

**ENHANCING LEGAL PROTECTIONS FOR VICTIMS OF DOMESTIC ABUSE -  
A CONSULTATION**

**SUMMARY OF RESPONSES**

**May 2021**

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## 1. INTRODUCTION

- 1.1 This document provides a summary of responses received as a result of the Department of Justice's consultation on enhancing the legal protections for victims of domestic abuse.
- 1.2 The public consultation was launched on 7 December 2020 and closed on Friday 19 February.
- 1.3 The Department received a total of 38 written responses from a range of organisations and individuals across the sectors (listed at **Annex A**). A number of individuals also corresponded with the Department to share their personal accounts.

## **2. SUMMARY OF CONSULTATION RESPONSES**

### **GENERAL COMMENTS**

- 2.1 Due to the range of responses received, this summary does not reflect each and every view on all of the topics, but highlights the key issues with regard to each question and area considered. It does however, where relevant, reflect a level of detail indicative of the complexities of the topics being consulted on.
- 2.2 The majority of responses were supportive of the overall proposal to introduce Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs). As this is a complex area which gives rise to a number of potential human rights issues, we plan to engage further with a number of respondents who provided detailed comments on this aspect, to further assist in the policy development process. This includes the Bar of Northern Ireland (the Bar), the Law Society and the Northern Ireland Human Rights Commission.
- 2.3 The Department would like to thank all respondents for taking the time to provide such comprehensive responses to the model set out within the consultation document. We look forward to working in partnership with key stakeholders to introduce DAPNs and DAPOs in Northern Ireland.

### **RESPONSES TO INDIVIDUAL CONSULTATION QUESTIONS**

- 2.4 The following information outlines the key points raised regarding the specific questions asked within the consultation document. It should be noted that some of the issues raised may relate to more than one question/area; therefore, in order to ensure that we accurately reflect the issues raised, there may be some duplication in the content.

### **Question 1:**

#### **Do you agree that we should introduce Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs)?**

Of the 38 respondents to the consultation, 32 (84%) agreed that Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs) should be introduced in Northern Ireland. It was generally agreed that DAPNs and DAPOs would be useful tools to help protect victims of domestic abuse, particularly if they are reluctant or scared to take action themselves. Respondents welcomed the protection that DAPNs and DAPOs would provide over and above that of Domestic Violence Protection Notices and Orders (DVPN and DVPOs) (which the Justice Minister decided, having consulted with statutory and voluntary sector partners, should not be introduced in the interim). One respondent highlighted the importance of learning lessons from the problems encountered in the implementation of DVPNs and DVPOs in England and Wales, particularly relating to what was seen as underuse by police.

***As noted in the consultation document, we are aware of the issues in relation to the implementation of DVPN and DVPOs in England and Wales. We will work to ensure that we learn lessons from the experience elsewhere, including the extent to which the new notices and orders are used. We will engage with statutory (including the Police Service of Northern Ireland) and voluntary sector partners to best address this.***

Other reasons given for supporting the implementation of DAPNs and DAPOs included the belief that, in situations of immediate danger, the most effective way to protect domestic abuse victims and guarantee their safety is by achieving a physical distance between the victim and the abuser. It was also noted by respondents that DAPNs and DAPOs would be beneficial in respect of compliance with Article 52 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) by putting in place additional protection measures for victims of domestic abuse who are considered to be in immediate danger.

A number of respondents welcomed the paradigm shift that DAPNs and DAPOs would

make in potentially barring an abuser from the family home, as opposed to victims being forced to leave their home and potentially move to refuge or temporary accommodation.

One respondent noted that the introduction of DAPNs and DAPOs should facilitate an alternative method of protection for victims. The Police Service of Northern Ireland (PSNI) also considered that these measures would assist them in intervening early in terms of preventing repeat victimisation and possible reoffending.

Some respondents noted that the introduction of DAPNs and DAPOs would provide a more uniform, streamlined approach to the various remedies that currently exist, while others noted that there were concerns about the effectiveness of current remedies and that the introduction of DAPNs and DAPOs is therefore welcomed.

While one respondent, a member of the public, did not support the introduction of DAPNs and DAPOs, a reason for this was not provided. Two individual respondents did not know if DAPNs and DAPOs should be introduced. These respondents expressed concern with the level of proof required before a DAPN is issued and noted that they could be used by abusers to make false allegations of abuse against a victim, as a means of coercively controlling them. It was also considered that they could be open to abuse by people who want to remove their partner from the family home in the event of a marriage breakdown. Their view was that Non-Molestation Orders are already being abused in these types of situations and that DAPNs and DAPOs would be as well.

The Public Prosecution Service (PPS), the Law Society and the Bar provided a response to this question but did not explicitly answer either way on whether they supported the introduction of DAPNs and DAPOs. PPS noted the benefits of a power of arrest in domestic abuse cases, stating that police powers in this regard currently provide the same protection.

While the Law Society considered DAPNs and DAPOs to be a supportive tool for victims of domestic abuse, which should be readily available and robust in preventing and dealing with incidents of domestic abuse, they considered that their introduction

must not be at the expense of the current Non-Molestation and Occupation Order remedies but rather should complement them.

***We can confirm that current orders (such as Non-Molestation and Occupation Orders) will still be available. DAPNs would be made by police, with police or specified third parties (possibly with leave of the court) able to apply for DAPOs, as well as victims themselves and any other person with leave of the court.***

The Bar of Northern Ireland considered that, despite the laudable intentions of these new policy proposals, there is a risk that the introduction of these new orders would result in a hierarchy of remedial and protective measures for victims and their children and could give rise to confusion around which legal tool is the most appropriate for each set of circumstances.

***We recognise this concern and consider that guidance and awareness raising will be instrumental in explaining the new measures. Although the majority of Non-Molestation and Occupation Order applications relate to domestic abuse situations, none of the protective orders currently available are domestic abuse specific. The creation of DAPNs and DAPOs will send out a strong message that domestic abuse is wrong and will not be tolerated. It also enables action to be taken to protect the victim when they do not feel able to apply for a Non-Molestation or Occupation Order themselves.***

***Overall, there is strong support for the introduction of DAPNs and DAPOs in Northern Ireland and we would intend to make provisions for these as a positive tool that will assist victims and survivors.***

***The consultation document noted that there would be provision in the forthcoming Miscellaneous Provisions Bill to introduce an amendment providing for enabling powers through secondary legislation. As Section 27 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021<sup>1</sup> now***

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<sup>1</sup> [Link to Domestic Abuse and Civil Proceedings Act.](#)

*provides that the Department may, by regulations, make provision to bring forward steps or measures to protect victims of domestic abuse, including through new DAPNs and DAPOs (though not necessarily limited to this), and having taken advice from First Legislative Counsel, the Department would intend to make use of these powers to progress the new protection measures.*



**Question 2:**

**Do you agree that the proposed Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs) should apply to not only physical violence and threats of violence, but also non-physical abusive behaviour?**

Of the 37 respondents who answered this question, 35 (95%) agreed that DAPNs and DAPOs should apply to non-physical abusive behaviour, as well as physical violence and threats of violence. These respondents strongly agreed that domestic abuse is not exclusively limited to physical violence and that, in some cases, non-physical abuse can be just as damaging, if not more damaging to victims. It was agreed that psychological and emotional abuse is prevalent in Northern Ireland. Other respondents welcomed that lessons were being learned from the review of Domestic Violence Protection Notices and Orders (DVPNs and DVPOs) in England and Wales.

In addition, respondents noted that the inclusion of non-physical abusive behaviour was consistent with the definition in the seven year Stopping Domestic and Sexual Violence and Abuse Strategy as well as the new domestic abuse offence to be introduced later this year. Respondents welcomed that the definition of abusive behaviour, as set out in the 2021 Act, would also apply in respect of DAPNs and DAPOs.

The Bar considered that there should be a pattern of abusive behaviour present (two or more occasions), rather than allowing for a DAPN or DAPO based on a single incident, particularly where that single incident need not have involved conduct that is violent, threatening or intimidating, and need not have had any actual effect on the alleged victim. ***The approach adopted reflects that utilised elsewhere, where a pattern of behaviour does not necessarily need to have occurred for a DAPN or DAPO to be in place.***

The Bar also raised concerns that the legislation brings a very wide range of personal connections within its scope which goes beyond partners or ex-partners and that a very wide spectrum of family relationships could therefore potentially fall within the remit of the proposed DAPNs for issue by the police in the first instance.

***We consider that it is appropriate that close familial relationships are caught within the remit of DAPNs and DAPOs, in line with the new domestic abuse offence as set out in legislation, to ensure consistency. These are limited to a person's parent, grandparent, child, grandchild or sibling as well as the parent, grandparent, child, grandchild or sibling of the person that they are in a relationship with. This is also consistent with the approach for Non-Molestation Orders currently, which can apply to partners as well as an even wider range of family members than that applicable to the new offence.***

One response out of the 38 received, from a member of the public, did not agree that DAPNs and DAPOs should apply to non-physical abusive behaviour, as well as physical violence and threats of violence, however, no reason for this was provided.

One respondent, a member of the public, answered that they did not know if DAPNs and DAPOs should capture non-physical abusive behaviour given their concerns that when they report psychological abuse that this is not deemed to meet the necessary threshold to constitute domestic abuse. Their view was that the same issues will arise in relation to DAPNs and DAPOs.

***Training on domestic abuse will be rolled out as part of the operationalisation of the new domestic abuse offence. Guidance will also be provided for those who will be making DAPNs or applying for DAPOs. Integral to this will be the fact that domestic abuse is not limited to physical violence.***

More generally the responses indicated general support for DAPOs and DAPNs applying to not only physical violence and threats of violence but also non-physical abusive behaviour.

***This will be reflected in the approach that the Department will take when drafting regulations. The scope and definitions used in relation to the new domestic abuse offence will be used in respect of DAPNs and DAPOs to ensure consistency.***

### **Question 3:**

**What length of time should a Domestic Abuse Protection Notice (DAPN) be valid for before the police have to apply to a magistrates' court for a Domestic Abuse Protection Order (DAPO), the suggestion being up to four days?**

33 respondents responded to this question, however, there was not a unanimous view on the length of time that a DAPN should be valid for before the police have to apply to a magistrates' court for a DAPO.

### **Up to 48 hours**

The majority of respondents considered that a 48 hour limit was not practicable, with a number highlighting evidence from England which showed that a 48 hour limit was viewed as a disincentive for officers to issue orders. However, the Bar noted that the requirements of a DAPN (around entry to property which could also be their home) could place significant restrictions on an individual's right to private and family life and to enjoy their property. The Bar considered that DAPNs are only appropriate for a short period of time and should be subject to judicial scrutiny and oversight at the earliest possible opportunity, ideally after the first 48 hours of the notice. They also proposed that the notice could then be extended by the court for a period of up to 28 days, ensuring protection while also giving all parties the time to apply for a range of orders if needed.

