

STATES OF JERSEY



Jersey

DRAFT DOMESTIC ABUSE (JERSEY) LAW 202-

Lodged au Greffe on 10th March 2022
by the Minister for Home Affairs
Earliest date for debate: 25th April 2022

STATES GREFFE



Jersey

DRAFT DOMESTIC ABUSE (JERSEY) LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Home Affairs has made the following statement –

In the view of the Minister for Home Affairs, the provisions of the Draft Domestic Abuse (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy G.C.U. Guida of St. Lawrence**
Minister for Home Affairs

Dated: 9th March 2022

REPORT

Background

Despite Jersey being a historically safe and low-crime jurisdiction, it is not free from the harms caused by domestic abuse and coercive and controlling behaviour.

Approximately fifteen percent of all crime reported to the States of Jersey Police is currently associated with domestic abuse. In 2015 the Multi-Agency Risk Assessment Conference (MARAC) assessed and worked on 145 high-risk domestic abuse cases. In 2019 this number rose to 215, with 159 cases in 2021 (probably reflecting the impact of Covid restrictions, which generally led to fewer reported crimes).

2019 also saw referrals to the Jersey Domestic Abuse Support (JDAS) record a 22% increase in high-risk domestic abuse.

The hidden nature of domestic abuse, together with its insidious impacts on physical and mental health, as well as social engagement, makes it very difficult to quantify its economic and social costs. However, it is possible to make an estimate based on costs calculated for the UK Government's '*Economic and social costs of domestic abuse*', published in January 2019¹. These figures are themselves only an estimate, but by extrapolation the costs to the Island of domestic abuse could be in the region of £25 million each year.

The Safeguarding Partnership Board says in its most recent Domestic Abuse Strategy that –

*“Domestic Abuse has a negative impact on people and communities who experience it – they may suffer many ill effects including physical injury, fear and low self-esteem and it has a particular adverse impact upon mental health. Of particular note, is the fact that domestic abuse can also have a significant impact upon the well-being of children and young people who live with it.”*²

The UK's Violence Against Women and Girls (VAWG) Strategy³ provides an overarching framework for crimes identified as being primarily committed, but not exclusively, by men, against women, within a context of power and control. In that context, the widely accepted position is that domestic abuse prosecutions should be addressed within an overall framework of violence against women and girls underpinned by human rights, and the Minister for Home Affairs has adopted that approach both in this legislation and associated work to address VAWG in Jersey.

Against this backdrop of significant need and urgency, in October 2018 the (then) Minister committed to bringing legislation to address Domestic Abuse to the Assembly, supported by his then Assistant Minister, now Minister for Home Affairs.

Although delayed by the diversion of resources to the pandemic response, initial development of the legislation continued and on 1st December 2020 the Minister signed a Ministerial Decision to request the preparation of the draft Law.

¹ [The economic and social costs of domestic abuse](#), Home Office, 2019

² [Domestic Abuse Strategy 2019-2022](#), Jersey Safeguarding Partnership Board, 2019

³ [Tackling violence against women and girls strategy - GOV.UK \(www.gov.uk\)](#)

Rationale for new legislation

Whilst the existing framework of statutory and customary law in Jersey that can deal with some of the behaviours associated with domestic abuse, (assaults, criminal damage, sexual assaults etc.) current legislation cannot recognise coercive and controlling behaviour and the patterns of behaviour that constitute domestic abuse. By only identifying specific offences, such as an assault, the current law only identifies ‘snapshots’ of a victim’s experience, and although the courts are robust in addressing offences which they feel have taken place in the context of an abusive relationship, there is no way of engaging with the wider pattern of coercion and control that characterises many abusive relationships.

This draft Law will ensure that domestic abuse is defined as a specific offence and will recognise those patterns of behaviour. Recognising controlling and coercive behaviour as a component of the domestic abuse offence will provide some protection for victims suffering long-lasting harm from abusive behaviour. It is also intended that the involvement of a child or someone who is pregnant will be an aggravating factor to any offence under this law. This will provide greater protection to victims of mental and physical abuse.

Overview

The draft Law will provide a new criminal offence of ‘domestic abuse’, which will be punishable by up to 5 years in prison and a fine. It will also provide for the sentence to be ‘aggravated’ (increased) by circumstances in where a pregnant person or a child is involved.

