in the Bailiwick, and the Court of the Seneschal made the DAPO.

(2) Where a court discharges a DAPO, the relevant person must, as soon as reasonably practicable, ensure that the person to whom a copy of the DAPO was provided under subsection (1) is notified of that decision.

(3) In this section "**the relevant person**" means –

(a) where the making, variation or discharge (as the case may be) relates to a DAPO made on application under section 27(2)(c) –

(i) if the application was made in the island of Guernsey, His Majesty's Sergeant,

(ii) if the application was made in the Island of Alderney, the Alderney Greffier, or

(iii) if the application was made in the Island of Sark, the Prévôt of Sark,

(b) where the making, variation or discharge (as the case may be) relates to a DAPO made on application under any other provision, the person who made the application, and

(c) where the making, variation or discharge (as the case may be) relates to a DAPO made under section 29, His Majesty's Procureur.

Notification requirements

38. (1) Subsections (2) to (6) apply where a person is subject to a DAPO.

(2) The person must, within the period of three days beginning with the day on which that person becomes aware that they are subject to a DAPO, notify an authorised officer of the information in subsection (3).

(3) The information referred to in subsection (2) is -

(a) the person's name and, if the person uses one or more other names, each of those names,

(b) the person's home address.

(4) If the person uses a name which has not been notified under this section, the person must, within the period of three days beginning with the day on which the person first uses that name, notify an authorised officer of that name.

(5) If the person changes home address, the person must, before the end of the period of three days beginning with the day on which that happens, notify an authorised officer of the new home address.

(6) If the person ceases to have any home address, the person must, before the end of the period of three days beginning with the day on which that happens, notify an authorised officer of that fact.

(7) The Committee may by regulations specify further notification requirements which a court may impose when making or varying a DAPO.

(8) In subsection (7) a "**notification requirement**" is a requirement for the person against whom the DAPO is made to provide specified information to an authorised officer.

(9) The requirements imposed by subsections (2) to (6) do not apply where -

- (a) the person is subject to another DAPO (and accordingly those requirements already apply), or
- (b) the person is subject to notification requirements under Part II of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013ⁿ,

but if on any day the person ceases to be subject to any notification requirements as mentioned in paragraph (a) or (b), the requirements imposed by subsections (2) to (6) apply to the person on and after that day, but as if the reference in subsection (2) to the day on which that person becomes aware that they are subject to a DAPO were a reference to that day.

(10) For provision about how to give a notification under subsection (2), (4), (5) or (6), see section 39.

(11) In this section "**authorised officer**" means a police officer authorised for the purposes of this Part by –

- (a) the Chief Officer of the salaried police force of the Island of Guernsey, or
- (b) the Constable of Sark.

ⁿ Order in Council No. IX of 2014; this enactment has been amended.

Further provision about notification under section 38.

39. (1) A person gives a notification under section 38(2), (4), (5) or (6) by -

- (a) attending at a police station in the appropriate island, and
- (b) giving an oral notification to an authorised officer (within the meaning of section 38(11)).

(2) In subsection (1) "**the appropriate island**", in relation to a person, means -

- (a) if the person has a home address in the Bailiwick, the island in which that home address is situated,
- (b) if the person does not have a home address in the Bailiwick, the island in which the court that last made a DAPO against the person is situated.

(3) In a case of a person giving a notification under section 38(5), any reference in subsection (2) to the person's home address is a reference to the person's home address at the time of giving the notification.

(4) A notification given in accordance with this section must be acknowledged—

- (a) in writing, and
- (b) if a form is prescribed by regulations made by the Committee, in that form.

(5) When a person ("R") gives a notification under section 38, R must, if required to do so by the person to whom notification is given, allow that person to do any of the following—

- (a) take R's fingerprints,
- (b) photograph, or otherwise produce an image of, R or any part of R.

(6) The power in subsection (5) is exercisable for the purpose of verifying R's identity.

Offences relating to notification.

40. (1) A person commits an offence if the person fails to comply with a requirement imposed by or under section 38.

(2) A person commits an offence if the person fails to comply with a requirement made under section 39(5).

(3) It is a defence for a person charged with an offence under subsection (1) or (2) to prove, on the balance of probabilities, that the person had a reasonable excuse for the failure to comply with the requirement.

(4) A person commits an offence if the person notifies the police, in purported compliance with a requirement under section 38, of any information which the person knows to be false.

(5) A person guilty of an offence under subsection (1), (2) or (4) is liable on conviction to imprisonment for a period not exceeding 5 years or to a fine or both.

(6) A person commits an offence under subsection (1) on the day on which the person first fails, without reasonable excuse, to comply with a requirement imposed by or under section 38 and continues to commit the offence throughout any period during which the failure continues, but a person may not be prosecuted more than once in respect of the same failure.

Variation and discharge of DAPOs.

41. (1) Subject to section 42, a court may vary or discharge a DAPO made by that or any other court.

(2) A court may vary or discharge a DAPO 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 DAPO under section 29.

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

(a) the person for whose protection the DAPO was made,

(b) the person against whom the DAPO was made ("R"),

(c) where the DAPO was made under section 27, the person who applied for the DAPO,

(d) where the DAPO was made under section 29, His Majesty's Procureur.

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

- (a) unless the DAPO was made on application under section 27 by the person for whose protection the DAPO was made, His Majesty's Procureur, and
- (b) in a case where the person for whose protection the DAPO was made is seeking to discharge the DAPO, or to remove or make less onerous any requirement imposed by the DAPO, the person for whose protection it was made.

