



## **Devon and Cornwall Police and Crime Panel**

**28<sup>th</sup> January 2022**

### **DOMESTIC ABUSE ACT 2021**

#### **1. Introduction**

1.1. As requested by the Police and Crime Panel, this paper provides information on the content of the Domestic Abuse Act 2021 and its implementation.

#### **2. The Domestic Abuse Act 2021**

2.1. In April 2021 the Domestic Abuse Act 2021 (the Domestic Abuse Act) received Royal Assent and passed into law following its consideration by Parliament. The legislation followed a government consultation in 2018 on Transforming the Response to Domestic Abuse and consultation on a draft Domestic Abuse Bill in 2019.

2.2. The Domestic Abuse Act contains a wide range of measures to enhance the response across the criminal justice and community safety landscape to domestic abuse. It aims to ensure that victims have the confidence to come forward and report their experiences, safe in the knowledge that the state will do everything it can, both to support them and their children and pursue the abuser.

#### **3. Key provisions within the Domestic Abuse Act 2021**

3.1. The Domestic Abuse Act contains a number of key changes to the legislative framework. A summary of the key changes is set out at Annex A to this report but the Panel may be particularly interested to note the following:

3.2. *New definition of domestic abuse:* a new statutory definition of domestic abuse is being introduced, emphasising that domestic abuse is not just physical violence, but can also be emotional, controlling or coercive, and economic abuse. The definition also specifies that children who witness domestic abuse are also considered to be victims.

3.3. *Domestic Abuse Commissioner:* the legislation establishes in law the independent office of Domestic Abuse Commissioner (the DA Commissioner), Nicole Jacobs. The DA Commissioner provides national leadership on domestic abuse issues and plays a key role in overseeing and monitoring the provision of domestic abuse services in England and Wales. The DA Commissioner is tasked with encouraging good practice



in preventing domestic abuse; identifying victims and survivors, and perpetrators of domestic abuse, as well as children affected by domestic abuse; and improving the protection and provision of support to people affected by domestic abuse. They have the power to publish reports and lay them before Parliament including on the need for certain domestic abuse services in England and the provision of such services and specified public bodies, including local authorities and the Commissioner have a duty to cooperate with the Commissioner and to respond to any recommendations made by the DA Commissioner within 56 days. Further information about the DA Commissioner's work can be found at [www.domesticabusecommissioner.uk](http://www.domesticabusecommissioner.uk).

- 3.4. *Local authority duties*: the legislation places a new duty on local authorities to establish a Domestic Abuse Partnership Board and to develop local strategies for tackling domestic abuse. It also obliges local authorities to ensure that support services are available for victims of domestic abuse who are housed in safe accommodation. The government has issued statutory guidance for local authorities regarding the operation of these new duties and additional new burdens funding to support their implementation has been provided to local authorities by government. One of the key topic debated during the Bill's passage was the potential need for enhanced duties regarding the provision of community based support services for all victims of domestic abuse and this issue is currently being considered in the Victims Law Consultation which is referred to in section 5 of this report.
- 3.5. *Domestic Abuse Protection Notices and Domestic Abuse Protection Orders*: the legislation provides a new system of Domestic Abuse Protection Notice and Domestic Abuse Protection Order which will replace the existing Domestic Violence Protection Order regime. These new orders will enable the courts to require offenders to undertake positive actions, such as counselling and treatment as well as enabling the setting of restrictions on offenders.
- 3.6. *Introduction of a number of new offences*: including the extension of the existing offence of controlling or coercive behaviour to cover post-separation abuse; extending the offence of disclosing private sexual photographs and films with intent to cause distress (known as the "revenge porn" offence) to cover threats to disclose such material; creating a new offence of non-fatal strangulation or suffocation of another person; and clarifying in statute the general proposition that a person may not consent to the infliction of serious harm and, by extension, is unable to consent to their own death (what is often called the Rough Sex Defence).
- 3.7. *Criminal justice and policing processes*: including prohibiting perpetrators from cross-examining their victims in person in civil and family courts and a new statutory presumption that victims of domestic abuse are eligible for special measures in the criminal, civil and family courts. The legislation also places the current Clare's Law arrangements around disclosure of past offences to a partner onto a statutory footing.