### **Up to 72 hours**

Similar to the concerns raised above, the Law Society noted that the issuing of a DAPN may have potentially draconian implications in removing a person from their home, impacting on family life and livelihood without a legal finding of fact. However, it also noted that there is a need to protect the vulnerable from ongoing abuse and that there is a fine balance when considering the duration of a DAPN. The Law Society suggested that a 72 hour timeframe would permit the person subject to the notice/order to access legal representation and that any longer this may be unfair and prejudicial to the accused, given that no evidence has been tested independently.

### **Up to four days**

Eight respondents agreed that DAPNs should be valid for up to four days before the police have to apply to a magistrates' court for a DAPO. One of these respondents noted the importance of recognising that there can be spurious allegations of abuse and that the impact on children of a parent being removed from the home can be devastating. PSNI considered that four days was an appropriate period, which takes into consideration practical operational matters and the potential for requirements for special courts over the weekend or Public Holidays where notices are enacted on a Friday / Saturday. They also noted that four days would allow PSNI time to consider the appropriate provisions that should be included in the DAPO. Additionally, it was considered that four days was appropriate with regards to the impact on the person subject to the notice and their human rights should an order not subsequently be granted. Another respondent noted that four days would be a workable limit for the judicial system, specifically magistrates' courts, in processing the volume of orders.

### **Up to seven days**

11 respondents considered that DAPNs should be valid for up to **seven** days. There were a range of reasons for this, including:

- operational issues around Court availability, as well as the increased risk of a DAPN lapsing;
- potential for better coordination amongst professional stakeholders in ensuring a robust and joined up approach to protecting victims;
- providing police with time to carry out an adequate assessment of prevailing conditions, including any conditions that should be imposed on the abuser, and process applications to the court (the police position above on timeframe should be noted);
- space for engagement with the victim or other family members, without restrictive time pressures; and
- balancing the investigative needs of the police with the ECHR rights of those affected (as above).

### **At least seven days**

A number of respondents considered that at least seven days (seven to ten days for a number) would be appropriate to allow sufficient time for the police to apply to a Magistrates' court in Northern Ireland, as well as giving the victim time and space to reflect on what has happened. They noted that this timescale would take into consideration the court sittings in both urban and rural areas in Northern Ireland, the varying speeds at which court processes can move and the availability of police officers throughout each policing district. It was also noted that this timescale would avoid a situation of a DAPN lapsing before a DAPO could be granted, which could add an element of danger and chaos to the process that could reduce confidence in statutory efforts to preserve victim safety.

***Given that there will be an onus on the police to bring forward a DAPO, following a DAPN being served, and assuming no change in circumstances, the Department considers that this should not materialise.***

It was also suggested that a seven to ten day timescale would enable a range of issues to be considered from a victim perspective as well as giving them a greater feeling of empowerment and that their needs are being taken into account. It was suggested that it may also encourage greater usage of DAPNs and DAPOs as a policing tool.

One respondent considered that a minimum period of seven days (and perhaps up to 10 days) may be justified, if it is compatible with the ECHR. They suggested that a greater analysis of the human rights implications of this should be carried out and that a view from the Human Rights Commission should be sought as to the compatibility with Convention rights.

***We have noted the wide ranges of views provided and are of the view that a period of up to 4 days would be most appropriate. Christmas Day, Good Friday, any Sunday and any day which is a bank or public holiday in Northern Ireland (and where the courts do not normally sit) would be disregarded. Reflecting on the comments raised during consultation (including from a PSNI operational perspective) and some of the concerns expressed about human rights***

*implications (as well as the associated risk of challenge to which this would give rise) we consider that this timeframe balances the need to provide PSNI with enough time to apply for a DAPO, against the need to consider the impact on the person subject to the notice and their human rights should an order not subsequently be granted. Having further liaised with the NI Human Rights Commission, we will undertake a Human Rights Impact Assessment on this aspect and consider the findings before drafting the regulations. The time period agreed will be kept under review, following introduction of the new DAPNs and DAPOs, and can be revised if considered necessary.*

#### **Question 4:**

**Do you agree that there should be multiple routes via which an application for a Domestic Abuse Protection Order (DAPO) can be made?**

Of the 36 respondents who answered this question, 34 (94%) agreed that there should be multiple routes via which an application for a DAPO can be made. Respondents agreed that many victims of domestic abuse may not want, or feel able, to make an application themselves, or may not want to make contact with police. It was noted that victims having someone, such as an individual or agency, to assist in this process could be beneficial. Some comments were made around the need for those making applications being appropriately trained and understanding the detail of the legislation.

Some respondents considered that there should be multiple routes including allowing the victim to apply for the DAPO themselves, or to approach the police to ask them to make one on their behalf. Some concerns were also expressed around DAPOs being made with or without the consent of the victim, discouraging victims from reporting, and that this should be done in consultation with victims as much as possible.

***While there will be a number of routes through which DAPOs can be made it will be possible for victims themselves to also apply. Where applications for a DAPO are being made the views of victims should be considered by the court, where the court is made aware of this. Regulations will provide that the court will consider the opinion of the person to be protected by the order, where the court is made aware of this, before making a DAPO. Any guidance associated with the orders will also clearly set this out.***

It was highlighted that the fact that DAPOs can be made across family and criminal courts and in specified civil cases should provide a more flexible and comprehensive response to domestic abuse right across the justice system. The process of enabling police and potentially other specified service providers to apply for a DAPO on the victim's behalf, and allowing courts to make an order of their own volition, should make the process less arduous and daunting for victims, especially for those who feel intimidated or unable to make an application on their own behalf. Respondents also considered that the multi-agency approach sends a clear signal that tackling domestic

abuse and protecting victims from further harm is a shared responsibility for all – not just police and its justice partners.

It was also stressed that applicants must have a clear understanding of the specific risk factors to ensure that the victim is not placed at increased harm by non-consensual action. ***Any associated guidance will cover this point.***

Two respondents (both members of the public) considered that there should not be multiple routes via which an application for a DAPO can be made. One of these respondents gave no explanation for this view while the other noted that DAPOs should not be able to be sought any more easily than at present.

Two respondents (The Law Society and the Bar) did not explicitly answer the question either way but provided some narrative to explain their thinking. The Law Society considered that there may be merit in having multiple routes via which an application for DAPOs may be made, though some members were concerned that that this may incur weak or spurious applications. They also considered that oversight by a court is intrinsic in ensuring the rights of the person subject to the restrictions, and due process.

***The Department considers that such concerns can be allayed by clearly defining who the specified third parties will be that can apply for DAPOs (see question 5). Consideration will also be given to whether such applications should be with the leave of the court. In addition, any other person will require leave of the court to make an application. Applications made, and the reasons for these, will be analysed during the pilot to check that the process is being used appropriately and will at all times remain under the jurisdiction of the courts in terms of decisions taken.***

***Having fully considered the responses to this question, we consider that it would be beneficial for there to be multiple routes via which an application for a DAPO can be made and plan to proceed on the basis that police, specified third parties (potentially with the leave of the court), the person for whose protection the order is sought and any other person with the leave of the court to which the***



***application is to be made would be able to make an application.***

**Question 5:**

**Do you agree that regulations should specify the ‘relevant third parties’ who potentially would be able to apply for a Domestic Abuse Protection Order (DAPO)?**

Of the 34 respondents who answered this question, 27 (79%) agreed that regulations should specify the ‘relevant third parties’ who potentially would be able to apply for a DAPO. A range of comments were also made in terms of the need for clear and unambiguous regulations prescribing who this would apply to, with varying views as to the scope of those regulations.

It was suggested that consultation should take place with potential third parties in terms of the appropriateness of them being specified in regulations and their capacity to apply for DAPOs. It was also considered that third parties specified in the regulations would need to be made aware of the legislation through statutory guidance, have appropriate resources in place to make applications and be appropriately trained.

Two respondents, who were members of the public, did not agree that regulations should specify the ‘relevant third parties’ who potentially would be able to apply for a DAPO. One respondent gave no reason for their answer while the other considered that third parties should be kept confidential to protect staff from potential intimidation.

Four respondents chose not to answer to the question either way, while six respondents didn’t know or were uncertain if regulations should specify the ‘relevant third parties’.

***On balance, we consider that regulations should specify the ‘relevant third parties’ and that these should be clear and unambiguous to prevent confusion. Limiting the number of third parties, as well as considering the need for the leave of the court, will also limit the potential for disingenuous applications being made. Question 6 is also relevant in terms of who respondents consider should be identified as relevant third parties.***

### **Question 6:**

**Which individuals/organisations should be identified as potential ‘relevant third parties’?**

A wide range of individuals/organisations were suggested by respondents in terms of potential relevant third parties including support organisations, health care providers and organisations involved in multi-agency risk assessment and risk management processes, as well as organisations not directly involved in domestic abuse prevention, such as educational establishments and council officers. There were also suggestions that this should include family, friends and legal representatives.

While some respondents considered that it was appropriate for family members or friends to be specified, others considered that only specialist support services should be in a position to apply for DAPOs as a third party. ***The intention is that family and friends will not be specified third parties but may apply for a DAPO with leave of the court.***

One respondent also considered that third-party applications should be limited to the PSNI, acting with the consent of the victim or survivor. Similarly, the Law Society raised concerns with organisations other than PSNI being identified as ‘relevant third parties’, for a number of reasons as well as the risk of breaching the humans rights of the person subject to the DAPO.

Concerns were also raised by the Bar and Law Society that third party applications could result in courts being overrun with applications that would not be granted, resulting in delay for robust applications.

The Bar urged caution about allowing third parties to make applications without further research on the matter, including consideration to be given to only allowing third party applications for a DAPO once leave of the court has been sought and granted, with the possible exception of the PSNI, in order to prevent potential abuse of the legislation.

Some respondents noted that, if third parties were to be specified, then there would

have to be consultation on who should be included.

***Given the wide range of suggestions made by respondents and the concerns raised by the Bar and the Law Society, we wish to consider this matter further. Discussions will also be held with colleagues in other jurisdictions on this matter.***

Both the Law Society and the Bar referred to Article 35 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998, (provision for third parties to act on behalf of victims of domestic violence), which has never been commenced. It was asked whether Article 35 will be commenced. ***There are currently no plans to commence this Article.***

**Question 7:**

**Do you agree that courts should be able to make Domestic Abuse Protection Orders (DAPOs) of their own volition during other proceedings, including in criminal trials?**

Of the 34 respondents who answered this question, 32 (94%) agreed that courts should be able to make DAPOs of their own volition during other proceedings, including in criminal trials. It was considered that this would provide a more flexible approach and would allow further protection of the victim without them having to initiate separate proceedings which could potentially re-traumatise them or result in potentially incurring further expense.

One respondent qualified their support by stating that orders made by courts of their own volition should be open to challenge/appeal by the person on whom it is being served.