In addition, it provides a power for the Magistrate’s Court and the Royal Court to issue Domestic Abuse Protection Orders (DAPOs). These Orders are intended to safeguard victims and prevent a person who has committed an offence associated with domestic abuse from committing further such offences.

The draft Law will also provide for the courts to require a person who has been convicted of domestic abuse offences to provide certain information to the States of Jersey Police to allow the police to keep track of domestic abusers and to operate proactively where necessary to safeguard victims, or to make potential victims aware of the individual’s history.

This ‘notification requirement’ is structured on that within the Sex Offenders (Jersey) Law 2010⁴, which underpins the operation of the Sex Offenders Register. It will allow the police to run a similar system to track domestic abusers, which was a core recommendation of the Domestic Homicide Review ‘*In respect of the death of Pamela*’ conducted in 2021⁵.

This also serves as a codification of the ‘Clare’s Law’⁶ system which permits the police to disclose proportionate and necessary information about domestic abusers to persons who apply, and goes further by allowing proactive disclosure.

⁴ [Sex Offenders \(Jersey\) Law 2010 \(jerseylaw.je\)](http://jerseylaw.je)

⁵ [In respect of the death of Pamela](#), Safeguarding Partnership Board, 2021

⁶ [clares-law.pdf \(jersey.police.uk\)](#)

Key elements

The draft Law has three fundamental components –

- The domestic abuse offence
- Domestic Abuse Protection Orders
- Offender notification requirements

The domestic abuse offence

Articles 3 and 4 of the draft Law, together with the definitions in Article 1 and 2, create a new offence of ‘domestic abuse’, and describe how this offence is committed and dealt with.

This offence can be committed where both parties are aged 16 or over, reflecting the existence of the complementary protections for those under 16 in the [Children \(Jersey\) Law 2002](#). These people must be ‘personally connected’, meaning they must be (or have been) in a relationship, are to be married, share a child, be related, or one provides care to the other.

The offence is committed where the perpetrator, more than once, either commits an offence of violence, harassment or neglect against the victim (e.g. assault), or where the perpetrator behaves in a coercive and controlling way, by isolating the victim from normal social interaction, regulating their activities or making the victim dependent on them.

The offence requires that either physical or psychological harm to be caused to the victim by the actions of the perpetrator, or that such harm was likely to occur. In considering ‘harm’, the courts must look at the cumulative effect of all the behaviour, not just take each action separately. That concept is a fundamental component of the offence and is intended to recognise the reality of living continually in an abusive relationship where ‘flare ups’ may be rare, but the cumulative effects of neglect, control and psychological abuse take an enormous toll on the victim and cause significant harm.

The perpetrator will have a defence if their behaviour was reasonable in the circumstances, or if they hold a genuine and reasonable belief that they are acting in the victims, best interests, even if that turns out to be mistaken. This is intended to deal with situations in which a person is ‘coerced or controlled’, but it is genuinely for their own good. An example might be a concerned person stopping their partner gambling by restricting their access to shared funds, or well-meaning efforts to stop self-destructive behaviour.

When sentencing a person convicted of domestic abuse, a court will be required to treat the presence or involvement of a child or pregnant person as an aggravating factor which will increase the severity of the sentence. This is similar to provisions in legislation from other jurisdictions, notably Scotland², but the application of the aggravating factor to pregnancy is unique to Jersey.

Domestic Abuse Protection Orders

Courts will have the power to make DAPOs in respect of a person over the age of 18 who has been convicted either of the offence of domestic abuse, or of another offence that results from the offender displaying a pattern of abusive behaviour (meaning physical or sexual abuse, violence, threats, harassment, or neglect) towards a person over 16.

² See the [Domestic Abuse \(Scotland\) Act 2018](#).

DAPOs will be available where the court feels that there is, on balance, a risk of further abusive behaviour against the victim. Before a DAPO is issued, the court must consider various factors including the wellbeing of any children involved, the wishes of any co-habiting family members and the wishes of the victim and perpetrator.

The DAPO will act to constrain the behaviour of the perpetrator, and might provide that they cannot contact or approach the victim, or cannot be near the victims home. Where the parties still live together, it can be used to ensure that the victim retains freedom of movement and association.

The DAPO can also act to underpin perpetrator programmes, by placing additional legal force on court-ordered requirements to attend counselling or education such as the Jersey Domestic Abuse Programme (JDAP)⁸.