(5) Section 31 (matters to be considered before making a DAPO) applies in relation to the variation or discharge of a DAPO as it applies in relation to the making of such a DAPO, but as if the reference to the person for whose protection the DAPO would be made was a reference to the person for whose protection the DAPO was made.

(6) Section 32 (making of DAPOs without notice) applies in relation to the variation of a DAPO as it applies in relation to the making of such a DAPO, but as if -

- (a) the reference to the person for whose protection the DAPO would be made was a reference to the person for whose protection the DAPO was made,
- (b) subsection (2) were omitted, and

(c) the reference in subsection (4) to making representations about the DAPO were a reference to making representations about the variation.

(7) Subject to subsections (8) to (11), and any Ordinance concerning electronic monitoring requirements made under section 65(1)(b)(v), the court may make any order varying or discharging a DAPO that it considers appropriate.

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

(9) The court may remove any requirement imposed by the DAPO, 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 DAPO was made from abuse, or the risk of abuse, carried out by R.

(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 DAPO only if satisfied that the DAPO is no longer necessary to protect the person for whose protection it was made from abuse, or the risk of abuse, carried out by R.

(12) Nothing in this section permits a court to vary a DAPO so that it remains in force for more than 2 years beginning with the day on which it is made.

Variation and discharge: supplementary.

42. (1) Subject to subsection (2), any application to vary or discharge a DAPO under section 41 must be made to the court that made the DAPO.

(2) Where the DAPO was made under section 29 following an appeal in relation to a person's conviction or sentence for an offence, any application to vary or discharge the DAPO must be made to the court by or before which the person was convicted.

(3) Except as provided for in subsection (2), a DAPO made by the Royal Court may be varied or discharged under section 41 only by the Royal Court.

(4) A DAPO that has been varied under section 41 remains an order of the court that first made it for the purposes of any further application under that section.

Criminal liability for breach of DAPO varied without notice.

43. (1) Subsection (2) applies in a case where—

(a) a DAPO made against a person ("R") is varied under section 41 so as to include an additional requirement, or to extend the period for which the DAPO, or a requirement imposed by the DAPO, has effect,

(b) R was not given notice of the proceedings for the variation,

- (c) R fails to comply with a requirement of the DAPO, but the behaviour constituting that failure occurs after such a variation, and
- (d) if the requirements of the DAPO had remained as they were immediately prior the variation, that behaviour would not have constituted a failure to comply with the DAPO.

(2) Where this subsection applies, R cannot be convicted of an offence under section 36 if the behaviour constituting a failure to comply with a requirement of the DAPO was engaged in at a time when R was unaware of the requirement.

(3) If subsection (2) applies in circumstances where R was not given notice of multiple, consecutive proceedings that resulted in multiple variations, the phrase "immediately prior the variation" in subsection (1)(d) is to be construed as meaning immediately prior all such variations.

- (4) The defence in subsection (2) is established if—
- (a) evidence adduced is enough to raise an issue as to whether the circumstances were as described in subsection (2), and
 - (b) the prosecution does not prove beyond reasonable doubt that the circumstances were not as described in subsection (2).

(5) The defence in subsection (2) is without prejudice to the generality of the defence also available in section 36(2) (reasonable excuse).

Appeals

44. (1) A person listed in subsection (2) may appeal against any decision of a court on an application for a DAPO under section 27.

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

(a) the person for whose protection the DAPO was sought,

(b) the person who applied for the DAPO (if different),
and

(c) if the application was granted, the person against whom the DAPO was made.

(3) A person against whom a DAPO is made under section 29 may appeal against the making of the DAPO as if it were a sentence passed on the person for the offence referred to in that subsection (assuming, in a case within subsection (2) or (4) of that section, that the person had been convicted of the offence).

(4) A person against whom a DAPO is made may appeal against a variation of the DAPO under section 41 that is made in a case within section 29 as if the varied DAPO were a sentence passed on the person for the offence referred to in that section (assuming, in a case within subsection (2) or (4) of that section, 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 41 in relation to a DAPO (to the extent it would not otherwise be so appealable under subsection (4)).

- (6) The persons referred to in subsection (5) are—
- (a) the person for whose protection the DAPO was made,
 - (b) the person against whom the DAPO was made ("R"),
and
 - (c) where the DAPO was made under section 27, the
person who applied for the DAPO.
- (7) An appeal under subsection (1) or (5)—
- (a) in the case of a decision made by the Juvenile Court,
the Magistrates' Court, the Court of Alderney or the
Court of the Seneschal, is to be made to the Royal
Court,
 - (b) in the case of a decision made by the Royal Court, is to
be made to the Court of Appeal.
- (8) For the powers of the Royal Court or Court of Appeal on such
an appeal, see section 45(4).

Further provision about appeals.

45. (1) Subsection (2) applies to any appeal relating to a DAPO, other
than an appeal in respect of —
- (a) a DAPO made on application under section 27(2)(c), or
 - (b) a decision under section 41 in respect of such a DAPO.

(2) Where this subsection applies, and before determining such an appeal, the court must give His Majesty's Procureur an opportunity to make representations.

(3) Subsection (4) applies to—

- (a) an appeal made to the Royal Court by virtue of section 44(7)(a), and
- (b) an appeal made to the Court of Appeal by virtue of section 44(7)(b).

(4) 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.

(5) For the purposes of section 42—

- (a) a DAPO that has been confirmed or varied on an appeal (whether under subsection (4)(a) or otherwise) remains an order of the court that first made it, and
- (b) a DAPO made by a court on an appeal (whether under subsection (4)(c) or otherwise) is to be treated as an order made by the court whose decision was appealed against.