***This will be the case regardless of whether or not the court has made the DAPO of its own volition, as to do otherwise could potentially breach the human rights of the person that is subject to the DAPO.***

Some respondents highlighted the potential for inconsistent approaches between different courts, including civil and criminal courts, and recommended that detailed guidance would be needed to ensure consistency across each court setting.

***We agree with the importance of a consistent approach between different courts. The work of the Judicial Studies Board will be important in this respect and it will be for them to consider the appropriate format of any awareness raising or training. All courts should take account of the conditions needed to make DAPOs and other matters to be considered, which will be contained in the Regulations.***

It was also noted that consideration should be given to how orders made by the court are communicated to PSNI to ensure effective policing, given that they will not have made the application themselves.

***We will further consider how best to address this as part of operationalisation of the new process. However, given that there are already a range of protection orders in place (such as Non-Molestation Orders) it is likely that a similar process to that already in place in relation to Non-Molestation Orders will be used.***

Two respondents, who were members of the public, considered that courts should not be able to make DAPOs of their own volition during other proceedings, including in criminal trials. One of these respondents gave no explanation for their answer while the other felt that the judiciary did not understand non-physical abuse well enough to be able to make these orders effectively.

***Awareness raising for the judiciary on the new domestic abuse offence, which incorporates non-physical abuse, as well as the new protection measures will be taken forward by the Judicial Studies Board.***

***Given the overwhelming support from respondents in relation to courts being able to make DAPOs of their own volition during other proceedings, including in criminal trials, the draft regulations will make provision for this.***

**Question 8:**

**Following the introduction of Domestic Abuse Protection Orders (DAPOs) across Northern Ireland more generally, and in the longer term, do you agree that courts should be able to impose positive requirements as well as prohibitions as part of the conditions attached to the proposed order?**

Of the 33 respondents to the consultation who answered this question, 29 (88%) agreed that courts should be able to impose positive requirements as well as prohibitions as part of the conditions attached to the proposed order following the introduction of DAPOs across Northern Ireland more generally, and in the longer term. It was considered that this would help those displaying abusive behaviours to change in the longer term and would protect not only current victims but future victims. It was also considered that those subject to a DAPO should be afforded the opportunity to address their behaviours to reduce repeat offending, rather than just being held to account, on the basis that punitive measures alone do not engender growth and change.

The Probation Board for Northern Ireland (PBNI) 'Promoting Positive Relationships', programme was cited by one respondent as a good example of how concerning behaviour can be addressed, with another respondent noting the importance of behavioural change programmes in helping individuals to understand the impact that their abuse is having on the victim, the family and the wider community. A further respondent highlighted that investment in these programmes is important. It was also suggested that positive requirements should be evaluated to determine whether or not they result in the victim/survivor no longer being at risk. Drug /alcohol treatment programmes or anger management classes were also suggested as other options that should be available to the court.

The financial implications of imposing positive requirements were raised. It was considered that, without appropriate funding, increased demands would be placed on services which are already under pressure and would, therefore, increase waiting times for those needing access to such services. It was also considered that more information is needed regarding what 'positive requirements' would look like and the evidence base for these.

One respondent flagged a potential risk in including positive requirements as part of a DAPO, in terms of the need for such requirements to be monitored effectively for compliance and progress as well as the need for a parallel process supporting the victim.

Hourglass was of the view that the introduction of positive requirements should be met with a commitment to a funded National Perpetrator Strategy (particularly in terms of the abuse of older people).

Four respondents did not agree that courts should be able to impose positive requirements, as well as prohibitions. Only one of these respondents provided an explanation for their view, with concerns that an individual had not been proven guilty.

***We note the general support for positive requirements and agree, in principle, to adding positive requirements to DAPOs, in the longer term, subject to further consideration and the necessary funding being available. It is not the intention of the Department to introduce positive requirements during the pilot or initial introduction of DAPOs.***



**Question 9:**

**Do you agree that courts should be able to require individuals subject to a Domestic Abuse Protection Order (DAPO) to notify personal details to the police?**

Of the 33 respondents who answered this question, 28 (85%) agreed that courts should be able to require individuals subject to a DAPO to notify personal details to the police. These respondents unanimously agreed that monitoring of the order and enforcement of it was essential to ensure compliance with the attached restrictions. They considered that this would mitigate against individuals continuing to abuse their victim, or forming other abusive relationships, and would also allow police to track repeat offenders as they move in and out of the jurisdiction.

One respondent supported this proposal, subject to clarification about how the information will be used and whether it will be shared. They noted that the right to privacy of the person subject to the DAPO and the victim must also be respected. ***We will address this issue in the guidance associated with the new measures.***

Another respondent considered that this requirement would enable police to be aware of abusive individuals, particularly in cases where there has been no police involvement. Police awareness could potentially feed into any Domestic Violence and Abuse Disclosure Scheme requests and enable police to monitor serial abusers.

Two respondents did not agree with the proposal but gave no explanation for their answer, while a further three respondents answered that they did not know if this should be a requirement, with one on the basis that a one-size-fits-all approach is neither just nor workable. A further five respondents did not provide an answer either way.

***Given the strong support for enabling courts to be able to require individuals subject to a DAPO to notify personal details to the police we would intend to provide for this. Views on what personal details should be required to be provided are set out at question 10.***

### **Question 10:**

**If so, what personal details should the courts be able to require individuals to provide to the police?**

A wide range of suggestions were made by respondents regarding which personal details individuals should be required to provide to police. These included:

- Name;
- Aliases used;
- Date of birth;
- Current address
- Changes to address;
- Who they live with, including children;
- Details of any new relationships and whether the new partner has children (to trigger an assessment for a Right To Tell disclosure);
- Proposed travel outside of the UK;
- Information relating to bank accounts;
- Information relating to their passport or another form of ID;
- Electronic device details e.g. mobile phones, laptops, tablets to prevent online abuse; and
- Use of social media if concerns include harassment/stalking digitally.

Other respondents considered that the personal details that individuals should be required to provide to the police should be similar to those required for Sexual Offences Protection Orders / Violent Offences Protection Orders (SOPO / VOPO). One respondent suggested that, to allow for any changes in circumstances there should be built in reviews to ensure the information is dynamic in nature.

***We consider that the information to be held needs to be proportionate, relevant and appropriate from a domestic abuse perspective and wider public risk. The regulations will require a person subject to the DAPO to notify the police of their name (and where they use one or more other names, each of these names) and their home address. The need for any additional notification requirements will be considered further, taking into account consultation responses, ahead of***

***drafting regulations.***

**Question 11:**

**As well as enabling conditions to protect the victim, should it be open to the courts to impose conditions within the Domestic Abuse Protection Order (DAPO) requiring the alleged perpetrator not to approach or contact any associated children?**

Of the 36 respondents who answered this question, 30 (83%) agreed that it should be open to the courts to impose conditions within the DAPO for the person subject to the order not to approach or contact any associated children.

Respondents acknowledged the need to protect children who can often be used as a means of harming the adult victim. It was considered that giving power to the family courts to make protective orders for children subject to on-going family proceedings would be beneficial and should be an option. It was felt that this should result in the victim/survivor no longer being at risk of abusive behaviour.

It was noted that the family court will be aware of all the details of the case and a Criminal Court should have access to reports from relevant professionals making information and communication a key element in all proceedings. The Bar specifically queried whether a register of court orders will be maintained and who will have access to this.

The Bar noted there is scope for a DAPO, the duration of which could be anything from six months to two years, to disrupt arrangements put in place under a safe contact order which will have been reached after a full consideration of the welfare and best interests of the child under the Children (Northern Ireland) Order 1995 and that the existence of a DAPO could prevent a parent from being able to have any contact with a child where there is no court order regulating the matter and the existence of a DAPO could be seen as a bar to obtaining such an order. The Bar also raised a concern around whether Article 57A of the Children (Northern Ireland) Order 1995 (which provides for an exclusion requirement in an interim care order) may need to be amended to allow a family court to make a DAPO when the parent does not agree with the making of an exclusion requirement in the interim care order under Article 57A.

A number of respondents also noted that any other protective orders, court provisions or orders in respect of children and contact / access would have to be taken into consideration and the rights of the child to maintain a relationship with a parent who is subject to an order must be balanced with any risk of further harm. There will, however, be occasions where it would be in the interests of the victim and the children to be protected from that person and so that should be an option. One respondent felt that a condition within the DAPO for the person subject to the order not to approach or contact any associated children should only be imposed in the worst cases and should be monitored closely by police/courts and removed/reduced as behavioural/attitudinal change improves.

NSPCC suggest clarity is needed where the PSNI would be expected to take into account the welfare of any person under the age of 18 whose interests the officer considered relevant to the giving of the notice, such as any children of the victim/person subject to the order, as well as where PSNI and courts will be required to consider the welfare of any children that are members of the victim's household as part of making the DAPN or DAPO. They consider that it is currently unclear whether it is intended to consider only the welfare of children of the victim/ person subject to the DAPO, or all children who normally reside with the victim/ person subject to the DAPO. They suggest that a legislative obligation is included in the DAPN and DAPO framework to ensure, in law, that the welfare of all children who are impacted upon by a DAPN or DAPO are a paramount consideration of the PSNI and courts.

Two respondents, both members of the public, did not agree that it should be open to the courts to impose conditions within the DAPO requiring the person subject to the order not to approach or contact any associated children. One respondent gave no reason for their answer while the other suggested they may be open to abuse and prevent children from seeing their parent.

***Given support in relation to this proposal, the Department intends to make provision to enable the courts to impose conditions within a DAPO requiring the alleged perpetrator not to approach or contact any associated children. Further detail will be set out in regulations and we will give consideration to issues raised by consultation respondents as part of this, with further engagement***

***where necessary.***

**Question 12:**

**Should provision be made that would, in the longer term, enable courts to be given an express power to impose electronic monitoring as a condition of a Domestic Abuse Protection Order (DAPO)?**

Of the 35 respondents who answered this question, 25 (71%) agreed that provision should be made that would, in the longer term, enable courts to be given an express power to impose electronic monitoring as a condition of a DAPO.

Most of the 25 respondents see this as a welcome move, some believing it should only be for extreme cases but more generally that it needs to be proportionate as it is viewed to increase the protection offered to the victim. It was recognised that appropriate risk management would be important to be able to control and effectively lower the risk to those victims at risk of serious harm and death especially in relation to repeat offenders who have a history of domestic abuse and breach of orders.

It was also pointed out that electronic monitoring has been proven to be an effective management tool in other areas of offending and the power to impose electronic monitoring as a condition of a DAPO has already been established through use in other jurisdictions. However, it was considered that this should not replace monitoring of offenders by police and the probationary service but should supplement it.

For those who support the provision, it was thought that tagging and monitoring would give additional safety and assurances and allow victims to remain in their own homes safely and without fear, especially if the court has imposed conditions in relation to restricting the movement of the offender.