People receiving a DAPO will need to inform the police where they live, and keep the police updated when they move, to ensure that their behaviour can be monitored.

The notification requirements

Where a court is satisfied that it is necessary and proportionate to reduce the risk of further abusive behaviour by the offender, it may require that an offender be subject to ‘notification requirements’. This means that the person must keep the police informed of any change of address, or if they use another name (legally or just in common use).

The court must specify how long the notification requirement will be in place and there are provisions for appeals against the imposition of notification requirements, or against a refusal to do so.

Notification requirements may be varied or revoked by a court if the circumstances of the person change.

Other points of note

Jurisdiction – the Council of Europe’s ‘Convention on violence against women’ (the Istanbul Convention)⁹ requires extraterritorial jurisdiction to be extended to criminal conduct for the specific purpose of protecting women against all forms of violence. This legislation will meet the requirements of the Convention by allowing domestic abuse offences committed in other jurisdictions by people habitually resident in Jersey to be treated as if they were committed in Jersey.

Cross-examination – the Criminal Procedure (Jersey) Law 2018¹⁰ makes specific arrangements for the conduct of trials that concern certain (mostly sexual) offences, by restricting an accused person from cross-examining their alleged victim in person. The draft Law would make a consequential amendment to Article 103 of the Criminal Procedure Law to apply that rule to domestic abuse offences as well.

Timescale

If approved, the draft Law will come into force following the approval of an Appointed Day Act. This is intended to allow time for the police and courts to put the necessary arrangements in place to manage trial process and the management of notification requirements.

⁸ [JDAP](#) is a domestic abuse programme delivered by the Jersey Probation and After-Care Service, for adults who have behaved abusively and want to change their behaviour.

⁹ [Council of Europe Convention on preventing and combating violence against women and domestic violence](#)

¹⁰ [Criminal Procedure \(Jersey\) Law 2018 \(jerseylaw.je\)](#)

Financial and manpower implications

There may be some additional requirements of the States of Jersey Police in administering the notification requirements for domestic abusers, but those will be managed within the resources of the Force.

Data protection implications

A threshold assessment was completed which did not indicate a high risk to rights and freedoms in relation to personal data in the draft legislation.

Human Rights

The Law Officers' Department has indicated that the draft Law does not give rise to any human rights issues. The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT**Human Rights Notes on the Draft Domestic Abuse (Jersey) Law 202-**

These Notes have been prepared in respect of the draft Domestic Abuse (Jersey) Law 202-, (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

All references to parts or provisions are references to Parts or Articles in the draft Law, unless otherwise stated.

The draft Law, if passed, would –

- (a) create a new criminal offence of domestic abuse;
- (b) allow the courts to issue domestic abuse protection orders, which are orders of a duration limited by reference to a specified date, event or until further order, that are issued to prevent a person who has been convicted of a relevant offence (i.e. the offence of domestic abuse and other statutory or customary offences involving abusive behaviour between people who are personally connected), and a power to vary and revoke those orders and to hear appeals;
- (c) allow the courts to require a person who has been convicted of a relevant offence to provide information to police; and
- (d) permit the police to disclose information in respect of a person convicted of a relevant offence to persons who apply for disclosure of that information, or where the disclosure is considered proportionate and reasonable in the circumstances.

Offence of domestic abuse

Part 2 sets out the offence of domestic abuse and aggravating factors relevant to the determination of a sentence to be imposed on, or other way of dealing with, a person convicted of that offence.

Article 3 provides that a person who intentionally or recklessly engages in behaviour that is domestic abuse commits an offence. Behaviour of a person (A) towards another person (B) is domestic abuse if: A and B are both aged 16 or over and are personally connected to each other; the behaviour is abusive; the behaviour consists of more than one act (or failures to act); and the behaviour causes, or is reasonably likely to cause, harm to B. Terms such as “abuse”, “personally connected” and “harm” are defined in Article 1(1), and Article 1(2) provides that behaviour “towards another person”, for the purposes of the offence in Article 3, includes conduct in which the offender makes use of another person or is behaviour which is directed at an animal or property. A has a defence if they had a reasonable belief that they were acting in B’s best interests and the behaviour was reasonable in the circumstances.

The domestic abuse offence does not apply retrospectively and, for this reason, in principle there is no question of retrospective application of the criminal law in contravention of Article 7 ECHR, which prohibits retrospective application of criminal offences.