Nature of proceedings under this Part and composition of the court.

46. (1) Proceedings before a court arising by virtue of sections 27, 29, 41(2)(a) and 41(2)(b) –

- (a) are civil proceedings, and
- (b) may be adjourned.

(2) The effect of subsection (1)(a) is that in proceedings arising under section 29 or section 41(2)(b), the court is not restricted in the proceedings to considering evidence that would have been admissible in the criminal proceedings in which the person concerned was convicted or (as the case may be) acquitted.

(3) Subsection (1)(b) applies even if, in respect of proceedings arising by virtue of section 29 or section 41(2)(b), such an adjournment is after sentencing or acquitting the person concerned or allowing the person's appeal.

(4) A DAPO may be made or varied in addition to any other sentence imposed in criminal proceedings, and in spite of anything specified in any other enactment that would otherwise restrict or prohibit this.

(5) If proceedings arising under this Part are before the Royal Court then the matter shall be determined by a judge sitting alone, including that part of an appeal that relates to a DAPO (and regardless of whether the DAPO being appealed against was made under section 27 or 29).

(6) Proceedings under this Part may be heard and determined in camera.

CHAPTER III

DOMESTIC ABUSE PROTECTION NOTICES AND ORDERS: SUPPLEMENTARY

Relationship of DAPNs and DAPOs with orders regulating contact or residence.

47. For the avoidance of doubt—

- (a) nothing in a court order which regulates contact with, or the residence of, a child limits the requirements or prohibitions that may be imposed by a DAPN or DAPO under this Part, and
- (b) accordingly, it is not a defence to a charge of committing an offence under section 25(1) or 36(1) that the accused was doing something that the accused was entitled to do by virtue of such a court order.

Rules of court under this Part.

48. (1) The Royal Court sitting as a Full Court may by Order make rules dealing with any other procedural or incidental matter arising under this Part, and generally for carrying this Part into effect.

(2) Without prejudice to the generality of subsection (1), such rules may make provision for –

- (a) the form and manner of applications, and that of other relevant documents, under this Part,
- (b) the service of documents (including court orders) under this Part,
- (c) the procedure for withdrawing an application under this Part,
- (d) the manner in which the interests of a child affected by an application under this Part will be considered by the court,
- (e) the circumstances in which the court will consider an application under this Part in the absence of a party,
- (f) case management by the court in proceedings under this Part,
- (g) the disclosure, non-disclosure and inspection of documentary evidence in proceedings under this Part,
- (h) the conduct of proceedings under this Part, including the receipt of evidence by the court,
- (i) the form and manner of appeals under this Part, and
- (j) orders as to the costs of proceedings under this Part.

(3) A rule enacted under this section may specify whether it is to apply within a specific island of the Bailiwick or is to apply Bailiwick-wide.

Service of documents under this Part.

49. Subject to any rules of court made under section 48, the court may give specific directions as to the service of documents (including an order made by that court) in any particular case being determined under this Part.

Guidance relating to the exercise of functions.

50. (1) The Committee may issue guidance relating to the exercise by relevant persons of functions under or by virtue of this Part.

(2) In this section "**relevant person**" means—

(a) a police officer, and

(b) any other person who may make an application for a DAPO under an Ordinance made under section 65(1)(b)(iii).

(3) A relevant person must have regard to any guidance issued under this section when exercising a function to which the guidance relates.

(4) The Committee may revise, revoke or replace any guidance issued under this section.

(5) The Committee may publish—

(a) any guidance issued under this section, and

(b) any revisions of that guidance.

Interpretation of this Part.

51. (1) In this Part –

"**abuse**" and "**abusive**" have the meanings given in section 21(9),

"**Constable of Sark**" means a person appointed as Constable under section 52(1) of the Reform (Sark) Law, 2008^o,

"**DAPN**" means domestic abuse protection notice, as described in section 21(1),

"**DAPO**" means domestic abuse protection order, as described in section 26(1),

"**His Majesty's Procureur**" includes a person authorised by His Majesty's Procureur, either generally or for a specific application or class of application, to carry out His Majesty's Procureur's functions under this Part,

"**home address**", in relation to a person, means –

- (a) the address of the person's sole or main residence in the Bailiwick, or
- (b) if the person has no such residence—
 - (i) the address or location of a place in the Bailiwick where the person can regularly be found,

^o Order in Council No.V of 2008; this enactment has been amended.

- (ii) if there is more than one such place, the address or location of whichever one of those places the person selects,

"personally connected" has the meaning given by section 5,

"the relevant summary court" means –

- (a) the Magistrate's Court if the person against whom the DAPO would be made –
 - (i) was given a DAPN by a police officer under section 21 in the Island of Guernsey, or
 - (ii) has not been given a DAPN and either that person or the person for whose protection the DAPO is sought resides in the Island of Guernsey,
- (b) the Court of Alderney if the person against whom the DAPO would be made –
 - (i) was given a DAPN by a police officer under section 21 in the Island of Alderney, or
 - (ii) has not been given a DAPN and either that person or the person for whose protection the DAPO is sought resides in the Island of Alderney,

(c) the Court of the Seneschal if the person against whom the DAPO would be made –

(i) was given a DAPN by a police officer under section 21 in the Island of Sark, or

(ii) has not been given a DAPN and either that person or the person for whose protection the DAPO is sought resides in the Island of Sark, and

"senior police officer" means -

(a) in respect of the Islands of Guernsey and Alderney, a member of the salaried police force of the Island of Guernsey who is an officer of at least the rank of inspector, and

(b) in respect of the Island of Sark, the Constable of Sark.

