



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**NIHRC Response to the Department of Justice  
Consultation on enhancing legal protections  
for victims of domestic abuse**

**February 2021**

# Table of Contents

<b>1.0 Introduction</b> .....	<b>5</b>
<b>2.0 Background</b> .....	<b>6</b>
<b>3.0 Human Rights Standards</b> .....	<b>8</b>
European Convention Human Rights.....	8
International Human Rights Standards .....	9
Istanbul Convention .....	10
<b>4.0 Introduction of Domestic Abuse Protection Orders and Notices</b> ...	<b>11</b>
Third Party Application.....	14
Domestic Abuse Protection Notices.....	15
<b>5.0 Conditions Attached to Domestic Abuse Protection Orders</b> .....	<b>17</b>
Electronic Monitoring .....	17
Breach of Domestic Abuse Protection Orders or Notices .....	18
<b>6.0 Disaggregated data</b> .....	<b>19</b>

## Summary of Recommendations

- 4.10 The NIHRC recommends the introduction of Domestic Abuse Protection Orders and Notices to provide immediate protection to victims of all forms of domestic abuse and that these are accessible across the criminal justice system.**
- 4.11 The NIHRC recommends that Legal Aid is available for applying for a Domestic Abuse Protection Order.**
- 4.12 The NIHRC recommends that the relevant authorities, particularly the police, should be adequately trained to ensure Domestic Abuse Protection Orders and Notices are effectively implemented.**
- 4.13 The NIHRC recommends additional resources are allocated to the police and potential relevant third parties specifically for training and application fees for Domestic Violence Protection Orders and Notices.**
- 4.14 The NIHRC recommends the Department reconsider such a lengthy and limited piloting exercise, to ensure the Domestic Abuse Protection Orders and Notices can be accessed by all victims of domestic abuse without further delay.**
- 4.19 The NIHRC recommends the Department provide further clarification on which individuals and organisations should be identified as potential relevant third parties. This should include engaging with organizations supporting victims and victims on implementation issues.**
- 4.20 The NIHRC recommends the Department consider potential consequences of third party application negating the victim's consent recognising the dynamics of domestic abuse and ensure it does not hinder the victim in subsequent legal proceedings.**

- 4.21 The NIHRC recommends that if the regulations are to specify the role of relevant third party organisations in applying for Domestic Abuse Protection Orders, that these organisations are provided with specialised training and adequate funding to fulfil this role.**
- 4.26 The NIHRC recommends that any interference with Article 8 ECHR is a measure of last resort and must be in accordance with the law. The NIHRC recommends the Department produce appropriate guidance on the use of Domestic Abuse Protection Notices to ensure compliance with Article 8 ECHR.**
- 5.8 The NIHRC recommends 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.**
- 5.9 The NIHRC recommends that the Department pilots the introduction of electronic monitoring, nonetheless, it should that it does not delay the introduction of Domestic Abuse Protection Orders and Notices.**
- 5.14 The NIHRC recommends clear guidance is provided to the Police Service NI on what constitutes a breach of a Domestic Abuse Protection Order and Notice to ensure perpetrators receive appropriate sanctions.**
- 6.3 The NIHRC recommends that the Department works with the relevant public authorities and civil society organisations to systematically collect and publish data on domestic abuse that is disaggregated by sex, gender, ethnicity, disability and age. It should also record the journey of abuse investigations through the criminal justice system, including number of initial reports, number of referrals to the Public Prosecution Service, how many reach different stages of the court process, how many prosecutions, what is the resulting remedy and how many repeat offences.**

## 1.0 Introduction

1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). In accordance with this function, the following advice is submitted in response to Department of Justice's consultation on enhancing legal protections for victims of domestic abuse.

1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, and the treaty obligations of the Council of Europe (CoE) and United Nations (UN). The relevant regional and international treaties in this context include:

- European Convention on Human Rights (ECHR);<sup>1</sup>
- CoE Convention on Preventing and Combating Violence against Women (Istanbul Convention);<sup>2</sup>
- UN Convention on Civil and Political Rights (UN ICCPR);<sup>3</sup>
- UN Convention on Elimination of Discrimination against Women (UN CEDAW);<sup>4</sup>
- UN Convention against Torture (UN CAT);<sup>5</sup>
- UN Convention on the Rights of the Child (UN CRC);<sup>6</sup> and
- UN Convention on the Rights of Persons with Disabilities (UN CRPD).<sup>7</sup>

1.3 In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These

---

<sup>1</sup> Ratified by the UK 1951. Further guidance is also taken from the body of case law from the European Court of Human Rights (ECtHR).