Article 7 ECHR also provides that the criminal law must enable a person to know from the wording of the relevant provision what acts, or omissions, will make them criminally liable and what penalty will be imposed for the act or omission. The use of overly vague concepts and criteria in interpreting a legislative provision can render the criminal law incompatible with the Article 7 ECHR requirements for clarity and foreseeability in the law. The draft Law contains several definitions or interpretative provisions to assist in the construction of the domestic abuse offence provision. 'Abusive', for the purposes of the offence, is defined as behaviour that is an offence under Jersey law, whether statutory or customary, that involves physical or sexual abuse, violence or threats, harassment, neglect or coercive or controlling behaviour (Article 1(1)). 'Coercive or controlling' is defined as behaviour that is reasonably likely to make B dependent or subordinate to A, isolate B, control, regulate or monitor B's day-to-day activities or restrict B's freedom of action (Article 1(1)). The offence also requires that the behaviour causes, or is reasonably likely to cause, harm to B. Harm is defined as physical harm or psychological harm including fear, alarm, distress, humiliation or degradation (Article 1(1)). It is considered that the offence, and reference to its constitutive terms as defined in the draft Law or by reference to established offences in Jersey law, are sufficiently clear so as to raise no issues of compatibility with Article 7 ECHR.

For completeness, it should be noted that, even where it might be suggested there is some novelty in the construction of the offence in the criminal law, it has been held that though there may be areas of doubt in relation to whether behaviour constitutes behaviour which falls within an offence, that fact alone does not make a provision incompatible with Article 7 ECHR, provided that it proves to be sufficiently clear in the large majority of cases. It is considered that the interpretation of the domestic abuse offence, in particular previously uncodified concepts such as 'coercive and controlling' behaviour would, in the majority of cases, be sufficiently clear so as to enable their application in determining the offence.

The domestic abuse offence also has the potential to engage Article 8 ECHR (right to respect for private and family life), in that the offence has the effect of criminalising private behaviour between personally connected individuals in intimate or family relationships (e.g. disagreements, arguments). This is, perhaps, particularly the case where the offending involves acts at, might be said to be, the less severe end of the offending spectrum: verbal abuse, harassing behaviour, controlling behaviour, as opposed to physical abuse, or violent or sexual assaults.

Article 8 ECHR is, however, a qualified right and interference with that right can be justified if it pursues a legitimate aim which includes, inter alia, the prevention of crime and to protect the rights and freedoms of others. The offence pursues a clear legitimate aim of preventing domestic abuse and protecting victims from associated harm (Article 3(2)). The offence provision is proportionate in relation to these aims because the offence is only made out if there is more than one abusive act (Article 3(2)(c)), and if the abusive behaviour causes, or is reasonably likely to cause, harm (Article 3(2)(d)). In addition, in determining whether the behaviour causes, or is reasonably likely to cause, harm to B, a person must look at the cumulative effect, or likely cumulative effect, of all the acts and failures to act (Article 3(3)). As such, domestic arguments and confrontations, which is behaviour that is sometimes a feature of domestic relationships, would not be a criminal offence if it did not meet these criteria, i.e. a number of acts and proved, inter alia, beyond a reasonable doubt to be behaviour causing, or reasonably

likely to cause, physical or psychological harm. The offence is also considered proportionate because the defendant would have a defence if they held a reasonable belief that they were acting in the persons best interests and the behaviour was reasonable in the circumstances.

Article 8 ECHR places positive obligations on states to protect individuals from violence by third parties, because violence threatens bodily integrity and the right to a private life. The ECtHR has held that these positive obligations extend to victims of domestic violence. States are therefore required to maintain and apply an adequate legal framework affording protection against acts of violence by private individuals. The offence, and the framework of victim-protection measures in the draft Law, are considered measures which are compliant with the positive obligation under Article 8 ECHR.

Domestic abuse protection orders

Part 3 provides for a new civil measure, the Domestic Abuse Protection Orders (DAPO). A DAPO is a civil order of the court which may subject a person to prohibitions, restrictions and positive requirements, such as evicting a person from their home or requiring them to attend counselling (Article 6). DAPOs also impose notification requirements while the order is in force (Article 7), and a breach of a DAPO or failing to provide information or providing false information, without reasonable excuse, is an offence (Article 10 and Article 7(2), respectively). The provisions relating to DAPOs in Part 3 engage several provisions of the ECHR.