(2) Any reference to changing home address includes a reference to a case where—

(a) a person acquires a home address at any time, and

(b) immediately before that time, the person did not have a home address.

PART III

OTHER ORDERS AND CONDITIONS

CHAPTER I
NON-MOLESTATION ORDERS

Non-molestation Orders.

52. (1) On the application of either party to a relevant relationship, the court may grant an order (a "**non-molestation order**") requiring the other party to the relevant relationship ("**the respondent**") –

- (a) not to molest or threaten to molest the applicant, any child of the family or any child living with the applicant,
- (b) to leave, or not to enter, premises specified in the order, or any part thereof, or any area specified in the order,
- (c) to permit any person described in paragraph (a) to enter and remain in premises specified in the order or any part thereof,
- (d) not to do or omit to do any other thing specified in the order the doing or omission of which is, in the court's opinion, likely or calculated to cause harm or distress to any person described in paragraph (a),
- (e) not to incite or assist any other person to do anything which, by virtue of the order, the respondent could not lawfully do.

(2) A non-molestation order –

- (a) may be made subject to such conditions as the court considers necessary or expedient to effect the purposes of the order,
- (b) may be made for such term as may be specified, and
- (c) may contain all or any of the requirements set out in paragraphs (a) to (e) of subsection (1).

(3) Except insofar as it affects rights of occupation, a non-molestation order does not affect any estate or interest in the specified premises.

(4) The court that made the non-molestation order may vary or revoke that order on the application of either party to the relevant relationship in question.

(5) In this section –

- (a) "**the court**", other than in subsection (4), means –
 - (i) where either party to a relevant relationship resides in the Island of Guernsey, the Magistrate's Court,
 - (ii) where either party to a relevant relationship resides in the Island of Alderney, the Court of Alderney,
 - (iii) where either party to a relevant relationship resides in the Island of Sark, the Court of the Seneschal,

- (iv) in any case where other proceedings relating to the same parties are before the Royal Court, the Royal Court, and
- (b) two persons are in a "**relevant relationship**" if at least one of the following conditions apply –
 - (i) they are, or have been, married to each other,
 - (ii) they are, or have been, civil partners of each other,
 - (iii) they are living together, or have lived together, as if spouses of each other,
 - (iv) they are, or have been, in an intimate personal relationship with each other.

Royal Court powers in respect of proceedings before another court.

53. (1) On an application under this Chapter to the relevant court, the relevant court may transfer the application to the Royal Court if –

- (a) the applicant and the respondent are both parties in the same civil proceedings that have already commenced,
- (b) those civil proceedings are before the Royal Court, and
- (c) the relevant court, having considered the nature of those civil proceedings, considers that it would be appropriate for the Royal Court to determine the application.

(2) If an application is transferred to the Royal Court in accordance with subsection (1), the Royal Court may –

- (a) determine the application, or
- (b) order that the matter shall be reheard and determined by the relevant court.

(3) No appeal shall lie from –

- (a) a decision of the relevant court to transfer the application to the Royal Court under subsection (1), or
- (b) a decision of the Royal Court to order that the matter be reheard and determined by the relevant court under subsection (2)(b).

(4) Where, after the making by the relevant court of a non-molestation order, proceedings which concern any matter governed by the order are begun in the Royal Court, the Royal Court may, if it thinks fit, revoke the order.

(5) Subsection (4) is without prejudice to the power of the Royal Court to impose a further non-molestation order under section 52, after such a revocation.

(6) In this section "**the relevant court**" means –

- (a) the Magistrate's Court,
- (b) the Court of Alderney, or

- (c) the Court of the Seneschal.

Procedure.

54. (1) Unless the court proceeds in accordance with subsection (2), the applicant shall serve a copy of the application, together with any relevant documents and notification of the date of the first hearing, on the respondent –

- (a) at least 4 clear days prior the date of the first hearing,
or
- (b) within such other period as the court may direct.

(2) The court may, in any case where it considers that it is just and convenient to do so, grant an application to make, vary or revoke a non-molestation order even though the respondent has not been given notice of the proceedings.

(3) In determining whether to exercise its powers under subsection (2), the court shall have regard to all the circumstances including –

- (a) any risk of significant harm to the applicant, a child of the family or a child living with the applicant, attributable to conduct of the respondent, if the application is not granted immediately,
- (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if it is not granted immediately, and
- (c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be

seriously prejudiced by the delay involved in effecting substituted service.

(4) If the court makes or varies an order by virtue of subsection (2), it must fix a date for a further hearing of the matter so as to afford the respondent an opportunity to make representations relating to the order, and the applicant must serve on the respondent, in accordance with any further directions of the court –

- (a) a copy of the order,
- (b) any relevant supporting documentation, and
- (c) notification of the date set for the further hearing.

(5) Proceedings under this Chapter may be heard and determined in camera.

(6) Proceedings under this Chapter in the Royal Court are determined by a judge sitting alone.

Rules of court under this Chapter.

55. (1) The Royal Court sitting as a Full Court may by Order make rules dealing with any other procedural or incidental matter arising under this Chapter, and generally for carrying this Chapter into effect.