PSNI noted that, whilst they support any legislative provisions which protect victims of domestic abuse and strengthen the powers to take action, it is essential that this is also proportionate, appropriate, lawful and necessary. They are of the view that any action would need to be considered alongside other legislative provisions and associated costs of implementing this factored into decision making.

Victim Support NI also highlighted that, given that such measures may involve

encroachment on a person's right to privacy, any such system must be proportionate and include safeguards to ensure the adequate balancing of the safety rights of the victim(s) and the privacy and liberty rights of the person subject to the order, particularly if that person has not been convicted of a related crime. They considered that this balance is most delicate when considering that DAPOs and DAPNs are civil orders and in most cases the person subject to the order will not have been convicted of a crime. Similarly, other respondents raised potential human rights issues for the person subject to the DAPO. One respondent suggested that the pilot of such a scheme may uncover issues and benefits which could be evaluated before a permanent power is introduced. It was also noted that the proposal would have resource implications for the PSNI to effectively implement and monitor electronically tagged persons.

One respondent believed that separate consideration is warranted given the gravity of the proposed condition and that greater discussion is needed to explore benefits of not introducing such a restrictive measure. Another respondent noted that broader consideration may be required to establish how that might be done proportionately in cases where no breach has yet taken place or no criminality has been established.

Four respondents (11%) did not agree that provision should be made that would, in the longer term, enable courts to be given an express power to impose electronic monitoring as a condition of a DAPO. Two provided reasons for their response and two did not.

The Bar noted that conditions imposed as part of the DAPO must be proportionate and raised concerns about an individual who is not formally accused of committing a criminal offence being electronically monitored. They noted that electronic tagging of an individual to monitor their whereabouts would be a clear invasion of privacy which needs to be justified. Furthermore, they referred to the consultation paper which referenced that DAPOs could be in place for lengthy periods of "six months to one to two years" or potentially longer with a condition attached for electronic monitoring. The Bar considered that this was not proportionate when there is no finding of fact, conviction or admission by the person subject to the DAPO. Alternatively, they suggested that consideration could be given to a system similar to bail reporting



conditions where there is appropriate or increased contact and communication between the police/victim and/or patrolling of the area for the duration of the order.

Sinn Fein also highlighted the importance of ensuring that conditions are proportionate and compliant with human rights. They noted that further information would need to be provided on the type of technology that would be used and whether it would be 24/7 monitoring of an individual, or monitoring in certain geographical locations.

Sinn Fein reiterated the point made by other respondents that an individual subject to a DAPO which has not been ordered in a criminal court will likely not have been convicted of any offences, and that this could impinge on their right to privacy, the right to a personal and family life and the right to a fair trial which may be considered disproportionate and unjustifiable.

It was considered that the Department should do further work to produce an evidence base which identifies a precedence for electronic monitoring in such circumstances; if it has been in place in other jurisdictions then detail about where and how it has worked; and evidence of how it will successfully increase compliance. It was also noted that the Department should conduct a detailed human rights analysis as to whether such a measure would be compliant with ECHR rights.

***We note the mixed views provided by respondents in relation to electronic monitoring. Given the concerns raised and the potential human rights implications, further consideration will be given to this matter ahead of any introduction in the longer term, as suggested by respondents. We would also conduct a human rights impact assessment on this matter and engage further with key stakeholders including the Northern Ireland Human Rights Commission, before reaching a decision on whether provision should be made, in the longer term, to enable courts to be given an express power to impose electronic monitoring as a condition of a DAPO. Any such change could be brought forward by secondary legislation.***

**Question 13:**

**What safeguards should be put in place relating to any use of electronic monitoring with Domestic Abuse Protection Orders (DAPOs)?**

There were 30 responses to this question, which relates to possible future consideration of electronic monitoring. A common theme was that there needs to be clear guidance on when any electronic monitoring would be applied, appropriate training to consistently monitor, along with sufficient resources and reviews on effectiveness to be put in place. Some felt that electronic monitoring should only be used if a previous order was abused or where the risks are severe and involve physical violence.

Other comments suggested that, given the potentially severe ramifications to liberty and ability to conduct day to day routines if an individual is to be monitored or tagged, the use of electronic monitoring should only be when an appropriate threshold has been met, that it should be time limited and be proportionate and fair and that any actions are lawful, necessary, proportionate and appropriate against a person subject to an order.

It was suggested that consideration should be given to the full circumstances of the incident giving rise to the DAPO; the offending history of the person subject to the DAPO; the likelihood of further abusive behaviour; the perceived risk to the victim; the attitude of the person subject to the DAPO; and whether any risk to the victim could be adequately managed by any other means.

Respondents considered that a review of the need for continued use of electronic monitoring would be needed, especially if the order were to remain in place for some time, and that engagement in any positive requirements and the absence of any further incidents would also be important factors for consideration in any safeguarding review.

Safeguards such as the right to legal representation for the person subject to the DAPO, the right to make representations, the right to apply to vary the DAPO and a right of appeal were all raised as suggestions.

It was noted that there is a need to balance and safeguard the rights of those to whom a DAPO would apply and that all subjects should be clearly informed of the conditions of it, how the monitoring works, their obligations with regards to the monitoring, the boundaries and parameters of any exclusion zones and clear time limits to how long monitoring will last needs to be a consideration.

A number of respondents noted that for any electronic monitoring to be effective and capable of safeguarding victims, providing them with peace of mind, that monitoring would need to be robust with sufficient resources.

The Northern Ireland Human Rights Commission (NIHRC) reiterated that any monitoring must be consistent with human rights law, in particular Article 8 ECHR and that a human rights impact assessment would be useful in this regard. The NIHRC also recommended that the Department provides further clarification on the statutory safeguards that would be used if electronic monitoring is implemented and that these reference human rights standards, in particular consideration of Article 8 ECHR.

***As set out under question 12, we recognise that further work needs to be carried out before reaching a decision on whether provision should be made, in the longer term, to enable courts to be given an express power to impose electronic monitoring as a condition of a DAPO. The suggestions raised in relation to safeguards will be considered further as part of future work in this area, and a human rights impact assessment will be conducted of any future proposals, in line with the suggestion of NIHRC.***

**Question 14:**

**Do you agree that breach of the proposed Domestic Abuse Protection Order (DAPO) should be a criminal offence?**

Of the 35 respondents who answered this question, 33 (94%) agreed that breach of the proposed order should be a criminal offence.

PBNI stated that this is congruent with breaches of SOPO / VOPO and allows for immediate arrest by the PSNI. Most agreed that breaches should be taken seriously and making all breaches a criminal offence would highlight the serious nature. It was considered that it would also encourage individuals to comply with DAPOs and act as a deterrent to breaching the order, otherwise it would be ineffective. It was also noted that victims need to have confidence in the system put in place to protect them.

The Law Society of Northern Ireland noted that not imposing a criminal sanction for breach of a DAPN or DAPO would not only undermine the principle of the new statutory orders but retreat from the now well-established practice that breaches of orders in domestic violence cases warrant societal disapproval by way of criminal penalty. They considered it central to the task of dealing with domestic abuse that the serious conduct it encompasses should be punished and that those who are subject to orders restraining their conduct and who then break those orders must confront the consequence of their actions. It was also noted that to remove a criminal penalty might well send out the wrong message.

Derry City and Strabane District Council also agreed that any DAPO should have effect throughout the UK as it should be an offence to breach it while in another part of the UK. The Council also suggested that the Department works closely with its counterpart in the Republic of Ireland and with An Garda Síochána (AGS) to ensure that the orders can be enforceable in all parts of Ireland. It was considered that this is particularly important for domestic abuse victims in border locations. Similar comments were received from Derry and Strabane Policing and Community Safety Partnership.

PSNI agreed that breach of the proposed order should be a criminal offence. They

considered that it was essential that there are stringent potential outcomes in order for the provisions to be effective, to be taken seriously and to best support victims. They also pointed out there will be resource and financial demand implications for PSNI, but that it was appropriate to ensure the highest level of safeguarding towards a victim of domestic abuse.

The Bar pointed out that, regarding a breach of a DAPO or DAPN, the person subject to the notice or order must know of their existence and the victim should be informed immediately once it has been served on them. It was also considered that a person subject to an order should also be made aware of the consequences that may follow the breach of any order. In addition, if criminal sanctions are to be imposed for breach of an order, the Bar noted that it is important that the individual subject to the order has had an opportunity to make representations. It was noted that the proposed orders could have significant and far-reaching impacts on an individual's daily life and, therefore, the process must include a mechanism for hearing from the individual before imposition and detail as to how the order may be appealed.

VSNI commented that making breach of DAPNs and DAPOs a criminal offence is in keeping with current justice policy which makes breach of other orders such as Non-Molestation Orders is a criminal offence. They also noted the role of protective measures in terms of compliance with the Istanbul Convention.

PPS notes the credibility of the process would be compromised unless the penalty for breach of the proposed order is a criminal offence with a power of arrest. ***We note the strong support for a breach of the proposed order being a criminal offence and intend to proceed on this basis.***

**Question 15:**

**If you do agree that breach of the proposed Domestic Abuse Protection Order (DAPO) should be a criminal offence, should it be possible for breach to alternatively be punished as a contempt of court?**

Of the 33 responses who answered this question, 14 (37%) agreed that breach of the proposed DAPO should be a criminal offence, and that it should be possible for breach to alternatively be punished as a contempt of court.

There was general agreement that this should be an option if the victim requests the approach and the court considers it to be in the victim's and, where appropriate, any children's interests; however, there was concern regarding the ability for the victim's consent to be given freely as they may be at risk of coercion to agree to the contempt of court route so that the person subject to the order avoids a criminal conviction.

Alternatively, one comment noted that it should also be possible for a breach to be punished as a contempt of court so that the possibility of criminal action does not deter victims from applying for a DAPO or from reporting breaches.

PPS noted that this alternative is rarely exercised in Northern Ireland, if at all, and offered to conduct further enquiries into the use of contempt proceedings in Northern Ireland should the Department consider this to be practical. ***We agree that this would be useful and will engage further with PPS on this matter.***

Nine respondents (24%) did not agree that breach of the proposed DAPO should be a criminal offence and that it should be possible for breach to alternatively be punished as a contempt of court. These respondents considered that contempt of court was not serious and that breaches need a robust response. It was considered that a clear message with effective sanctions needs to be utilised to deter breaches. Other issues were raised with contempt of court, such as it being a very cumbersome process which would disempower the police to be able to tackle abuse when it is happening.

Four respondents (10%) did not know, six (16%) respondents had no answer and five (13%) did not answer the question: however, some of these respondents provided

some narrative to explain their thinking as a further eight comments were received. A number of those respondents acknowledged that it could potentially be problematic. For the sake of clarity and certainty the Law Society suggested that it may be easier to simply establish that breach of a DAPN or DAPO is a criminal offence.