3.8. *Housing*: providing that all eligible homeless victims of domestic abuse automatically have ‘priority need’ for assistance and measures to ensure the continuation of lifetime tenancies where a victim of domestic abuse need to be granted a new secure tenancy.

#### **4. Implementation of the Domestic Abuse Act 2021**

4.1 Whilst some provisions of the Domestic Abuse Act came into effect in April 2021 upon Royal Assent the majority of provisions will be implemented over a longer time period. The Home Office has published a commencement schedule which will be regularly updated [Domestic Abuse Act 2021 commencement schedule - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97421/domestic_abuse_act_2021_commencement_schedule.pdf) and the timeframes set out in the schedule may be subject to amendment.

4.2 Some of the key provisions of the Bill are already in effect, including:

- New statutory definitions of ‘domestic abuse’ and ‘personal connection’ (although the extension to include children is not expected until some time in 2022)
- Establishment of the Statutory Office of the Domestic Abuse Commissioner
- Requirement on local authorities to provide support services for all victims of domestic abuse within safe accommodation
- Establishment by local authorities of local Domestic Abuse Partnership Boards and the creation of a local Domestic Abuse Strategy
- Requirement for local authority policies on homelessness to assign victims of domestic abuse a priority status
- New criminal offence on threats to disclose sexual photos or films to cause distress
- Clarification that consent to serious harm for sexual gratification is not a defence.

4.3 Other provisions that are expected to come into force in the first half of 2022 include:

- New criminal offences of controlling or coercive behaviour in an intimate or family relationship and strangulation or suffocation
- Application of special measures within the court for victims of domestic abuse (like the measures currently available to victims of sexual offences)
- Prohibition on cross examination in civil and family proceedings

4.4 There are some measures within the Domestic Abuse Act which will take considerably longer to come into effect, for example the new Domestic Abuse Protection Notices and Domestic Abuse Prevention Orders which will replace the existing Domestic Violence Prevention Orders are not expected to come into effect until early 2023.

4.5 Further information on the timescales for implementation of many provisions and guidance on implementation arrangements and detailed practices is still awaited from the Home Office but policing, local authority and criminal justice agencies are working locally and nationally to prepare for their implementation.

4.6 Devon and Cornwall Police have established a Domestic Abuse Act Implementation Working Group which includes representation from local Community Safety

Partnerships, the Domestic Abuse Commissioner's Office and the OPCC as well as a wide range of policing representatives including learning and development, corporate communications and victim care. The Group which is led by the Devon and Cornwall Police Lead for Domestic Abuse has begun to prepare for implementation but further information is awaited from the Home Office regarding implementation plans and timeframes for many of the provisions. Devon and Cornwall Police are also working with regional and national policing leads on domestic abuse to share information and best practice in preparation for the legislative changes.

4.7 The Panel may wish to be aware that Devon and Cornwall Police is seeking to be one of the pilot areas for the new Domestic Abuse Protection Orders, recognising the significant benefits that these new orders could bring to supporting victims and increasing our focus on addressing perpetrator behaviours. Information about how the pilots will operate and whether Devon and Cornwall will be considered as a pilot location is still awaited from the Home Office.

4.8 Local authorities across Devon, Cornwall and the Isles of Scilly have put in place their own structures and approaches to preparing for the changes set out in the legislation, working in many cases with and through their CSP. Devon and Cornwall Police and the OPCC are engaged in this work in support of the CSP. Some of the most significant changes for local authorities have already been introduced, with the new duty to provide support services for victims in refuges and secure accommodation and to establish local Domestic Abuse Partnership Boards and set out a local strategy coming into effect in the final months of 2021.

## 5. Wider National Landscape

5.1 In addition to the Domestic Abuse Act and the recently published national Tackling Violence Against Women and Girls Strategy there are a number of other national developments which are currently being considered:

5.2 ***Police, Crime, Sentencing and Courts Bill***: the Police, Crime, Sentencing and Courts Bill is currently being considered by the House of Lords following its passage through the House of Commons in 2021. The Bill is reaching its final stages of consideration and is expected to become law by Spring 2022. The Bill contains a number of measures which relate to domestic abuse, including a new regulatory regime for the inspection of digital devices; a new duty on local community safety and criminal justice partners to prevent serious violence and extending the timeframe within which domestic abuse victims are able to report certain offences. The Bill is due to complete Report Stage in the House of Lords by the end of January 2022 and will then move into its final stages.