(2) Without prejudice to the generality of subsection (1), such rules may make provision for –

- (a) the form and manner of applications, and that of other relevant documents, under this Chapter,

- (b) the service of documents (including court orders) under this Chapter,
- (c) the procedure for withdrawing an application under this Chapter,
- (d) the manner in which the interests of a child affected by an application under this Chapter will be considered by the court,
- (e) the circumstances in which the court will consider an application under this Chapter in the absence of a party,
- (f) case management by the court in proceedings under this Chapter,
- (g) the disclosure, non-disclosure and inspection of documentary evidence in proceedings under this Chapter,
- (h) the conduct of proceedings under this Chapter, including the receipt of evidence by the court,
- (i) the form and manner of appeals under this Chapter, and
- (j) orders as to the costs of proceedings under this Chapter.

(3) A rule enacted under this section may specify whether it is to apply within a specific island of the Bailiwick or is to apply Bailiwick-wide.

Appeals to the Royal Court.

56. (1) Subject to section 53(3), where under this Chapter the relevant court makes, varies, or revokes an order, or refuses to do any of those things, an appeal lies to the Royal Court.

(2) An appeal under this section shall be in such manner and subject to such conditions as may be provided by rules made by Order of the Royal Court.

(3) On an appeal under subsection (1) the Royal Court may make any order necessary to give effect to its determination of the appeal, including any incidental or consequential orders as appear to it to be just.

(4) Any order of the Royal Court on an appeal under this section shall, for the purpose of any power to vary, or revoke the order, be treated as if it were an order of the relevant court from which the appeal was brought.

(5) In this section "**relevant court**" means -

- (a) the Magistrate's Court,
- (b) the Court of Alderney, or
- (c) the Court of the Seneschal.

Appeals to the Court of Appeal.

57. (1) Where under this Chapter the Royal Court makes, varies, revokes or revives an order, or refuses to do any of those things, an appeal lies to the Court of Appeal.

(2) A non-molestation order made by the Royal Court and confirmed on appeal (with or without variation) remains an order of the Royal Court.

Offence of breaching non-molestation order.

58. (1) Subject to the remainder of this section, a person who is subject to a non-molestation order commits an offence if the person fails to comply with any requirement imposed by the non-molestation order.

(2) It is a defence for a person charged with an offence under subsection (1) to prove, on the balance of probabilities, that the person had a reasonable excuse for the failure to comply with the requirement.

(3) A person charged with an offence under subsection (1) has a defence if –

(a) the non-molestation order was made against the person without that person being given notice of the proceedings, and

(b) the behaviour constituting a failure to comply with a requirement of the non-molestation order was engaged in at a time when the person was unaware of the existence of the order.

(4) The defence in subsection (3) is established if –

- (a) evidence adduced is enough to raise an issue as to whether the circumstances were as described in subsection (3), and
 - (b) the prosecution does not prove beyond reasonable doubt that the circumstances were not as described in subsection (3).
- (5) Subsection (6) applies in a case where—
- (a) a non-molestation order made against a person ("R") is varied so as to include an additional requirement, or to extend the period for which the non-molestation order, or a requirement imposed by the non-molestation order, has effect,
 - (b) R was not given notice of the proceedings for the variation,
 - (c) R fails to comply with a requirement of the non-molestation order, but the behaviour constituting that failure occurs after such a variation, and
 - (d) if the requirements of the non-molestation order had remained as they were immediately prior the variation, that behaviour would not have constituted a failure to comply with the non-molestation order.

(6) Where this subsection applies, R cannot be convicted of an offence under subsection (1) if the behaviour constituting a failure to comply with a

requirement of the non-molestation order was engaged in at a time when R was unaware of the requirement.

(7) If subsection (6) applies in circumstances where R was not given notice of multiple, consecutive proceedings that resulted in multiple variations, the phrase "immediately prior the variation" in subsection (5)(d) is to be construed as meaning immediately prior all such variations.

(8) The defence in subsection (6) is established if—

(a) evidence adduced is enough to raise an issue as to whether the circumstances were as described in subsection (6), and

(b) the prosecution does not prove beyond reasonable doubt that the circumstances were not as described in subsection (6).

(9) These defences in subsections (3) and (6) are without prejudice to the generality of the defence also available in subsection (2).

(10) 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.

(11) 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.

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

(13) In proceedings for an offence under this section, a copy of the original order, signed by the judge who 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.

(14) A reference in this Law or any other enactment to proceedings under this Chapter, or to an order under this Chapter, does not include a reference to proceedings for an offence under subsection (1) or to an order made in such proceedings.

Orders and notifications to be provided to police.

59. (1) Where a court makes or varies a non-molestation order against a person ("R") it must give such directions as it considers appropriate for ensuring that a copy of the order will be provided to -

- (a) the Chief Officer of the salaried police force of the Island of Guernsey if –
 - (i) it appears R resides in the island of Guernsey or Alderney, or
 - (ii) it is uncertain where R lives, or it does not appear that R resides in the Bailiwick, and the court that made the order is situated in Guernsey or Alderney,
- (b) the Constable of Sark if -
 - (i) it appears R resides in the Island of Sark, or

- (ii) it is uncertain where R lives, or it does not appear that R resides in the Bailiwick, and the Court of the Seneschal made the order.

(2) Where a court revokes a non-molestation order it must give such directions as it considers appropriate for ensuring that the person to whom a copy of the order was provided under subsection (1) is notified of that fact.

Relationship of non-molestation order with orders regulating contact or residence.

60. For the avoidance of doubt—

- (a) nothing in a court order which regulates contact with, or the residence of, a child limits the requirements that may be imposed by a non-molestation order under this Chapter, and
- (b) accordingly, it is not a defence to a charge of committing an offence under section 58(1) that the accused was doing something that the accused was entitled to do by virtue of such a court order.