Article 5 – Right to liberty and security

Article 5 ECHR provides that everyone has the right to liberty and security of person. DAPOs engage Article 5 ECHR because they impose prohibitions, restrictions and/or positive requirements on a person, and because the draft Law states that a breach of a DAPO is a criminal offence. Article 5 ECHR provides that a person may be deprived of their liberty in specified cases, in accordance with a procedure prescribed by law. The specified cases include where it is reasonably considered necessary to prevent the offender committing an offence (Article 5(1)(c) ECHR), or for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law (Article 5(1)(b) ECHR). Article 5 ECHR case law indicates that there is no clear line between deprivation of liberty which would amount to a breach of Article 5 ECHR and a mere restriction on liberty which would not amount to breach – the difference is a matter of degree not substance. Account must be taken of a range of factors including: type, duration, effect and manner of implementation. The interferences brought about by the imposition of a DAPO under the draft Law will, therefore, depend on the nature of the imposition. However, in principle, the provisions in Articles 5 and 6 allow the courts to act in a way compatible with Article 5 ECHR when deciding what requirements the DAPO should impose.

Article 6 – Right to a fair trial

DAPOs can place a range of prohibitions on A including prohibiting A from contacting B, prohibiting A from coming within a specified distance of B or a specified premises, and if A and B live together evicting A from their home and preventing A from evicting B from the home (Article 6). DAPOs may also impose any requirements the court deems necessary to protect another person from the risk of further domestic abuse, including for example, requiring A to attend specified counselling or education (Article 6(1)(f)).

Article 6 ECHR provides that in the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Evicting or preventing a person from accessing their property would engage a person's civil right to enjoy their property. Similarly, preventing a person from contacting or going near a person may, depending on the circumstances, interfere with their civil right of access to their children. Whether Article 6 ECHR is in fact engaged, however, will always depend on the circumstances of an individual case.

The draft Law has included several safeguards to protect a person's Article 6 ECHR rights. DAPOs may only be issued by a court, where A has been convicted of a relevant offence, and if A is aged 18 or over (Article 5(1)). An application is required by the Attorney General, and the grounds of issuing a DAPO are that, on the balance of probabilities, that there is a risk of further domestic abuse by A towards the victim (B) and that it is necessary to issue the order to protect B (Article 5(2)). Before issuing a DAPO, the court must consider: any statements made by A or B on the matter; the welfare of any person under the age of 18 whose interests the court considers relevant to the giving of the order (whether or not that person and A are personally connected); and if the order will limit or prevent A from entering the premises where B lives, take reasonable steps to discover the opinion of any person who lives at the premises and is personally connected to A or B (Article 5(3)). In addition, the person has the right, within 14 days, to appeal the decision (Article 8) or subsequently to apply to vary or revoke the DAPO if they can demonstrate that their circumstances have significantly changed such that the DAPO is no longer necessary or proportionate (Article 9).

In the UK government's human rights memorandum, which accompanied the Domestic Abuse Bill, it highlighted in relation to DAPOs that procedural unfairness could arise by DAPOs being imposed without the court having to be satisfied, to a criminal standard of proof, of the acts alleged before making an order which could involve the imposition of positive elements. The UK government highlighted, by way of example, that a DAPO could be issued by a court on acquittal of an offence such that a court is not satisfied on a set of facts to the criminal standard, and so unable to convict for an offence, but is satisfied to the civil standard and therefore able to impose a DAPO. The UK government was satisfied that DAPOs do not involve a determination of a criminal charge for the purpose of Article 6 ECHR. The UK government highlighted that although alleged conduct may be criminal, it is not necessarily so, and that the purpose of orders does not have to be punitive. The UK government argued that this applied to DAPOs, stating that "a DAPO is not... a penalty: the legislative aim underpinning the creation of DAPOs is the prevention of, and diversion from, domestic abuse rather than the punishment of perpetrators and the conditions for making a DAPO are statutorily confined to circumstances where an order is "necessary and proportionate" for protective purposes". It is considered that the same analysis applies in the case of DAPOs that could be issued under the draft Law, the aim of which would be preventative rather than punitive. In any event, DAPOs under the draft Law could only be issued if a person has been convicted of a relevant offence (e.g. either domestic abuse or another offence which has a domestic abuse element) (Article 5(1)). It is considered, therefore, that DAPOs under the draft Law would not amount to the determination of a criminal charge for the purposes of Article 6 ECHR.