<sup>2</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), 11 April 2011.

<sup>3</sup> Ratified by the UK 1966.

<sup>4</sup> Ratified by the UK 1986.

<sup>5</sup> Ratified by the UK 1988.

<sup>6</sup> Ratified by the UK 1989.

<sup>7</sup> Ratified by the UK in 2009.

declarations and principles are non-binding, but provide further guidance in respect of specific areas. The relevant standards in this context include:

- UN CAT Committee Concluding Observations 2019;<sup>8</sup>
- UN CEDAW Committee Concluding Observations 2019;<sup>9</sup>
- UN CEDAW Committee General Recommendation No 35;<sup>10</sup>
- UN Human Rights Committee General Comment No 32;<sup>11</sup> and
- UN Declaration on the Elimination of Violence against Women.<sup>12</sup>

- 1.4 The NIHRC welcomes the introduction of legislation to strengthen legal protections for victims of domestic abuse, in particular to implement provisions around Domestic Abuse Protection Notices and Orders.
- 1.5 Considering the range of practical issues in the consultation, the NIHRC has sought to highlight relevant human rights standards and principles, where they may be of assistance in developing the Domestic Abuse protection Orders and Notices. Therefore, the NIHRC's response to some of the questions have been grouped together.

## 2.0 Background

- 2.1 New figures show that incidences of domestic violence are at an all-time high in Northern Ireland. In 2019/2020 there were 31,817 domestic abuse incidents recorded, this figure is 52 per cent higher than the level of 20,959 recorded at the start of the data series in 2004/05.<sup>13</sup> There were 18,640 domestic abuse crimes recorded in 2019/20 which is also the highest level recorded since the series began in 2004/05. This figure is 93

---

<sup>8</sup> CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019.

<sup>9</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report', 8 March 2019.

<sup>10</sup> CEDAW/C/GC/35, 'UN CEDAW Committee General Recommendation No 35: Gender-based Violence against Women', 26 July 2017.

<sup>11</sup> CCPR/C/GC/32, 'UN Human Rights Committee General Comment No 32: Article 14 on the Right to Equality Before the Courts and Tribunals and to a Fair Trial', 23 August 2007, at para 29.

<sup>12</sup> UN General Assembly, 'Declaration on the Elimination of Violence against Women', 20 December 1993.

<sup>13</sup> Police Service of Northern Ireland, 'Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2019/20 Annual Bulletin' (PSNI, 2020).

per cent higher than 2004/05 and represents 17 per cent of all crimes recorded within the financial year.<sup>14</sup>

- 2.2 Domestic Violence Protection and Protection Orders have been operational in England and Wales since 2014. However, they are currently in the process of being replaced with the broader reaching Domestic Abuse Protection Notices and Orders and are currently being piloted in England and Wales.
- 2.3 Currently in Northern Ireland (NI), a number of court orders are available for protecting victims of domestic abuse provided under the Family Homes and Domestic Violence (Northern Ireland) Order 1998. Firstly, a non-molestation order can be applied for through the family court to prevent a partner or ex-partner, a relative or household member from harassing or causing harm. In some cases, a family court may issue a non-molestation order of its own volition through family proceedings involving the perpetrator. Breach of a non-molestation order is a criminal offence and the individual can be arrested and prosecuted if sufficient evidence is available.
- 2.4 The second option is for a victim to apply for an occupation order to decide who should live in the family home. However, a breach of an occupation order is not a criminal offence unless a power of arrest has been attached to the order.
- 2.5 Furthermore, in emergency situations an ex-parte injunction can be granted by the court without the perpetrator being brought to court but with a full hearing up to six weeks later. In addition, a criminal court may issue a restraining order but this can only be granted at the conclusion of criminal proceedings. Legal Aid is available to victims of domestic abuse to apply for all types of orders.
- 2.6 Through engagement with civil society organisations supporting victims of domestic abuse, the NIHRC has learned that when reporting breaches to the Police Service NI victims felt that not enough was being done and arrests were not being made, which hindered their confidence in reporting

---

<sup>14</sup> Police Service of Northern Ireland, 'Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2019/20 Annual Bulletin' (PSNI, 2020).