Transitional provisions.

61. (1) In this section, a domestic violence order means an order imposed under either -

- (a) section 15 of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988^P, or

^P Ordres en Conseil Vol. XXXI, p. 171; this enactment has been amended.

(b) section 24A of the Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964⁹.

(2) A domestic violence order that was in force immediately prior to the commencement of this Law -

(a) shall continue to be in force, notwithstanding the repeals mentioned in section 70, and with the same powers of enforcement in the event of a breach as existed immediately prior the commencement of this Law,

(b) may not be varied, renewed or extended,

(c) may be revoked and replaced by a non-molestation order under this Chapter, whether on the same terms or on different terms.

(3) The court may exercise the power in subsection (2)(c) either of its own motion or on an application by the person who applied for the domestic violence order.

(4) An application for a domestic violence order outstanding at the commencement of this Chapter is to be treated as though it is an application for a non-molestation order under this Chapter.

⁹ Ordres en Conseil Vol. XIX, p. 241; this enactment has been amended.

(5) An appeal outstanding at the commencement of this Law instituted under a provision of an enactment repealed by this Law may proceed and be determined as if the provision had not been repealed.

Interpretation of this Chapter.

62. In this Chapter, unless the context otherwise requires -

"**child**" means a person under 18 years of age,

"**child of the family**", in relation to the parties to a relevant relationship, means –

- (a) a child (including an adopted child) of both those parties, and
- (b) any other child, not being a child who is being boarded out with those parties by the Committee for Health & Social Care or otherwise, who has been treated by both of those parties as a child of their family,

"**Royal Court**" means the Matrimonial Causes Division of the Royal Court.

CHAPTER II
RESTRAINING ORDERS

Amendment to the Harassment Law concerning restraining orders.

63. (1) The Protection from Harassment (Bailiwick of Guernsey) Law, 2005 is amended as follows.

(2) In the heading for Part 2, for "CIVIL PROCEEDINGS", substitute "RESTRAINING ORDERS AND INJUNCTIONS".

(3) In section 4(1) for "an offence under section 2 or 3", substitute "any offence".

(4) Immediately after section 4(4), insert the following subsection -

"(4A) When a court is considering whether to make, vary or discharge an order under this section, the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 5.

(4B) If the Royal Court is considering whether to make, vary or discharge an order under this section, that decision is made by a single judge sitting alone.

(4C) Where a court makes or varies an order under this section, or refuses to vary or discharge an order under this section, the defendant may appeal against that decision as though the order is a sentence imposed on the date of that decision, notwithstanding anything in any other enactment to the contrary."

(5) Immediately after section 4(6), insert the following subsection -

"(7) A court dealing with a person for an offence under this section may vary or discharge the order by a further order."

(6) Immediately after section 4, insert the following heading and section -

"Restraining orders on acquittal."

4A. (1) A court before which a person ("the defendant") is acquitted of any offence may, if it considers it necessary to do so to protect any person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.

(2) Subsections (3) to (7) of section 4 apply to an order under this section as they apply to an order under that section and, in respect of the right of appeal mentioned in section 4(4C), an appeal against an order under this section proceeds as if –

(a) the defendant had been convicted of the offence before the court which made the order, and

(b) the order had been made under section 4.

(3) Where the Court of Appeal allows an appeal against conviction it may remit the case to the Royal Court to consider whether to proceed under this section.

(4) Where -

(a) the Royal Court allows an appeal against conviction, or

(b) a case is remitted to the Royal Court under subsection (3),

the reference in subsection (1) to a court before which a person is acquitted of any offence is to be read as referring to the Royal Court.

CHAPTER III
PRE-CHARGE BAIL CONDITIONS

Amendments to PPACE to enable pre-charge bail.

64. (1) The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 is amended as follows.

(2) In section 12(1) -

(a) in paragraph (c), delete the word "or",

(b) in paragraph (d), for the full stop substitute ", or", and

(c) immediately after paragraph (d), insert the following paragraph -

"(e) of arresting a person under section 57(1) or 57(1B)."

(3) In section 37(6), immediately before the full stop, insert " and section 56A(1A) (which provides that a three-hour period following an arrest under section 57(1B) is to be disregarded when calculating the detention period)".

(4) Immediately after section 48(8) insert the following subsection -

"(9) In the case of a person arrested under section 57(1B), the provisions of this section are subject to section 56A(1A)."

(5) In section 55(2), for "no conditions shall be imposed unless that person has been charged with an offence and", substitute "conditions of bail may be imposed (whether or not that person has been charged with an offence) but only if".

(6) For section 55(7), substitute the following subsections -

"(7) Where a custody officer has granted bail to a person subject to a duty to appear at a police station or a designated place of detention, the custody officer may give notice in writing to that person -

- (a) that his attendance at the designated place of detention is not required, or
- (b) appointing a different time, or an additional time, at which the person is to attend at the police station to answer bail.

(7A) The exercise of the power under subsection (7)(b) does not affect the conditions of bail (if any)."

(7) For subsections (9) and (10) of section 55, substitute -

"(9) If an application under subsection (8) is made by a person charged with a criminal offence in connection with which that person was granted bail, the court -

- (a) shall remand the applicant in custody or on bail in accordance with the court's determination of the application,
- (b) if it grants bail, may vary the conditions of the applicant's bail, and this may involve -
 - (i) the removal of conditions, or

- (ii) the imposition of new conditions,
including more onerous conditions,

and following the court's determination of the application, the grant of bail by the custody officer shall lapse, having been replaced by the court's decision on bail.