VSNI noted that it may be useful for this option to exist in cases where victims are put in a difficult position where they genuinely don't want their partner to be criminalised for their behaviour. However, on balance, the dangers posed for such a provision to be open to abuse and manipulation of victims by abusers, and the pressure that may be put on victims to ask for contempt of court instead of criminal breach, makes it a less effective option and so they would be inclined to support the criminalising of breach as standard.

***We recognise the mixed views received in relation to this question and will engage further with stakeholders, including PPS who has offered to conduct further enquiries into the use of contempt proceedings in Northern Ireland.***

**Question 16:**

**Do you agree that courts should have flexibility in determining how long to impose a Domestic Abuse Protection Order (DAPO) for?**

Out of the 31 respondents who answered this question, 28 (90%) agreed that courts should have flexibility in determining for how long to impose a DAPO.

These respondents recognised that every case is different and that the length of the DAPO should depend on the level and type of abuse involved and should be proportionate to risk. It was agreed that courts should have flexibility in determining for how long to impose a DAPO, taking account of the particular circumstances of the case. It was also noted that the court is best placed to determine the duration of the DAPO as the court will be making this decision once all the information and circumstances have been considered.

Some respondents highlighted that, if positive requirements are attached to the DAPO, that the courts will need flexibility in determining its length.

Some respondents agreed with the question but noted that it may be preferable for a set or minimum timeframe to be specified to avoid disparity between Judges/courts. They also considered that an ability to enforce a short or flexible time frame would reduce the validity of the order and could lead to multiple applications for variance or discharge.

Three respondents, members of the public, did not agree that courts should have flexibility in determining how long to impose a DAPO for, with one these considering that they should be in place for life.

An additional seven respondents did not answer this question either way; however, a number of these provided some narrative to explain their thinking. For example, the Bar noted that the consultation suggested that DAPOs “could be in place from around six months to one to two years but could be longer where necessary or proportionate”. They considered that this appeared to shift the emphasis away from emergency protection to something which operates on a much longer-term basis and



recommended that a 48 hour DAPN, potentially then extended by the court for up to 28 days, would be more useful in helping to fill any gaps in the provision of protection on a short-term basis, rather than creating yet another layer in the form of a DAPO as a substitute for more appropriate long-term remedies that already exist. If DAPOs are taken forward then they agreed that the court should specify the period for which it would be in place. In addition, the Law Society noted that the legislation should give clear and unambiguous guidance for the making and duration of orders so that there is consistency of approach by the judiciary.

***We recognise the support for the courts to have flexibility in determining the duration of a DAPO and the draft regulations will reflect this. It would be for the court to determine the length of the order, depending on the particular circumstances of the case. There will not be a set time period for which the order would apply; rather it would be dependent on the circumstances of the case. While it is not appropriate for the Department to issue guidance to the judiciary, as this would impinge on judicial independence, the Department will engage with the Judicial Studies Board on this matter. Given the need to respond on a case by case basis, we do not consider that it is appropriate to set a specific minimum timeframe for a DAPO.***

**Question 17:**

**Do you agree that courts should be able to vary or discharge Domestic Abuse Protection Orders (DAPOs) either of their own volition or at the request of the victim, or alleged perpetrator, or the applicant?**

Out of the 30 respondents who answered this question, 19 (63%) agreed that courts should be able to vary or discharge DAPOs. Some of those respondents answering 'yes' limited their support to the court being able to vary or discharge DAPOs of their own volition, but not at the request of the victim or the person subject to the order.

Conversely, it was considered by some respondents that while requests raised by the victim and person subject to the order will require careful consideration there should nonetheless be scope for this to happen. PBNI also noted that while it fundamentally believed in people's capacity to change there would need to be safeguards put in place to ensure a victim is not being coerced to apply to the Court for vary / discharge of the order. ***(See question 18 for views on safeguards which could be put in place).*** Another respondent agreed with this view and added that, where an offender requests that an order be less onerous or strict, the court should seek the views of the victim and/or the third party before any relaxation or variance to the order.

The Bar agreed that the courts should be able to vary or discharge DAPOs either of their own volition or at the request of the victim, person subject to the order or the applicant, subject to some form of criteria, for example, when satisfied that to do so would not cause any harm to the victim or their children. A further respondent considered that the order should only be varied in very specific circumstances.

Nine respondents, made up of members of the public and organisations supporting victims, were of the view that the courts should not be able to vary or discharge DAPOs either of their own volition or at the request of the victim, person subject to the order or applicant, due to undermining the seriousness of the measure and potentially leaving the victim or survivor open to pressure from their abuser.

Two respondents answered that they did not know whether courts should be able to vary or discharge the DAPO given that this is a complex issue, subject to a number of

variables, and the need to be cautious regarding potential pressure being placed on victims to agree out of fear or manipulation (where an independent risk assessment should be carried out and recommendations made on that basis).

A further eight respondents chose not to answer the question either way, but some provided some narrative to explain their thinking. For example, one of these respondents noted that the courts would have to be content that the abusive behaviours were no longer present, that the risk was mitigated and that the victim was not coerced (with appropriate safeguards needed).

***We consider that courts should have the ability to vary or discharge a DAPO, in line with existing protective orders. We propose that applications to vary or discharge a DAPO could be made by:***

- ***the person for whose protection the order was made;***
- ***the person against whom the order was made;***
- ***the person who applied for the order; or***
- ***the police (if they did not apply for the order).***

***In addition, we propose that before deciding whether to vary or discharge a DAPO, the court must hear from the police (if they wish to be heard) and the person for whose protection the order was made, if they are the person seeking to get the order discharged or made less onerous.***

***The draft regulations will state that the court may include an additional requirement in the order, or extend the period for which the order, or a requirement imposed by the order, has effect only if satisfied that it is necessary to do so in order to protect the person, for whose protection the order was made, from domestic abuse or the risk of domestic abuse. The regulations will also state that the court may remove any requirement imposed by the order, or make such a requirement less onerous, only if satisfied that the requirement as imposed is no longer necessary to protect the person for whose protection the order was made from domestic abuse, or the risk of domestic abuse. If it***

***appears to the court that any conditions necessary for a requirement to be imposed are no longer met, the court may not extend the requirement, and must remove the requirement. The court may discharge the order only if satisfied that the order is no longer necessary to protect the person for whose protection it was made from domestic abuse, or the risk of domestic abuse.***

***In addition, the court will also be required to consider the welfare of any associated children and the opinion of any relevant occupant of the premises lived in by the person for whose protection the order was made.***

**Question 18:**

**What safeguards should be put in place to ensure that the Domestic Abuse Protection Order (DAPO) is not varied or discharged because the victim is being pressurised by the alleged perpetrator?**

30 respondents answered this question and provided views on safeguards that should be put in place to ensure that the DAPO is not varied or discharged because the victim is being pressurised by the person subject to it. Respondents considered that, in cases where a victim requests that a DAPO is varied or discharged, there should be an assessment by third party professionals involved with the victim and the person subject to it (e.g. Women's Aid, Victim Support, Safeguarding services and PBNI) to identify if the request is being made out of fear or manipulation, and to identify the level of risk inherent in varying or discharging the DAPO. One respondent considered that family, friends and support groups (sheltered dwellings) should be asked to provide a view on whether victims are being pressurised by their abuser.

In relation to requests from the person subject to the order to vary or discharge it, it was suggested that the court should consider the view of the victim and whether there is a history of manipulation or complaint withdrawal, or if there is any evidence of breach of the order that has not been reported by the victim. Other respondents suggested that the victim should be given the opportunity, in a safe environment, to respond to such requests and any children of the victim should also be asked for their views.

Some respondents recognised that there is always the potential that DAPOs are relaxed, varied or discharged as the result of the victim being coerced, intimidated or pressured by the offender. It was suggested that, in order to reduce the risk of this, the court should only relax or discharge the DAPO when it is totally satisfied that it is appropriate to do so. They also considered that if the order is relaxed or discharged and the abuser reoffends then a new DAPO should be introduced with more stringent conditions. It was highlighted that the victim should always be at the centre of any court decisions and any variance to the DAPO should be to the benefit of the victim. A further suggestion made was that testimonials should be received to vouch for the

behavioural/attitudinal change of the person subject to the order before any change to the DAPO is agreed.

The importance of the judiciary recognising the signs of coercive and controlling behaviour was also highlighted and it was noted that guidance would be needed which sets out that whilst the views of the victim are taken into consideration that this would not automatically mean the provisions would be removed or discharged. It was considered that this would remove the onus from the victim and would potentially reduce the occasions where further offences may be committed against them.

***The Judicial Studies Board is making provision to raise awareness amongst the judiciary of the new domestic abuse offence, which captures non-physical abusive behaviours. Further discussions will be held with the Board around raising awareness in relation to DAPOs. It will be for them to then consider the appropriate format of any awareness raising or training.***

One respondent suggested that those subject to the order should be required by courts to attend for assessment for suitability/motivation to attend domestic abuse-behavioural change programmes. It was considered that their capacity to meaningfully engage and make changes should be a prerequisite to variation or change of the DAPO. It was also noted that victims should also be provided with opportunities to engage in support services.

It was noted that police taking forward orders, as well as third party applications, would reduce the burden the victim. However, there was concern that in terms of variation or discharge of orders that this may place increased pressure on victims. Other respondents had a similar view and re-emphasised their response to question 17 by noting that the DAPO should not be allowed to be varied or discharged under any circumstances. These respondents felt that there should be no availability to vary the DAPO as victims are at high risk of being re-abused even when orders are imposed and may be coerced by the abuser to have the orders discharged.

As set out under question 17, some respondents advised that concerns had been raised by stakeholders that this provides the perfect opportunity for the further

manipulation and abuse of a victim, and if this provision is proceeded with then there must be robust safeguards in place to ensure that the DAPO is not varied or discharged as a result of being pressurised by the person subject to the order. They suggested that such safeguards could include the need for an independent evaluation/assessment by a social worker, or someone outside of the justice system. They also considered that the Department should do more work on this and produce further proposals for safeguarding options.