to the police. The Police Ombudsman for NI's statistics on complaints and allegations received show that domestic violence related complaints, though small in number, have significantly increased. In April to September 2018, 18 complaints with domestic violence as an underlying factor were received, this increased to 27 in April to September 2019.<sup>15</sup> In 2018/19, the Police Ombudsman also recommended that the Service Procedure relating to police response to stalking and harassment is reviewed and updated, to which a response is awaited.<sup>16</sup>

## 3.0 Human Rights Standards

### European Convention Human Rights

- 3.1 Articles 2 ECHR protects the right to life and Article 3 ECHR protects freedom from torture, cruel, inhuman or degrading treatment and punishment.<sup>17</sup> The European Court of Human Rights (ECtHR) has been clear that these provisions contain positive obligations on the State to ensure these fundamental rights are protected.
- 3.2 The ECtHR has provided that there are positive obligations under Article 2 ECHR to take appropriate steps to safeguard the lives of those within its jurisdiction to apply in the context of any activity, whether public or not, in which the right to life may be at stake.<sup>18</sup> This requires public authorities to take reasonable steps when they know of or ought to have known of real and immediate threats to life, including by a third party non-State actor.<sup>19</sup> Article 3 ECHR is an absolute right, which provides that this right must never be interfered with under any circumstances.<sup>20</sup>
- 3.3 Article 8 ECHR ensures protection of a private and family life.<sup>21</sup> It is a qualified right, which means limitations are allowed if they are "in accordance with the law" and are "necessary in a democratic society" for the protection of one of the objectives set out in Article 8(2) ECHR, in this

---

<sup>15</sup> Police Ombudsman NI, 'Complaints and Allegations Received by the Police Ombudsman for NI Quarterly Statistical Update to 30<sup>th</sup> September 2019' (PONI, 2019).

<sup>16</sup> Police Ombudsman NI, 'Annual Statistical Bulletin of the Police Ombudsman for NI, 2018/19' (PONI, 2019), at 24.

<sup>17</sup> Article 2 ECHR; Article 3 ECHR.

<sup>18</sup> *Case of Centre for Legal Resources on Behalf of Valentin Campeanu v Romania* (2014) ECHR 14.

<sup>19</sup> *Osman v UK* (1998) ECHR 101, at para 116.

<sup>20</sup> *Chahal v UK* (1996) ECHR 413.

<sup>21</sup> Article 8 ECHR; Article 14 ECHR.



instance “for the prevention of disorder or crime” and “the protection of the rights and freedoms of others” The ECtHR clarified that “necessary” in this context does not have the flexibility of such expressions as “useful”, “reasonable”, or “desirable” but implies the existence of a “pressing social need” for the interference in question.<sup>22</sup>

- 3.4 The ECtHR has held that the State has a responsibility to protect individuals from violence by third parties. This has been particularly true in cases involving victims of domestic violence. While there are often violations of Articles 2 and 3 ECHR in such cases, Article 8 ECHR is also applied because violence threatens the bodily integrity aspect of the right to respect for private life.<sup>23</sup> Under Article 8 ECHR, States have a duty to protect the physical and moral integrity of an individual from other persons, which requires affording protection against acts of violence by private individuals.<sup>24</sup>
- 3.5 The ECtHR has provided that safeguarding physical integrity under Article 8 ECHR requires an effective criminal investigation.<sup>25</sup> Compliance with Article 8 ECHR in the sphere of protection against acts of individuals is within the State’s margin of appreciation, yet effective deterrence against grave acts, where fundamental values and essential aspects of private life are at stake, requires efficient criminal law provisions.<sup>26</sup>

## **International Human Rights Standards**

- 3.6 The UN Committee against Torture (UN CAT), in its 2019 Concluding Observations on the UK, stated it is concerned about reports of increasing numbers of domestic abuse crimes and sexual offences, mainly against women, while also recording low prosecution. The Committee recommended that the UK encourage “the reporting of domestic violence cases, inter alia by informing women of their rights and the existing legal avenues through which they can receive protection”.<sup>27</sup> The UN CAT Committee further recommended “that all domestic violence cases, in all United Kingdom (UK) territories and dependencies, are thoroughly investigated, that perpetrators are prosecuted and, if they are convicted,

---

<sup>22</sup> *Dudgeon v UK* (1981) ECHR 22.