(10) If an application under subsection (8) is made by a person not charged with a criminal offence in connection with which that person was granted bail, the court may -

- (a) refuse the application,
- (b) vary the conditions of the applicant's bail, and this may involve -
 - (i) the removal of conditions, or
 - (ii) the imposition of new conditions,
including more onerous conditions,

and the grant of bail by the custody officer shall not lapse but shall continue subject to any such variation of the conditions."

(8) Immediately after section 55, insert the following section -

"Duty to seek views of alleged victim on condition of pre-charge bail.

55A. (1) Subsections (2) to (5) apply if -

- (a) a person has been arrested for an offence but has not been charged with that offence, and

(b) a custody officer proposes to release the person on bail under this Part.

(2) If it is reasonably practicable to do so, the investigating officer must seek the views of the alleged victim (if any) of the offence on -

(a) whether relevant conditions should be imposed on the person's bail, and

(b) if so, what relevant conditions should be imposed.

(3) In this section "**relevant condition**", in relation to an offence and an alleged victim of that offence, means a condition that relates to the safeguarding of the alleged victim.

(4) The investigating officer must inform the custody officer of any views obtained under subsection (2).

(5) If the person is granted bail subject to relevant conditions, the investigating officer must, if it is reasonably practicable to do so, notify the alleged victim of the offence of those conditions.

(6) If the alleged victim of the offence appears to the investigating officer to be vulnerable, subsections (2) and (5) apply as if references to the alleged victim of the offence were to a person appearing to the officer to represent the alleged victim.

(7) Subsections (8) to (11) apply if -

- (a) a person has been arrested for an offence but has not been charged with that offence,
- (b) the person has been released on bail under this Part subject to conditions, and
- (c) the person requests a custody officer to vary the conditions under section 55(3).

(8) If it is reasonably practicable to do so, the investigating officer must seek the views of the alleged victim (if any) of the offence on -

- (a) whether any of the conditions that are relevant conditions should be varied, and
- (b) if so, what variations should be made to those conditions.

(9) The investigating officer must inform the custody officer of any views obtained under subsection (8).

(10) If any of the conditions that are relevant conditions are varied, the investigating officer must, if it is reasonably practicable to do so, notify the alleged victim of the variations.

(11) If the alleged victim of the offence appears to the investigating officer to be vulnerable, subsections (8) and (10) apply as if references to the alleged victim of the offence were to a person appearing to the officer to represent the alleged victim.

(12) In this section "**investigating officer**", in relation to an offence, means the police officer or other person in charge of the investigation of the offence.

(13) For the purposes of this section a person ("V") is an alleged victim of an offence if -

- (a) an allegation has been made to a police officer or other person involved in the investigation of the offence that V has suffered physical, mental or emotional harm, or economic loss, which was directly caused by the offence, and
- (b) V is an individual.

(14) For the purposes of this section an alleged victim of an offence is vulnerable if the alleged victim -

- (a) was under 18 years of age at the time of the offence, or
- (b) may have difficulty understanding a communication from an investigating officer under this section, or communicating effectively in response to it, by reason of -
 - (i) a physical disability or disorder,

- (ii) a mental disorder within the meaning of section 1 of the Mental Health (Bailiwick of Guernsey) Law, 2010^r, or
- (iii) a significant impairment of intelligence and social functioning."

(9) In section 56A, immediately after subsection (1), insert the following subsection -

"(1A) Where a person has been arrested under section 57(1B), and in addition to the considerations mentioned in subsection (1), the period of three hours beginning with the time at which the person arrives at a police station following the arrest is not to be included as part of any period of police detention which falls to be calculated in relation to the person under this Part."

(10) In the heading to section 57, immediately after "failure to answer to" insert ", or breaking conditions of,".

(11) Immediately after subsection (1) of section 57, insert the following subsections -

"(1A) Subsection (1B) applies where a custody officer has -

- (a) granted bail to a person subject to a duty to appear at a police station or a designated place of detention, and

^r Order in Council No. XV of 2011; this enactment has been amended.

(b) imposed conditions on that bail.

(1B) Where this subsection applies, the person on bail may be arrested without warrant by a police officer if the officer has reasonable grounds for suspecting that the person has broken any of the conditions of bail.

(1C) For the avoidance of doubt, the breaking of a condition of bail referred to in subsection (1B) is not a criminal offence."

PART IV

MISCELLANEOUS AND GENERAL PROVISIONS

Power to make Ordinances.

65. (1) The States may by Ordinance –
- (a) amend the list of alternative offences in section 10(2),
 - (b) amend Part II of this Law by –
 - (i) amending the maximum period of time that may pass between the giving of a DAPN and the first hearing for an application for a DAPO, including amendments to how that period is to be calculated, provided such a maximum period does not exceed 14 days,
 - (ii) adding further circumstances in which a court can make a DAPO of its own motion (without application),

- (iii) specifying other persons who may make an application for a DAPO and the circumstances in which such a person may do so,
 - (iv) amending the maximum duration of time for which a DAPO may be in force, whether by substituting an alternative maximum period of time or by stipulating that a DAPO may last until a further court order (or a combination of both),
 - (v) making provision for a court to impose a DAPO that includes an electronic monitoring requirement, being a requirement that the person on whom the DAPO is imposed ("R") submits to electronic monitoring in the Bailiwick of R's compliance with other requirements imposed by the DAPO,
- (c) make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to this Law.