***We agree that further consideration should be given to this area, including what safeguards should be in place, as part of the work on drafting the regulations.***

***As noted under question 17, we recognise the concerns raised about the ability for courts to vary or discharge a DAPO. We note that some respondents consider that a DAPO should not be varied or discharged under any circumstances. However, we consider that that courts should have the ability to vary or discharge a DAPO, in line with existing protective orders. Consideration will be given to what safeguards can be included in the draft regulations to ensure that the DAPO is not varied or discharged because the victim is being pressurised by the person subject to the order. For example, before deciding whether to vary or discharge a DAPO, the court must hear from the police (if they wish to be heard) and the person for whose protection the order was made, if they are the person seeking to get the order discharged or made less onerous. In addition, the court may include an additional requirement in the order, or extend the period for which the order, or a requirement imposed by the order, has effect, only if satisfied that it is necessary to do so in order to protect the person, for whose protection the order was made, from domestic abuse or the risk of domestic abuse. Similarly, the court may remove any requirement imposed by the order, or make such a requirement less onerous, only if satisfied that the requirement as imposed is no longer necessary to protect the person, for whose protection the order was made, from domestic abuse or the risk of domestic abuse. If it appears to the court that any conditions necessary for a requirement to be imposed are no longer met, the court may not extend the requirement, and must remove the requirement. The court may discharge the order only if satisfied that the order***

***is no longer necessary to protect the person for whose protection it was made from domestic abuse, or the risk of domestic abuse.***

***In addition, the court will also be required to consider the welfare of those under the age of 18 whose interests the court considers relevant in varying or discharging the order.***

***The Department fully recognises the importance of having appropriate safeguarding measures in place to ensure that victims are not pressurised by the person subject to the order with regards to the varying or discharge of an order and will, therefore, give further consideration to safeguarding matters in preparing the regulations.***



**Question 19:**

**Do you have any views about how the Domestic Abuse Protection Notice (DAPN) / Domestic Abuse Protection Order (DAPO) process can contribute to better perpetrator management?**

Twenty-one respondents provided a response to this question with these respondents generally agreeing that the proposed enhanced legal protections for victims have the potential to both support victims and also contribute to better management of abusive behaviours, through prohibitions (and any future positive requirements) placed on those subject to the orders. One respondent felt that there is a need to temper expectations as to the efficacy of offender management programmes and to ensure that the ongoing protection requirements for victims and their children are not neglected. Another felt that there would need to be strict statutory guidance in relation to the application of positive requirements. Another respondent considered that both prohibitive and positive requirements should be consistent, measured and monitored. They also stressed that training and funding needs to be put in place to enable agencies to carry out such monitoring. It was also noted that there would need to be strict statutory guidance in relation to the application of particular positive requirements.

It was also suggested that the person subject to the order should, similar to PPANI arrangements, be subject to spot checks as to their whereabouts and compliance with the conditions of the order.

One respondent considered that the DAPO process, as outlined in the consultation paper, offers some hope for better co-ordination and information sharing between statutory agencies charged with the protection of victims and their families. However, it was also noted that the core agencies charged with taking this important work forward are already under-resourced and struggling to manage existing workloads accordingly. Another respondent agreed with this view and considered that additional training and resources are needed for these new measures.

It was recommended that best practice from other jurisdictions be identified, and learnt from, in relation to managing abusers. Hourglass noted that better offender

management, in the case of abuse of older people, requires further knowledge and suggested that fully funded research should be conducted, supported by experts and informed by the experience of specialist support services such as Hourglass.

One respondent noted that the introduction of DAPNs and DAPOs would be a further tool in the area of “early intervention”.

***We note the comments made by respondents in response to this question. As noted in the consultation, adding positive requirements to DAPOs will form part of a longer term piece of work. We will give further consideration to the matters raised by respondents when taking this forward.***

**Question 20:**

**How can we ensure that the alleged perpetrator is not able to use the Domestic Abuse Protection Notice (DAPN) / Domestic Abuse Protection Order (DAPO) process to further abuse a victim?**

Twenty-seven respondents provided views on how we could ensure that the alleged perpetrator is not able to use the DAPN/DAPO process to further abuse the victim. However, many of these respondents noted that this would be difficult to ensure and that, ahead of imposing DAPNs or DAPOs, careful consideration of all of the facts of the case is needed as well as support for victims.

Another respondent felt that much will hinge upon the quality of information, risk assessment and supporting material placed in front of the court and also upon the training and support provided to the judiciary. The need for appropriate training for those involved with the orders was also highlighted. Strict monitoring of the order, enforcement and consequences for breach were also considered essential. It was suggested that the victim needs to be informed of any conditions applied to the DAPN or DAPO and that ongoing engagement with the victim should take place to enable them to raise any concerns about compliance. One respondent suggested that the Department learn from best practice elsewhere.

A concern was raised by one respondent that there are currently victims and abusers who both have Non-Molestation Orders in place. They suggested that the Court would need to have sufficient evidence so that the abuser would not be able to get the protection of the Court through a DAPO to further abuse their victim. Similarly, another respondent noted that, where there are counter allegations, it would be important to seek views of any third party agencies and check the previous history of abusers.

The Public Prosecution Service considered that sufficient safeguards are built into criminal proceedings to ensure that a DAPO cannot be used to further abuse a victim. It was advised that prosecutors will receive training and guidance which should provide further safeguards.

Another respondent noted that there is a need to be fully aware of, and explore, the

impact of coercive controlling behaviour.

***The importance of recognising non-physical abusive behaviour will be set out clearly in DAPN and DAPO guidance.***

Other respondents reiterated their view that restricting third-party applications to the PSNI could avoid DAPOs being used by a person subject to the order to further abuse the victim, as the PSNI have investigative powers which other organisations do not have. Others repeated concerns that DAPO applications by third parties could be open to abuse, particularly if taken without the consent of the victim, and that a system of adequate checks and balances should be put place for DAPOs being applied for by third parties. ***(See questions 5 and 6 for further views on third party applications.)***

***To make a DAPO, the court will need to be satisfied on the balance of probabilities that the person subject to the order has been abusive towards the alleged victim. They will also need to be satisfied that the order is necessary and proportionate to protect that person from domestic abuse, or the risk of domestic abuse, carried out by the person that is subject to the order.***

**Question 21:**

**It is intended to pilot Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs) in two geographical locations. Do you have any views on this?**

Twenty-seven respondents had views on the proposal to pilot DAPNs and DAPOs in two geographical locations.

A number of these respondents considered that this was a reasonable approach and that it was best practice to undertake a pilot to ascertain the impact of a proposed change and ensure lessons learned shape the model for implementation. Some respondents considered that it would be disadvantageous for victims who are not covered by the pilot areas, while others stated that it would need to be time limited. Two respondents suggested that the pilot should last for no more than one year, whilst the Bar considered that it would be very important to pilot the proposed new orders for at least two years and to thoroughly evaluate their operation. The NIHRC raised concerns that the length of time proposed of between one to two years was too long and would delay the immediate support needed to protect victims of domestic abuse.

It was also suggested that parallel processes to prepare for regional rollout should be ongoing from the beginning of the pilot, including securing the necessary finances. Some respondents also considered that assessment of the pilots could take place in parallel to them being run, with reviews every six months and feedback shaping the regional rollout so that by the time the pilot comes to an end a full rollout can happen swiftly.

One respondent suggested that a pilot should be carried out in every area and another considered that further research should be carried out on the strengths and weaknesses of a pilot. Other respondents, including Women's Aid, noted that they would prefer that DAPNs and DAPOs were rolled out across the whole of Northern Ireland from the outset, while NIHRC stated the need to ensure DAPNs and DAPOs can be accessed by all victims of domestic abuse without further delay.

A potential logistical problem was raised in a scenario where the victim moves

between two areas, one of which is a pilot area and the other is not.

***It should be noted that any pilot would likely be based on where offences take place as opposed to where an individual lives.***

***We consider that DAPNs and DAPOs should be piloted in two areas (urban and rural) to ensure lessons can be learned to shape the model for implementation. We have noted concerns about the length of the pilot period but consider that this needs to be long enough to give an indication of costs and to properly test the model. We therefore consider that the pilot period is likely to be 12 – 18 months. Other preventative and protective orders will continue to be available for victims in non-pilot areas during this time. We also agree that the evaluation of the pilots should be dynamic, with ongoing reviews during the operation of the pilot to minimise delay in any roll out of DAPNs and DAPOs at the end of the pilot period.***

**Question 22:**

**Do you have any views as to the two locations that Domestic Abuse Protection Orders (DAPOs) could be piloted in, possibly Belfast and one ‘more rural’ area (dependant on numbers)?**

26 respondents expressed views in relation to the two locations that DAPOs could be piloted in. A number of respondents agreed that there should be a pilot in a rural area and an urban area as the challenges of protecting victims and monitoring abusers are quite distinct. It was also suggested that PSNI statistics should be used to determine areas with the highest levels of abuse and that PSNI should be involved in deciding the areas for the pilots.

One respondent felt that choosing an area where incidents of domestic abuse are unusually high or low may give over or under inflated indications of cost and this should be considered when selecting the pilot areas. Another respondent considered that there should be three rather than two areas piloted, due to diversity of populations across Northern Ireland.

Once the pilot areas have been agreed, it was considered that the local Area Commander and their officers should be appropriately briefed so that they fully understand the circumstances, criteria and the people against whom such orders could be used. ***We will be liaising closely with justice partners in terms of both the location of pilot areas as well as the operationalisation of the new measures.***

Derry City and Strabane District Council and Derry City and Strabane Policing and Community Safety Partnership (PCSP) were keen that their district was one of the two geographical pilot areas. The reasons given for this included that the Council area has a substantial urban population surrounded by a large rural hinterland and that it consistently records high levels of domestic abuse incidents and crimes. Other specific areas suggested included Belfast, Fermanagh area, Armagh, Newry and Craigavon. One respondent noted that Craigavon and Belfast court areas are not currently involved in the Enhanced Combination Order roll out and choosing these areas would allow these Courts be involved in new types of ‘business’ without stretching resources.

One respondent considered that, as well as a rural and urban location for the pilot, there should be consideration of a high uptake area for other protective orders, including Non-Molestation Orders and a low uptake area. Another respondent felt that MARAC numbers could be a useful indicator of need in geographical areas, which could be of use when deciding on pilot areas.

***We will engage with PSNI and NICTS to agree the most suitable areas for the pilot. With regards to the pilot in an urban area, the area likely for consideration is Belfast or Derry/Londonderry, given the views raised by respondents.***



**Question 23:**

**Do you have any other comments you wish to make regarding the introduction of Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs)?**

Twenty-one respondents answered this question.

It was recommended that a task and finish group should be set up to consider in full the application and management of DAPNs and DAPOs to avoid potential unintended consequences and ensure proper governance is applied. It was also suggested that an oversight body or a joint working group should be formed with the Department of Justice, Department of Health, PSNI, PPS, NICTS, legal representatives, HSC Trusts and specialist services to consider further research around the effectiveness of these new orders and to monitor their implementation.