<sup>23</sup> *Milićević v Montenegro* (2018) ECHR 6; *ES. and Others v. Slovakia* (2009).

<sup>24</sup> *Sandra Janković v. Croatia* (2008) ECHR 24.

<sup>25</sup> *MC v Bulgaria* (2003) ECHR 646.

<sup>26</sup> *MC v Bulgaria* (2003) ECHR 646, at para 166.

<sup>27</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 57.

are punished with appropriate sanctions”.<sup>28</sup> Furthermore, that “victims have access to effective remedies and means of protection, including strong police protection”.<sup>29</sup>

- 3.7 The UN CEDAW Committee, in its 2019 Concluding Observations on the UK, noted “with particular concern the inadequacy of laws and policies to protect women in Northern Ireland (from gender-based violence)” and recommended that the UK ratify the Istanbul Convention.<sup>30</sup>
- 3.8 The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) provides a legal framework at pan-European level to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence. The UK Government has made it clear that it intends to ratify the Istanbul Convention and is currently in the process of addressing existing areas of non-compliance, such as extending its protections regardless of immigration status, criminalisation of psychological control across the UK, ensuring extraterritorial application, and protecting those that are reliant on spousal/partner support for residence status.<sup>31</sup>

## **Istanbul Convention**

- 3.9 The Istanbul Convention is specific on the issue of protecting women and girls from violence. It can also be used as an indicator of best practice more broadly in providing guidance on how to develop legislation in relation to developing appropriate protection measures in relation to domestic abuse and gender based violence.
- 3.10 In particular, Article 52 of the Istanbul Convention concerns emergency barring orders and provides that:

---

<sup>28</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 57.

<sup>29</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 57.

<sup>30</sup> CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report’, 8 March 2019, at para 29.

<sup>31</sup> Preventing and Combating Violence against Women and Domestic Violence (Ratification of Convention) Act 2017; Home Office, ‘Ratification of the CoE Convention on Combating Violence against Women and Girls and Domestic Violence (Istanbul Convention) – 2020 Report on progress’ (HO, 2020), at Annex A.

Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.

- 3.11 Article 53 of the Istanbul Convention concerns restraining or protection orders requiring parties to take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence. The Convention provides that these are available for immediate protection and without undue financial or administrative burdens placed on the victim; issued for a specified period or until modified or discharged; where necessary, issued on an ex parte basis which has immediate effect; available irrespective of, or in addition to, other legal proceedings and allowed to be introduced in subsequent legal proceedings.

## **4.0 Introduction of Domestic Abuse Protection Orders and Notices**

- 4.1 The NIHRC welcomes the introduction of protection orders and notices to provide protective measures in the immediate aftermath of a domestic violence incident and provide a uniform, streamlined approach to the various remedies that currently exist.
- 4.2 The NIHRC further welcomes Domestic Abuse and Protection Orders and Notices that will protect victims from all forms of domestic abuse, including physical violence, the threat of violence as well as non-physical abuse and coercive control. This should be linked to the definition of abusive behaviour in the Domestic Abuse and Family Proceedings Bill and apply to individuals who are personally connected as set out in the Bill.<sup>32</sup> The

---

<sup>32</sup> Domestic Abuse and Family Proceedings Bill, 2020.

NIHRC welcomed the introduction of an extensive statutory offence of domestic abuse that includes physical harm, psychological harm, violent behaviour, threatening behaviour and controlling behaviour. The NIHRC welcomed that the offence of controlling behaviour is expansive and includes economic control, in line with the Istanbul Convention.

- 4.3 The NIHRC recognises the need for Domestic Abuse Protection Orders and Notices to be made across family, civil and criminal courts to provide a more flexible and comprehensive response to domestic abuse across the justice system. The NIHRC acknowledges the importance of the continuance of Legal Aid to victims of domestic abuse when seeking Domestic Abuse Protection Orders.
- 4.4 The NIHRC would highlight the need for the introduction of Domestic Abuse Protection Orders to shift the onus from the victim having to take legal action to protect themselves. Considering this, the police, the courts and potentially specified service providers acting to protect the victim should be adequately trained and funded to fulfil their role in preventing, escalating and prosecuting domestic abuse. The UN CAT Committee, in its 2019 Concluding Observations, made specific reference to the need for training on domestic violence and gender based violence. It recommended that the UK Government should “provide mandatory training on the prosecution of gender-based violence to all justice officials and law enforcement personnel and continue awareness-raising campaigns on all forms of violence against women”.<sup>33</sup>
- 4.5 The UN CEDAW Committee within its General Recommendation No 35 on gender-based violence against women, regarding preventative measures, recommended that States should “provide mandatory, recurrent and effective capacity-building, education and training for members of the judiciary, lawyers and law enforcement officers”.<sup>34</sup>
- 4.6 Article 15 Istanbul Convention requires states to strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence including training on co-ordinated multi-agency co-

---

<sup>33</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019 at para 56.