(2) The Committee (and any other committee of the States of Guernsey) shall, before recommending the States to agree to make an Ordinance under the provisions of this Law, consult -

- (a) in the case of an Ordinance having effect in Alderney, the Policy and Finance Committee of the States of Alderney, and
- (b) in the case of an Ordinance having effect in Sark, the Policy and Finance Committee of the Chief Pleas of Sark,

in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate any Ordinance made under the provisions of this Law.

Power of Royal Court to make rules of court.

66. (1) The Royal Court sitting as the Full Court has power to make rules of court under this Law.

(2) Rules of court made under this Law may have effect in relation to any court in the Bailiwick, as may be specified in the rules of court.

(3) In addition to rules of court made under powers created under any other provision of this Law, rules of court under this section may provide for all procedural, practical and incidental matters which may be necessary for bringing this Law into effect.

(4) Rules of court under any provision of this Law –

- (a) may contain such supplementary, incidental, transitional and consequential provision as may appear to be necessary or expedient, and
- (b) may be amended or repealed by subsequent rules of court.

Regulations: consultation and annulment.

67. Regulations made by the Committee under any provision of this Law -
- (a) in the case of regulations having effect in Alderney, shall be made only after consultation with the Policy and Finance Committee of the States of Alderney,
 - (b) in the case of regulations having effect in Sark, shall be made only after consultation with the Policy and Finance Committee of the Chief Pleas of Sark,
 - (c) shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

Guidance to police about disclosure of information by police forces.

68. (1) The Committee may issue guidance about the disclosure of police information for the purposes of preventing and mitigating the effects of domestic abuse.
- (2) A police officer must have regard to any guidance issued under this section.
- (3) The Committee may from time to time revise any guidance issued under this section.

(4) Before issuing or revising guidance under this section, the Committee must consult with -

- (a) the Chief Officer of the salaried police force of the Island of Guernsey,
- (b) the Constable of Sark, and
- (c) such other persons as the Committee considers appropriate.

(5) Subsection (4) does not apply in relation to any revisions of guidance issued under this section if the Committee considers the proposed revisions of the guidance are insubstantial.

(6) The Committee may publish -

- (a) any guidance issued under this section, and
- (b) any revisions of that guidance.

(7) In this section "**police information**" means information held by a police officer.

Guidance about domestic abuse.

69. (1) The Committee may issue guidance about -

- (a) the effect of any Part of this Law, and
- (b) such other matters relating to domestic abuse in the Bailiwick as the Committee considers appropriate.

(2) A person exercising public functions to whom guidance issued under this section relates must have regard to it in the exercise of those functions.

(3) The Committee may -

(a) publish any guidance issued or revised under this section,

(b) keep any guidance issued under this section under review, and

(c) revise any guidance issued under this section if the Committee considers revision to be necessary in light of any review.

(4) Nothing in this section permits the Committee to issue guidance to a court or tribunal.

Repeals

70. The following are hereby repealed -

(a) Articles 7 and 8 of the Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes, 1917,

(b) the Child Protection (Alderney) Law, 1953,

(c) Part III of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988, and

(d) Part IVA of the Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964.

Interpretation.

71. (1) In this Law, unless the context requires otherwise -

"adopted" means adopted in pursuance of –

- (a) an adoption order made under the Adoption (Guernsey) Law, 1960^s,
- (b) an adoption order made in any part of the United Kingdom, in the Isle of Man or in the Island of Jersey, or
- (c) subject to sections 6 and 7 of the Adoption (Guernsey) Law, 1970^t, an overseas adoption within the meaning of section 5 of that Law,

"child": -

- (a) in respect of section 2(2)(c), see section 2(4)(b),
- (b) in respect of Chapter II of Part I, see section 12(8),
- (c) in respect of Chapter III of Part I, see section 17(8),
- (d) in respect of Chapter I of Part III, see section 62,

^s Ordres en Conseil Vol. XVIII, p. 192; this enactment has been amended.

^t Ordres en Conseil Vol. XXII, p. 380; this enactment has been amended.

"civil partnership" means –

- (a) the relationship between two persons who have registered as civil partners under the Civil Partnership Act 2004^u, or under the Civil Partnership (Jersey) Law 2012, or who are treated under the Civil Partnership Act 2004 as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled, or
- (b) a relationship established under the law of a territory other than the United Kingdom or Jersey and of a character which is equivalent or substantially similar to a civil partnership formed under the Civil Partnership Act 2004, and which relationship has not been dissolved or annulled,

and **"civil partner"** shall be construed accordingly,

"the Committee" means the States of Guernsey Committee for Home Affairs,

"parental responsibility" means parental responsibility as defined in -

^u An Act of Parliament (2004 c. 33)

- (a) Part II of the Children (Guernsey and Alderney) Law, 2008^v, or
- (b) Part II of the Children (Sark) Law, 2016^w, and

"**police officer**" means –

- (a) in relation to the Islands of Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey and, within the limit of their jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to the Island of Alderney, a member of the said police force and a member of any police force which may be established by the States of Alderney,
- (c) in relation to the Island of Sark, the Constable, the Vingtenier and a member of the said police force of the Island of Guernsey.

Extent.

72. This Law shall have effect in the Bailiwick of Guernsey.

^v Order in Council No. XIV of 2009; this enactment has been amended.

^w Order in Council No. VIII of 2016; this enactment has been amended.

Citation.

73. This Law may be cited as the Domestic Abuse and Related Provisions (Bailiwick of Guernsey) Law, 2024.

Commencement.

74. This Law shall come into force on the day of its registration on the records of the Island of Guernsey.