***We will further consider establishing a multi-agency task and finish group to help inform policy development and plan for the pilots as well as the need for an Oversight Group.***

The Law Society believed that it is essential that these new notices and orders are dovetailed into current Non-Molestation Orders, and there should not be confusion as to when they should be used or how they should be used. It was considered that clear unambiguous guidance will be required. ***We can confirm that clear guidance will be prepared. Other protective orders will still be available.***

The Bar asked what rank of police officer would be required to make a DAPN. ***We can confirm that this would be at least the rank of Inspector.*** The Bar also noted there is no reference in the consultation paper as to how decision making by the PSNI will be documented to ensure consistency. ***This will be discussed further with police ahead of the pilots being launched.***

The Bar encouraged a further evaluation of the various protective measures currently available to be undertaken to ascertain whether they are being fully utilised, any barriers which are preventing their successful operation and any gaps in provision to

ensure that new measures can be designed to be as effective as possible before the introduction of DAPOs. The Bar also asked for further information around how the number of Non-Molestation Orders, Occupation Orders, DAPNs and DAPOs will be recorded. They considered that there is the potential for significant duplication and confusion with this new system and therefore it would be useful to understand whether there will be a register of court orders and who will have access to this. The Bar also queried how a victim and/or a third party can ascertain if a DAPN and/or DAPO has been granted against an individual, whether this will fall within the remit of the Domestic Violence and Abuse Disclosure Scheme and stated that it was unclear how any breaches of the DAPNs and DAPOs will be recorded.

***We will consider these issues further as we prepare the regulations and will consider whether any further engagement is needed with relevant parties. With regards to the Domestic Violence and Abuse Disclosure Scheme this will continue to operate as at present, as part of which consideration would be given to the risk posed to an individual ahead of making a disclosure in terms of both convictions and any other relevant information.***

It was suggested that it would be useful for the DAPN/DAPO process to trigger a referral to a support organisation so that victims have support and assistance during this period. It was considered that this may also help to act as a counterweight against perpetrator manipulation. Where the DAPN/DAPO process is triggered by the police consideration would be given to the need for referral to appropriate support organisations. ***This matter can be considered further during the development of the pilots.***

NIHRC noted that an application for a DAPO by a third party would not require the victim's consent and raised concerns that, considering the dynamics of domestic abuse, if the order is granted without the victim's consent, it could be breached by the victim themselves and used against them in later court proceedings. ***This is something we will consider further when drafting the regulations.***

The Department of Education noted that consideration needs to be given to the needs of the children within families where a DAPN or DAPO has been made and how this

will be managed to protect their physical and emotional health and well-being. One respondent asked for confirmation on who will apply for DAPO in the Magistrates' court. ***We can confirm that this will be PSNI where this follows a DAPN.***

Queries were also raised about taking into consideration the views of victims in the process.

***Guidance will clearly state that in taking forward an application, consideration should be given to the views of the victim, where this is available to the court. This will also be provided for in terms of the regulations.***

The Bar noted that the introduction of DAPOs would see applications made by either the police in a District Court/Magistrates' Court or potentially specified parties in the family court. It was also noted that it was unclear from the consultation paper whether a DAPO application should be made to the District Judges (criminal or civil) or the Family Proceedings Court if there are children involved. In terms of criminal proceedings, it was noted that the consultation paper is silent in relation to where both police and court bail conditions would fit within any DAPO. ***We will consider these issues further with justice partners, during development of the draft regulations.***

The Bar noted that the consultation suggested that the DAPOs "could be in place from around six months to one to two years but could be longer where necessary or proportionate" and expressed concern that this appears to shift the emphasis away from emergency protection to something which operates on a much longer-term basis. They made comparisons with the provisions for DVPOs which could be in force for up to 28 days.

***We consider that the court should have flexibility in determining the length of a DAPO and, given that every case is different, that the length should depend on the level and type of abuse involved and should be proportionate to risk. This would not be dissimilar from protection that is provided through Non-Molestation Orders, for which the court determines the time period for which they are in place. This view was shared by the majority of respondents who answered question 16.***

The Bar also queried whether a victim could apply for a Non-Molestation Order or Occupation Order at the same time as having a DAPN in place. ***We do not expect that multiple types of protection orders would be applied for at the same time.***

A further query raised by the Bar related to what might happen if a DAPN is in place but lapses and no application is made for a DAPO and whether a victim might subsequently be disadvantaged or find it difficult to apply for a Non-Molestation Order at a later stage.

***We can confirm that the intention would be that where a DAPN is served by the police that this would be followed by a DAPO, assuming there is no change in circumstances.***

It was also noted that there were likely to be differences in the approach taken by criminal and civil courts in making DAPOs. ***Regulations will include detail around conditions and matters to be considered across the court jurisdictions.***

The Bar also asked, if PSNI is not making an application for DAPO, to which family court other applications would be made.

***This will be considered further during the development of regulations: however, it is currently anticipated that, in most cases, there will be an application to a Domestic Proceedings Court unless there are connected proceedings in another court.***

A number of other issues were also raised which we will consider further as part of the policy development process and we will hold further discussions with respondents as required.

**Question 24:**

**Do you have any comments to make on the potential implications the introduction of Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs) may have on equality, in terms of the impact of the proposals for different groups?**

28 respondents provided comments on the potential implications the introduction of DAPNs and DAPOs may have on equality. It was agreed that these orders need to be available to all victims of domestic abuse regardless of gender, disability, ethnic origin, etc.

One respondent expressed concern that a male seeking a notice would not be taken as seriously as a woman, whereas another considered that DAPNs and DAPOs had the potential to significantly strengthen protection of victims and survivors of domestic abuse, thus contributing to equality between men and women in particular.

It was also noted that it was important to consider that domestic abuse does not only arise within the context of heterosexual relationships and that protection requirements for victims from the LGBTQ community also need to be proactively asserted. It was also noted that domestic abuse is frequently underpinned by cultural expectations, roles and traditions and that some cultures have a mistrust of the police. It was suggested that the specific needs of BAME groups and the specific forms of coercive control and abuse levied against BAME victims by abusers needs to be highlighted and that special consideration should be given to how DAPOs would be available and accessible for those from BAME communities, migrants, and those with insecure immigration status, in compliance with the Istanbul Convention. ***DAPOs will be available regardless of the gender, gender identity or sexual orientation of those involved.***

Some respondents considered that DAPNs and DAPOs would have a positive impact on the equality of Section 75 groups, particularly victims of domestic abuse with disabilities, who may be more unlikely to, or unable to, disclose and seek help. However, it was also noted that there may be care implications if a victim has a disability and the person subject to the order is their carer. Similarly, if the person

subject to the order has a disability, this may not preclude them from being removed from the home if it is necessary for victim safety, but additional obligations may lie on statutory bodies to ensure that appropriate care is in place for them, and that alternative accommodation is fit for purpose.

COPNI urged that appropriate deliberation be given as to how the proposed measures may most effectively meet the needs of older victims of domestic abuse given these barriers to equal access to justice.

Northern Ireland's unique circumstances as a society with a history of conflict and division and the impact this continues to have at times with heightened sensitivities around policing and justice issues was also raised. It was suggested that some marginalised individuals may have concerns about the power which the DAPO would provide to police and other third parties to remove a person subject to the order from their home, potentially even in the absence of consent from the victim.

***The guidance prepared in relation to DAPNs and DAPOs will make clear that domestic abuse can affect anyone, regardless of age, gender, disability or sexual orientation. It will also highlight specific Section 75 considerations and that there should be equality for all groups, bearing in mind that cultural differences and individual religious beliefs can create difference.***

**Question 25:**

**Is there an opportunity to better promote equality of opportunity or good relations as part of the proposals?**

Of the 24 respondents who answered this question, 16 (67%) agreed that there is an opportunity to better promote equality of opportunity or good relations as part of the proposals.

It was considered that DAPN and DAPOs provide a further opportunity to highlight that domestic abuse is not a problem confined to one area of society or specific groups within it. It was also suggested that the existence of DAPN and DAPOs should be publicised in a variety of languages and circulated to cultural centres and doctors' surgeries, for the attention of minority groups who may be unaware. It was also considered that information about DAPNs and DAPOs should be provided in an easy read format to reach all victims.

***We agree that raising public awareness of DAPNs and DAPOs will be essential in promoting equality of opportunity or good relations. We will ensure that any public awareness materials are made accessible in an easy ready format and in different languages.***

It was noted that training for those issuing notices and applying for orders could help promote equality of opportunity and good relations by highlighting barriers to accessing support and strategies to address these.

***The guidance around DAPNs and DAPOs will make clear that domestic abuse can affect anyone, regardless of age, gender, disability or sexual orientation. It will also highlight specific Section 75 considerations and that there should be equality for all groups, bearing in mind that cultural differences and individual religious beliefs can create difference.***

Two respondents did not know if there was an opportunity to better promote equality of opportunity or good relations as part of the proposals and a further six respondents noted that they did not consider that there is an opportunity to better promote equality

of opportunity or good relations. One of these respondents considered that this could only be done if they were rolled out across Northern Ireland straight away.



**Question 26:**

**Do you have any comments on the potential implications the introduction of Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs) may have on human rights?**

Twenty-six respondents provided comments on the potential implications the introduction of DAPNs and DAPOs may have on human rights.

It was considered by a number of respondents that preserving the human rights of all parties was important in order to ensure that the provision is both ECHR compliant and has the confidence of the police as the implementing body.

The DAPN/DAPO process was seen as necessary with regards to Article 2 and 3 of the Human Rights Act 1998 (the right to life and the right not to be tortured or treated in a unhuman or degrading way). It was also considered that it promotes safeguarding the right to respect for private and family life (Human Rights Act 1998, Article 8). It was also seen as important for creating a legal context compliant with CEDAW and the Istanbul Convention. It was noted that this must be balanced with the human rights of the person subject to the order and non-interference by a public authority with the exercise of this right.

It was suggested that a human rights impact assessment should be carried out. It was noted that this should consider whether the human rights of children under 16 years are adversely affected. It was also suggested that there may be issues and practicalities to be further considered and explored regarding Article 8 and public entities making decisions and taking actions on behalf of an individual who has full capacity of his/her own personal affairs.

It was noted that DAPNs could require an individual to not come within a certain distance of an alleged victim's home, not enter the home or require them to leave the home, regardless of whether it is also their home too, and without being found guilty by a criminal court. Some respondents considered that this raises a number of issues around the potential for restrictions to an individual's right to private and family life (Article 8) and right to enjoy their property (Article 1, Protocol 1) and therefore noted

that care must be taken to ensure that DAPNs are handled with proper oversight and due process by the police. The Bar considered that DAPNs should be subject to judicial scrutiny and oversight at the earliest possible opportunity, ideally after the first 48 hours of the notice.

The Bar also considered that the maximum time period attached to DAPNs at the police stage should not be arbitrary and should be based on evidence that it is actually required given the impact on Article 8 rights. The NIHRc recommended that any interference with Article 8 ECHR is a measure of last resort and must be in accordance with the law. The NIHRc also recommended that the Department should produce appropriate guidance on the use of DAPNs to ensure compliance with Article 8 ECHR.

The NIHRc also highlighted that any electronic monitoring must be consistent with human rights law, in particular Article 8 ECHR. The primary purpose of Article 8 ECHR is to protect against arbitrary interferences with private and family life, home, and correspondence by a public authority.