<sup>34</sup> CEDAW/C/GC/35, ‘UN CEDAW Committee General Recommendation No 35: Gender-based Violence against Women’, 26 July 2017 at para 30(e).

operation to allow for a comprehensive and appropriate handling of referrals in cases of violence.

- 4.7 The NIHRC understands the Department is currently considering the experience of Domestic Abuse Protection Orders in England and Wales, where it is being piloted, as well as Scotland. The NIHRC would suggest that the Department also look at models of best practice in European countries.
- 4.8 The Department is proposing an initial pilot of the Orders in NI to better understand the costs of implementation and to consider learning from other jurisdictions. It proposes to do so initially in only a number of areas including one urban and one rural. The NIHRC would suggest the Department monitor the implementation of the Orders in rural areas considering the greater isolation of victims and less frequent court sittings. However, the NIHRC is concerned that the length of time proposed of between one to two years is too long and will delay the immediate support needed to protect victims of domestic abuse.
- 4.9 To apply Domestic Violence Protection Orders and Notices the victim must be aged 16 years or over and the alleged perpetrator be aged 18 years or over. Article 19 of the UN Convention on the Rights of the Child (CRC) requires that "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse". The Preamble of the Istanbul Convention recognises that children are victims of domestic violence, including as witnesses of violence in the family. Articles 22, 23 and 26 of the Istanbul Convention also call for specialist support for children in such situations.

**4.10 The NIHRC recommends the introduction of Domestic Abuse Protection Orders and Notices to provide immediate protection to victims of all forms of domestic abuse and that these are accessible across the criminal justice system.**

**4.11 The NIHRC recommends that Legal Aid is available for applying for a Domestic Abuse Protection Order.**

- 4.12 The NIHRC recommends that the relevant authorities, particularly the police, should be adequately trained to ensure Domestic Abuse Protection Orders and Notices are effectively implemented.**
- 4.13 The NIHRC recommends additional resources are allocated to the police and potential relevant third parties specifically for training and application fees for Domestic Violence Protection Orders and Notices.**
- 4.14 The NIHRC recommends the Department reconsider such a lengthy and limited piloting exercise, to ensure the Domestic Abuse Protection Orders and Notices can be accessed by all victims of domestic abuse without further delay.**

### **Third Party Application**

- 4.15 The NIHRC understands the Department is considering provision for a number of specified third parties to apply to the family courts for a Domestic Abuse Protection Order on the victim's behalf. The NIHRC understands that the availability of third party applications has the potential to protect victims that are unlikely to approach the police and would enable specified organisations to take action on their behalf. This is particularly relevant in NI where some communities are less likely to report issues to the Police Service NI.
- 4.16 The Department provides that third party applicants could be family members and other third-party organisations. The Department does not indicate who would qualify as a third-party organisation. The NIHRC is concerned that some individuals or third party organisations may not be appropriately trained in working with domestic abuse victims and would require specialised training to fulfil this role.
- 4.17 The NIHRC understands that an application for a Domestic Abuse Protection Order by a third party would not require the victim's consent. The NIHRC is concerned that considering the dynamics of domestic abuse, if the Order is granted without the victim's consent, the Order could be breached by the victim themselves. The NIHRC is concerned that this may be used against the victim in later court proceedings. The NIHRC has learnt through engagement with civil society organisations supporting victims of domestic abuse that the issue of consent and third party

application is of particular concern. The NIHRC would suggest that the Department considers further engagement and consultation directly with victims and organisations supporting victims in regards to this issue as it is essential for the new measures to be victim centred.

4.18 Furthermore, if the Department is considering that third party organisations can apply on behalf of a victim, this would provide those organisations with a statutory power in making applications. The NIHRC is concerned that if organisations are to fulfil a statutory role in applying for Protection Orders, they should be adequately funded to do so.