In sum, taking these elements of the assessment together, it is considered that the DAPO provisions in the draft Law are compatible with Article 6 ECHR.

Article 7 – No punishment without law

The DAPO provisions in the draft Law are not expressed to have application to past behaviour, rather the draft Law would only permit the imposition of a DAPO where a person has been convicted of a relevant offence. A relevant offence could be either an offence of domestic abuse, which could only occur post-commencement of the draft Law, or a conviction for another existing customary or statutory offence, which could be an offence that was committed prior to, or following, the commencement of the draft Law. In these latter cases, where the DAPO is imposed on a person convicted of an offence prior to the commencement of the draft Law, the DAPO is not applied to past behaviour, rather it is imposed in relation to a previous conviction, where a court has already determined the criminal nature of the offending.

Here, the conviction and sentence is the punitive measure imposed by the criminal law, and the DAPO, imposed under powers in the draft Law, would be a preventative measure imposed having regard to the fact of offending. This model of civil measure following criminal conviction is common in Jersey law, see, for example, the power to impose restraining orders on offenders under the Sex Offenders (Jersey) Law 2010 for past and present offending. Moreover, a DAPO is not considered to be a punitive measure, and it will follow from the established certainty that a court will have already determined the criminal culpability of the offender. As such, there is no question of retrospective application of the criminal law (in the sense of a punitive measure applied to past behaviour which may or may not meet the criminal standard) in the context of DAPOs under the draft Law. It is considered that the draft Law is compatible with Article 7 ECHR in this respect.

Article 8 – Right to respect for private and family life

Article 8 ECHR protects individuals from arbitrary interference in their private and family life, home and correspondence. To be permissible an interference must be in accordance with the law, in pursuit of one of the legitimate aims laid down in Article 8(2) ECHR and must be “necessary in a democratic society”, that is proportionate to the aim pursued. The “family life” element of Article 8 ECHR protects family relationships and matters essential to those relationships. ‘Family’ is not confined to marriage and is a question of fact depending on the existence of close personal ties. The right to respect for the ‘home’ has been interpreted as covering a right of access to and occupation of premises, a right not to be expelled and to enjoy the home without interference or intrusion, and a right not to be evicted or to have one’s home destroyed. ‘Home’ is an autonomous concept that does not depend on the classification under domestic law. Rather it focuses on the nature and degree of ties between person and the property. As such, whether a person’s family or home life have been interfered with does not depend on state-based definitions of those terms and is to be determined on the specific facts of each case.

Moreover, under the family life aspect of Article 8 ECHR, the ECtHR has generally assumed contact with a specific other person to constitute a fundamental element of Article 8 ECHR. Similarly, under the private life aspect, it encompasses the right for each individual to approach others in order to establish and develop relationships with them. However, the private life limb does not guarantee the right as such to establish a relationship with a particular individual, especially if the other person does not share the wish for contact and if the person with whom the applicant wishes to maintain contact has been the victim of behaviour which has been deemed detrimental by the domestic courts.

DAPOs engage Article 8 ECHR to the extent that the prohibitions and positive requirements would prevent the perpetrator of domestic abuse from contacting family members and accessing their home. Article 8 ECHR is also engaged to the extent that a DAPO would prevent a victim of domestic abuse from maintaining their family life where a DAPO is issued without the victim's consent. In addition, notification requirements (Article 7) which require the person subject to a DAPO to notify the police of their name or address, and a change in those details, would interfere with that person's right to privacy.

Article 8 ECHR is a qualified right. Any interference with a person's home, family or private life as a result of a DAPO being issued against a person will be in accordance with the law (the clear provisions set out in Part 3), in pursuit of legitimate aims (recognised in Article 8(2) ECHR) of preventing crime and protecting the rights and freedoms of others, and, it is considered, in a proportionate manner, in principle. DAPOs can only be issued in accordance with the express provisions contained in the draft Law. This includes the necessity of a conviction for a relevant offence, that the court is satisfied on the balance of probabilities that there is a risk of further domestic abuse by A towards B, and where it is necessary to protect B (Article 5). Furthermore, any positive requirements may only be imposed if it is necessary to protect B from the risk of further abuse carried out by A (Article 6). When imposing any prohibitions or requirements on A, a court is expressly required to avoid, as far as practical, conflict with A's religious beliefs and interference with A's work or education (Article 6). These prohibitions and requirements are also subject to appeal, variation or revocation (Articles 8 and 9).