***We recognise that electronic monitoring will give rise to human rights considerations. Any introduction in the longer term would give further consideration to this. More generally a human rights impact assessment will be carried out in relation to any future electronic monitoring conditions and will also consider the issues highlighted by respondents, as set out above.***

**Question 27:**

**Do you have any comments on the potential implications the introduction of Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs) may have in rural areas?**

16 respondents provided comments on the potential implications the introduction of DAPNs and DAPOs may have in rural areas.

It was recognised that victims in rural areas may have reduced access to services and support and be less likely to disclose abuse. Respondents again reiterated the need pilot the introduction of the DAPNs and DAPOs in both rural and urban localities, to take into account these differing features. It was also noted that a timely police response is difficult to achieve given large geographical spread in rural areas.

Some respondents referred to research conducted by the National Rural Crime Network in 2019: *Captive & Controlled Domestic Abuse in Rural Areas - isolated, unsupported, and unprotected, victims failed by the system, services and those around them*, which identifies potential implications that need to be considered. These respondents encouraged the Department of Justice to look at the recommendations within the report to further inform the proposals. They also recommended that the Department should liaise with the local rural community and conduct a rural impact assessment.

***We will consider the aforementioned research and any other relevant research on domestic abuse in rural settings, as well as rurality issues raised during consultation, ahead of piloting DAPNs and DAPOs.***

**Question 28:**

**Do you have any comments you wish to make regarding the financial impact of the introduction of Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs)?**

31 respondents provided comments on the financial impact of the introduction of DAPNs and DAPOs.

Some respondents noted that there is likely to be significant financial cost associated with the introduction of DAPNs and DAPOs and that the proposals should be properly resourced, to offer as much protection to victims as possible. It was noted that victims must not be required to pay a fee for a DAPO.

The Bar noted that legal aid will be available for DAPOs but felt that the consultation paper was unclear as to the level of funding that will be available for the victim and the person subject to the order to issue/defend an application. They asked for clarification as to whether there will be funding for legal representation for the victim where the application is brought by a third party and queried whether unintended consequences could arise from any funding decisions in relation to other protective orders already provided for in legislation.

***Before introducing these new orders, we will need to review legal aid arrangements and will engage with the Bar and Law Society on this going forward.***

A number of respondents raised concerns about the cost associated with police making a DAPN or an organisation applying for a DAPO. It was noted that there were high costs for police associated with the Domestic Violence Protection Notices and Orders (DVPNs and DVPOs) in England and Wales and that they were underutilised due to the cost of seeking to obtain them. It was felt that there would need to be sufficient funding in place during the pilot (and afterwards) to allow the police to take a decision to make a DAPN or for police or third parties to make an application for a DAPO, based on risk and risk alone. It was also considered that costs need to be identified and monitored and the pilot scheme (with a full evaluation) will provide an

opportunity to do that.

The need for properly resourced training for those involved in the DAPN/DAPO process was also suggested. The Bar noted that it already delivers a programme of CPD training for barristers and could develop this in future to reflect the introduction of any new protective measures.

It was suggested that the consultation paper is unclear as to how the Department and other justice bodies will take ownership for ensuring the successful implementation of these new measures alongside the interrelated issues of the availability and timing of any new resources or training that will be required across the justice system.

***Preparation for and the piloting of DAPNs and DAPOs will be important in ensuring the effective operation of the new measures as well as identifying the likely costs in the longer term.***

Some respondents noted that, in addition to the need to adequately resource PSNI, it is important that voluntary sector organisations supporting victims of domestic violence be adequately resourced to assist victims applying for these orders.

Women's Aid noted that they had serious concerns with regard to financial impact of the introduction of such Notices and Orders and requested that this finance burden does not sit with the victim; noting that there are many cases where women are in debt, paying off legal fees from protection orders they have had to get for their own safety and that no one should have to pay for protection.

It was also noted that one of the problems with the existing non-molestation orders is that it can be costly for some victims, and can often drain victims of their resources or price victims out of protection.

***In common with almost all areas of law where legal aid is available, provision for help to bring an application for a non-molestation order is subject to a means test. This test is based on disposable income – so a person with unusually large basic expenses should not necessarily be disadvantaged. Nonetheless, at the***

*margins there are likely to be some people who do not pass the financial eligibility test, but for whom the cost of private representation is prohibitive.*

*Partly in recognition of this fact, in view of the serious nature of these proceedings, and because of the complexities that can arise around getting access to funds for people in these circumstances, the Director of Legal Services has discretion to waive the financial eligibility test for these cases, where they consider it equitable to do so. This discretion is in regular use by the Legal Services Agency, ensuring that everyone has access to legal aid for representation in these proceedings. The Legal Services Agency has reminded legal representatives of the availability of this facility and the Department of Justice would encourage them to ensure that their prospective clients are aware of their entitlement to legal aid through this mechanism.*

*As the Department looks again at the needs of people who need the protection of the courts due to issues of domestic violence or abuse, and at supporting legal aid provision, we will want to reflect on a range of matters raised during the consultation.*

It was noted that resources should also be made available in the Family and Civil Courts for work to assist alleged perpetrators as currently there is no access to courses to assist with behavioural change locally as they tend to be available to those convicted in the criminal courts through probation services. ***Behavioural change programmes are currently available across Northern Ireland, in conjunction with the Health Trusts, for those that are showing concerning behaviour but have not yet reached the criminal justice system.***

## CONCLUSION AND WAY FORWARD

2.5 This consultation process has attracted a broad range of views, raising many important issues and providing further insight into the potential challenges that may be faced in implementing these proposals in Northern Ireland. The Department wishes to thank all respondents to the consultation.

2.6 Respondents have generally welcomed the proposed model for DAPNs and DAPOs in Northern Ireland. However, as agreed in the body of this document, the Department has agreed to undertake a number of actions prior to beginning work on the drafting of regulations and guidance. The Department will:

- continue to learn lessons in relation to the implementation of DVPNs and DVPOs in Northern Ireland;
- further consider which individuals/organisations should be specified as potential 'relevant third parties', potentially with the leave of the court;
- consider the need for any additional notification requirements, specific to domestic abuse;
- conduct a human rights impact assessment, including in the context of the time period for making a DAPO and any future electronic monitoring (also taking into consideration issues raised by respondents), ahead of drafting regulations;
- engage with PPS to determine the use of contempt proceedings in Northern Ireland;
- engage with the Judicial Studies Board on raising awareness of DAPNs and DAPOs amongst the judiciary;
- further consider what steps, if any, can be taken with the court process to prevent a DAPO being discharged as a result of a victim being pressurised by the person subject to the order;
- liaise with justice partners on the location of the two pilots (one urban, one rural);

- consider establishing a multi-agency task and finish group and oversight group to plan for introduction of the pilots; and
- review legal aid arrangements with regards to DAPOs.

3.3 In the longer term, the Department will also:

- identify potential positive requirements to be associated with DAPOs, subject to further consideration and the necessary funding being available; and
- engage further with stakeholders on relevant issues including human rights (such as the Northern Ireland Human Rights Commission) as well as undertake further work before reaching a decision on whether provision should be made, in the longer term, to enable courts to be given an express power to impose electronic monitoring as a condition of a DAPO.

3.4 The following bullet points summarise the latest policy position following the consultation:

- a civil DAPN would be available for issue by the police;
- this could be used where a senior police officer (at least Inspector) had reasonable grounds for believing that a person has been abusive to someone that they are personally connected to and that the notice is necessary to protect that person from domestic abuse or a risk of domestic abuse;
- the DAPN could require an alleged perpetrator to not contact the victim, not come within a certain distance or their home, not enter their home or require them to leave the victim's home (prohibitions);
- the DAPN could last for a period of up to four days (subject to a Human Rights Impact Assessment), at which point an application would have to be made to the magistrates' court for a DAPO;
- the scope and definitions used in relation to the new domestic abuse offence (including non-physical abusive behaviour) would be used in



- respect of DAPNs and DAPOs to ensure consistency;
- the duration of DAPOs will be flexible and be determined by the court, depending on the particular circumstances of the case;
  - DAPOs would be available in both criminal and civil courts;
  - police, specified third parties (potentially with the leave of the court), the person for whose protection the order is sought and any other person with the leave of the court to which the application is to be made would be able to make an application;
  - DAPOs could also be made by the criminal, civil or family court, of its own volition;
  - courts would be able to impose conditions within a DAPO requiring the alleged perpetrator not to approach or contact any associated children;
  - in the longer term, positive requirements, such as requiring an individual to attend a behavioural change programme, may be added; subject to the necessary funding;
  - further work will be undertaken (as well as a Human Rights Impact Assessment) before reaching a decision on whether provision should be made, in the longer term, to enable courts to impose electronic monitoring as a condition of a DAPO and subject to the necessary funding;
  - a court would be able to vary or discharge DAPO requirements;
  - DAPOs would include notification requirements, requiring individuals to notify the police of their name and address and of any changes to this information while the order is in effect;
  - the need for any additional notification requirements will be considered further, taking into account consultation responses, ahead of drafting regulations;
  - civil legal services will be available to provide representation to eligible parties to proceedings for a Domestic Abuse Prevention Order. We will ensure that legal aid is available to victims without a means test.

- applicants, victims or alleged perpetrators would be able to appeal a court's decision in relation to making the Order or any conditions attached to it;
- breach of a Domestic Abuse Protection Order would be a criminal offence;
- recognising the mixed views on the option of a breach being dealt with as a civil contempt of court we will engage further with stakeholders, including PPS who offered to conduct further enquiries into the use of contempt proceedings locally;
- DAPNs and DAPOs would be tested in two geographical areas, ahead of rollout across Northern Ireland; and
- with regards to the pilot in an urban area, the area for consideration is likely to be Belfast or Derry/Londonderry, given the views raised by respondents.

<b>List of Consultation Respondents</b>
11 members of the public
The Bar of Northern Ireland (including the views of Family Bar Association and Criminal Bar Association)
Belfast Area Domestic & Sexual Violence Partnership
British Association of Social Workers Northern Ireland
Commissioner for Older People for Northern Ireland
Health and Social Care Board
Department of Education
Derry and Strabane Policing and Community Safety Partnership
Derry City and Strabane District Council
HERe NI and Cara-friend
Hourglass
Law Society of Northern Ireland
Migrant Centre NI
MINDWISE Mental Health Charity
Newry, Mourne & Down Policing and Community Safety Partnership
Northern Ireland Human Rights Commission
Northern Ireland Women's European Platform
NIPSA
NSPCC
Police Service of Northern Ireland
Probation Board for Northern Ireland
Public Prosecution Service
Sinn Féin
South Eastern Health and Social Care Trust
Ulster Unionist Party
Victim Support NI
Women's Aid Federation Northern Ireland
Women's Policy Group NI