**4.19 The NIHRC recommends the Department provide further clarification on which individuals and organisations should be identified as potential relevant third parties. This should include engaging with organizations supporting victims and victims on implementation issues. Any third party organisation fulfilling this role should do so in a way that is compliant with human rights.**

**4.20 The NIHRC recommends the Department consider potential consequences of third party application negating the victim's consent recognising the dynamics of domestic abuse and ensure it does not hinder the victim in subsequent legal proceedings.**

**4.21 The NIHRC recommends that if the regulations are to specify the role of relevant third party organisations in applying for Domestic Abuse Protection Orders, that these organisations are provided with specialised training and adequate funding to fulfil this role.**

### **Domestic Abuse Protection Notices**

4.22 Domestic Abuse Protection Notices, are to be served on the alleged perpetrator by a police officer at the time of receiving the report. It is proposed that the Notice could be served on the perpetrator for up to seven days, as it is considered that a minimum of four days is required to make the appropriate application and for consideration by the court. The Department acknowledges that having a Notice in place for a period of between four to seven days without judicial oversight raises concerns on the rights of the alleged perpetrator to a private and family life.

- 4.23 This engages Article 8 ECHR, the right to a private and family life and non-interference by a public authority with the exercise of this right. Determining whether an interference is justified is guided by whether it is “proportionate to the legitimate aim pursued”.<sup>35</sup> However, it should remain a measure of last resort and interference should only be pursued if there is a good reason to do so.
- 4.24 Under Article 8 ECHR, States also have a duty to protect the physical and moral integrity of an individual from other persons, which requires affording protection against acts of violence by private individuals.<sup>36</sup> In order to determine the impact of interference with Article 8 ECHR and balance the rights of the perpetrator against the rights of the victim, the Department should conduct a human rights impact assessment.
- 4.25 The Human Rights Act 1998, section 6, requires that public authorities do not act in a way that is incompatible with the ECHR. The Human Rights Act 1998, section 3, further requires that “so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with [ECHR] rights”. To ensure these two requirements are adhered to it is important that a human rights impact assessment is conducted regarding any laws, strategies, policies and practices. Such an assessment provides policy makers with a focused approach to ensure human rights issues are fully considered and addressed. The purpose of the assessment is to help identify the potential rights engaged and if there are particular aspects that need to be considered, for example, if it is a right that should not be interfered with or if it is a right that can be limited, can any possible limitation be justified.
- 4.26 The NIHRC recommends that any interference with Article 8 ECHR is a measure of last resort and must be in accordance with the law. The NIHRC recommends the Department produce appropriate guidance on the use of Domestic Abuse Protection Notices to ensure compliance with Article 8 ECHR.**

---

<sup>35</sup> *Dudgeon v United Kingdom* (1981) ECHR 5, at para 53.

<sup>36</sup> *Sandra Janković v. Croatia* (2008) ECHR 24.



## 5.0 Conditions Attached to Domestic Abuse Protection Orders

### Electronic Monitoring

- 5.1 The NIHRC understands the Department is considering electronic monitoring as a means to monitor compliance with a Domestic Abuse Protection Order. The Department suggests a number of different technologies for example, to remotely monitor the individual's compliance with conditions such as abiding by an exclusion zone around the victim's home and/or workplace. Electronic monitoring would be used to track an alleged perpetrator's location with the aim of preventing stalking or intimidation.
- 5.2 The NIHRC recognises electronic monitoring has the potential to enhance compliance with conditions placed upon the alleged perpetrator. The NIHRC would highlight that any 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.<sup>37</sup>
- 5.3 Conditions upon which a State may interfere with the enjoyment of a protected right are set out in Article 8(2) ECHR. Limitations are allowed if they are "in accordance with the law" or "prescribed by law" and are "necessary in a democratic society" for the protection of one of the objectives set out in Article 8(2) ECHR.
- 5.4 The European Court of Human Rights (ECtHR) provides a 'margin of appreciation' to States in proceedings that concern qualified rights, such as Article 8 ECHR.<sup>38</sup> The State has a certain amount of discretion in how it chooses to limit such rights through considering the pressing social need to do so. However, any interference must be necessary and proportionate in pursuit of a legitimate aim, as set out in Article 8(2) ECHR.
- 5.5 In order to determine whether a particular infringement of Article 8 ECHR is necessary in a democratic society, the ECtHR balances the interests of

---

<sup>37</sup> *Libert v France* (2018) ECHR 185.