A DAPO can be imposed against a person without the consent of the person for whose protection the order is imposed (though the court is required to consider any statements made by A or B on the matter (Article 5(3)(a)). However, interference with the victim's right to family and home life in these cases can be justified. Firstly, the ability of DAPOs to be imposed without the consent of the victim safeguards against the risk that the victim may be subject to coercion from, or pressure by, the perpetrator into withdrawing or withholding consent. Secondly, the test for issuing a DAPO is one of risk of abuse and necessity to protect B from harm (see Article 5(2)). Thirdly, while the interference is likely to remain for as long as the order is in force, the court will only make an order for as long as is deemed necessary to protect the victim from abuse. In addition, the victim has the right to appeal the decision of the court (Article 8(2)(b)) and to apply to the court to vary or revoke the decision (Article 9(2)(b)).

The Article 8 ECHR rights of others who are in some way connected to A and B may also be interfered with by the imposition of a DAPO. The draft Law, however, requires that the views of and impact on these people is taken into consideration before an order is imposed (Article 5(3)(b) and (c)). The court must before issuing an order consider the welfare of any person under the age of 18 whose interests the officer or the court considers relevant to the giving of the order (whether or not that person and A are personally connected) and if the order will limit or prevent A from entering the premises where B lives, take reasonable steps to discover and consider the opinion of any other person who lives at the premises and is personally connected to A or B.

For these reasons, the DAPO provisions are considered compatible with Article 8 ECHR in principle.

Article 9 – Freedom of thought, conscience and religion

Article 9 ECHR provides that everyone has the right to freedom of thought, conscience and religion including, inter alia, to manifest his religion or belief in worship, teaching

practice and observance. This is a qualified right and may be subject to such limitations as are prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

A DAPO may prohibit A from coming within a specified distance of a specified premises and impose any other requirement on A that the court considers necessary to protect B from the risk of further domestic abuse carried out by A (Article 6). This has the potential to interfere with a person's Article 9 ECHR rights if, for example, that person was prevented from attending a premises for religious worship or a positive requirement imposed by a court prevented that person from manifesting their religion. Whether Article 9 ECHR is engaged will, however, always depend on the individual circumstances of each case. In any case, the draft Law is deemed to be compliant with Article 9 ECHR. Not only is the court, as a public authority required to consider a person's ECHR rights when subjecting them to an order (as required under the Human Rights (Jersey) Law 2000), there is an explicit requirement on the face of the draft Law requiring the court to, so far as practicable, avoid conflict with A's religious beliefs (Article 6(2)(a)).

Article 10 – Freedom of expression

Article 10 ECHR provides that everyone has the right to freedom of expression, including the freedom to hold opinions, to receive and impart information and ideas without interference by public authority. This is a qualified right and may be subject to formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of, inter alia, public safety, for the prevention of disorder or crime, and for the protection of the reputation or rights of others.

A DAPO can prevent a person from contacting another person and can place any other requirement on a person that a court thinks necessary to protect another person from domestic abuse (Article 6). Such a requirement could include, for example, preventing a person from using social media to express their opinions about another person. In this way, Article 10 ECHR may be engaged, however, as in the case of Article 9 ECHR, whether there is an unlawful interference will depend on the individual circumstances of each case. The draft Law is considered to be compliant with Article 10 ECHR because any interference will be in accordance with the draft Law, in pursuit of clear legitimate aims, and proportionate, in principle, in that any restrictions can only be imposed, including for a specified period, if the court deems them necessary to protect the victim.

Article 11 – Freedom of assembly and association

Article 11 ECHR provides that everyone has the right to freedom of peaceful assembly and to freedom of association with others. This right is qualified and restrictions on this right may be justified if prescribed by law and if they are necessary in a democratic society in the interests of, inter alia, the prevention of crime and the protection of the rights and freedoms of others.

A DAPO can place restrictions on a person's freedom of movement by preventing them from accessing their home, a location where another person is present and from coming within a specified distance of a specified premises (Article 6). This could, for example, prevent the person from accessing or attending a particular location or event. As is the case with the other qualified rights considered in this memorandum, Article 11 ECHR may be engaged but whether there is an unlawful interference will depend on the individual circumstances of each case. In principle, any interference with this right

would be justified on the basis that it would be in accordance with the law, in pursuit of the legitimate aim of preventing crime and would only be applied if considered necessary to protect the victim from domestic abuse or the risk of domestic abuse.