5.3 ***Domestic Abuse Strategy***: the government is expected to publish a new Domestic Abuse Strategy in the next few weeks. This strategy is expected to include a specific

focus on action to tackle perpetrators of domestic abuse as well as setting out the government's approach to supporting and assisting victims of these offences. It is not known at this time whether the government will be releasing any additional funding to support the provision of perpetrator programmes within local areas. The current funding that has been secured by the Commissioner from the Home Office ends on 31<sup>st</sup> March 2022. This funding has been supporting a range of initiatives delivered by local authorities over the past eighteen months, including specialist IDVAs in areas such as children and young people and behavioural change and wider bystander awareness programmes and training. The Commissioner and PCCs nationally are continuing to engage with officials from the Home Office regarding future funding and OPCC officials are in regular engagement with local authority partners on this matter.

5.4 ***Victims Law Consultation:*** in December 2021 the Government launched a consultation on improving victims' experience of the justice system. The consultation, which covers a wide range of issues relating victims is the first step towards a new 'Victims' Law' based upon the Victims' Code of Practice. The consultation also seeks views on establishing a wider duty on local authorities with regards to the provision of community based services for victims of domestic abuse (the DA Act places specific responsibilities on local authorities with regards to the provision of such services to victims who are in refuge accommodation). Further information on this consultation is provided in the PCC Update Report to this meeting.

**Contact for further information:**

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## **ANNEX A – KEY PROVISIONS OF THE DOMESTIC ABUSE ACT 2021**

### **Summary from [www.gov.uk](http://www.gov.uk)**

- i. Creating a new statutory definition of domestic abuse, emphasising that domestic abuse is not just physical violence, but can also be emotional, controlling or coercive, and economic abuse.
- ii. Establishing in law the office of Domestic Abuse Commissioner and setting out the Commissioner's functions and powers.
- iii. Providing for a new Domestic Abuse Protection Notice and Domestic Abuse Protection Order which will replace the existing Domestic Violence Protection Order regime. These new orders will enable the courts to require offenders to undertake positive actions, such as counselling and treatment.
- iv. Placing a duty on local authorities in England to provide accommodation based support to victims of domestic abuse and their children in refuges and other safe accommodation.
- v. Requiring local authorities to establish local Domestic Abuse Partnership Boards and to create a local Domestic Abuse Strategy.
- vi. Prohibiting perpetrators of abuse from cross-examining their victims in person in the civil and family courts in England and Wales.
- vii. Creating a statutory presumption that victims of domestic abuse are eligible for special measures in the criminal, civil and family courts.
- viii. Clarifying circumstances in which a court may make a barring order under section 91(14) of the Children Act 1989 to prevent family proceedings that further traumatise victims.
- ix. Extending the existing offence of controlling or coercive behaviour to cover post-separation abuse.
- x. Extending offence of disclosing private sexual photographs and films with intent to cause distress (known as the "revenge porn" offence) to cover threats to disclose such material.
- xi. Creating a new offence of non-fatal strangulation or suffocation of another person.
- xii. Clarifying in statute the general proposition that a person may not consent to the infliction of serious harm and, by extension, is unable to consent to their own death (what is often called the Rough Sex Defence).
- xiii. Extending the extraterritorial jurisdiction of the criminal courts in England and Wales, Scotland and Northern Ireland to further violent and sexual offences.
- xiv. Providing for a statutory domestic abuse perpetrator strategy.
- xv. Enabling domestic abuse offenders to be subject to polygraph testing as a condition of their licence following their release from custody.
- xvi. Placing the guidance supporting the Domestic Violence Disclosure Scheme ("Clare's law") on a statutory footing.
- xvii. Providing that all eligible homeless victims of domestic abuse automatically have 'priority need' for homelessness assistance.
- xviii. Ensuring that where a local authority, for reasons connected with domestic abuse, grants a new secure tenancy to a social tenant who had or has a secure lifetime or assured tenancy (other than an assured shorthold tenancy) it must be a secure lifetime tenancy.
- xix. Prohibiting GPs and other health professionals in general practice from charging a victim of domestic abuse for a letter to support an application for legal aid.
- xx. Providing for a statutory code of practice relating to the processing of domestic abuse data for immigration purposes.