<sup>38</sup> *Dudgeon v UK* (1981) ECHR 5, at para 51-53.

the State against the right of the applicant. The ECtHR has clarified that 'necessary' in this context does not have the flexibility of such expressions as "useful", "reasonable", or "desirable", but implies the existence of a "pressing social need" for the interference in question.

5.6 The Department suggests including a set of statutory safeguards to ensure that electronic monitoring is only used when necessary and proportionate however, these are not provided within the scope of the consultation. The Department does not mention the impact of electronic monitoring on the right to a private and family life as encompassed by Article 8 ECHR. In order to determine if the use of electronic monitoring is necessary and proportionate it must be in accordance with the scope of Article 8 ECHR. A human rights impact assessment would be useful in this regard. The NIHRC suggests that the statutory safeguards make specific reference to Article 8 ECHR in terms of meeting the requirements of the monitoring encompassing necessity, proportionality and meeting the pressing social need to protect the victim.

5.7 The Department further provides that any introduction of monitoring would be piloted most likely within the criminal courts, before considering use in any other court. It is proposed that an enabling power would be provided for in legislation that would allow this measure to be further considered and brought forward in the longer term.

**5.8 The NIHRC recommends 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.**

**5.9 The NIHRC recommends that the Department pilots the introduction of electronic monitoring, nonetheless, it should ensure that it does not delay the introduction of Domestic Abuse Protection Orders and Notices.**

### **Breach of Domestic Abuse Protection Orders or Notices**

5.10 It is proposed that it would be a criminal offence to breach a Domestic Abuse Protection Notice or Order. A magistrates' court would be able to impose a sentence of up to six months imprisonment and/or a fine and the

Crown Court up to five years and/or an unlimited fine for a breach of a DAPO. The maximum penalty is similar to that for a breach of a non-molestation order.

- 5.11 The NIHRC recognises the need to send a strong message that non-compliance is to be taken seriously and should be appropriately sanctioned. In 2019 the UN CAT Committee recommended that “that all domestic violence cases, in all United Kingdom (UK) territories and dependencies, are thoroughly investigated, that perpetrators are prosecuted and, if they are convicted, are punished with appropriate sanctions”.<sup>39</sup>
- 5.12 Article 53 of the Istanbul Convention provides that “parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions”.
- 5.13 Furthermore, considering concerns on breaches of non-molestation orders not being appropriately sanctioned, clear guidance should be provided to the Police Service in regards to what constitutes a breach of a Domestic Abuse Protection Order or Notice so that perpetrators can be appropriately sanctioned.
- 5.14 The NIHRC recommends clear guidance is provided to the Police Service NI on what constitutes a breach of a Domestic Abuse Protection Order and Notice to ensure perpetrators receive appropriate sanctions.**

## 6.0 Disaggregated data

- 6.1 The UN CEDAW Committee in its 2019 concluding observations on the UK recommended that the UK Government and NI Executive “systematically collect and publish data, disaggregated by sex, gender, ethnicity, disability and age, throughout the whole of its territory to inform policymaking and assess the impact of measures taken”.<sup>40</sup>

---

<sup>39</sup> CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 57.

<sup>40</sup> CEDAW/C/GBR/CO/8, ‘UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI’, 14 March 2019, at para 26(d).

6.2 The NIHRC welcomes the data published by the Police Service NI on domestic abuse in Northern Ireland. However, the information gathered and how it is disaggregated can be improved.

**6.3 The NIHRC recommends that the Department works with the relevant public authorities and civil society organisations to systematically collect and publish data on domestic abuse that is disaggregated by sex, gender, ethnicity, disability and age. It should also record the journey of abuse investigations through the criminal justice system, including number of initial reports, number of referrals to the Public Prosecution Service, how many reach different stages of the court process, how many prosecutions, what is the resulting remedy and how many repeat offences.**

## Contact us

**Rhyannon Blythe**

**Director Policy, Legal, Research and Investigations**

[www.nihrc.org](http://www.nihrc.org) | [info@nihrc.org](mailto:info@nihrc.org) | +44 (0)28 9024 3987  
4<sup>th</sup> Floor, Alfred House, 19-21 Alfred Street, Belfast, BT2 8ED