Article 1 of Protocol 1 (A1P1) – Protection of property

A1P1 provides for the protection of property. It is a qualified right permitting interference in the public interest and subject to the conditions provided for by law. A DAPO can, if the perpetrator and the victim live together at the same premises require the perpetrator to leave and not enter the premises and prevent them from evicting or excluding the victim from the premises (Article 6). In circumstances where the DAPO is stated to last for an extended period of time, it is considered that an order of this nature could constitute deprivation of property. This is because in extreme circumstances it could be argued that the person's A1P1 rights have in effect been expropriated or extinguished. It follows that A1P1 will be engaged where a person is deprived of, or prevented from accessing or using, property as a result of a DAPO.

For the interference to be lawful it must comply with the principle of lawfulness and pursue a legitimate aim, in the public or general interest, by means reasonably proportionate to the aim sought to be realised. A DAPO will only be issued subject to the conditions provided for by the draft Law, and in pursuit of the legitimate public or general interest of protecting victims from offending behaviour (noting that states enjoy a wide margin of appreciation in determining what is in the public/general interest). In terms of proportionality, the provisions would, in principle, enable a fair balance to be struck as between the protection of property rights and the interests of the community in victim protection. There is no requirement for the public in general to benefit and it is enough that the victim would benefit from the imposition of the DAPO (although it could of course be argued that the general public do benefit from a reduction in domestic abuse offending). It is therefore considered that the restrictions which can be imposed in a DAPO, together with the safeguards contained in the draft Law, will strike a fair balance between the rights of the perpetrator and the victim. Moreover, as the duration of an order is linked to the necessity of protecting B, the duration of the order determined by the court, even an extended duration is, in principle, likely to be justified.

Notification requirements and the power to disclose information

Part 4 provides that a court that convicts a person aged 16 and over of a relevant offence may, if considered necessary and proportionate to reduce the risk of further abusive behaviour by the offender, order that the offender be subject to notification requirements (Article 11). The notification requirements include providing their name and address, and will therefore engage a person's right to privacy under Article 8 ECHR. Imposing notification requirements on a person can be justified in the interests of public safety, the prevention of crime and for the protection of the rights and freedom of others. Whether it is necessary in a democratic society depends on whether there is a "pressing social need" for the interference in question. The ECtHR allows states to determine this question, subject to review by the court.

The measures also need to be proportionate to the legitimate aim pursued. It is considered that the measures are proportionate because in order for the notification requirements to be imposed a person must: be convicted by a competent court of a relevant offence (Article 11(1)); the court must then satisfy itself that the notification requirements are necessary and proportionate to be imposed (Article 11(2)); and the person subject to the notification requirements can appeal the decision and apply to vary or revoke the requirements if they can demonstrate to the court that their circumstances

have significantly changed so that the order is no longer necessary or proportionate (Article 13 and 14).

Article 15 provides the police with the power to disclose details of a person's conviction for a relevant offence; details of any DAPO that have been issued against a person (even if the order is no longer in force); and information provided by a person to comply with the notification requirements. This information may be disclosed to a person who applies for the information to be disclosed or to a person who the police officer considers is at a credible risk of harm from the offender, if the disclosure is proportionate and reasonable in the circumstances.

Providing the police with a statutory power to disclose sensitive information about an individual to a third party will engage a person's right to privacy and to family life under Article 8 ECHR. Any disclosure must be made in accordance with the draft Law and a police officer who makes such a disclosure must comply with any relevant guidance issued by the Chief Police Officer in relation to disclosing the information or deciding to disclose information under (Article 15(3)). The ability to disclose clearly supports the legitimate aims of preventing crime and protecting the rights and freedom of others. It is also considered proportionate, in principle, as when considering whether to proactively disclose information a police officer must be satisfied that the person to whom they are disclosing is at a credible risk of harm from the person subject to notification requirements and the disclosure must be proportionate and reasonable in the circumstances (Article 15(2)(b)).

As noted earlier, Article 8 ECHR places positive obligations on states to protect individuals from violence by third parties including victims of domestic violence. A statutory power to disclose private information to third parties, in certain circumstances, can therefore be seen as a measure in compliance with the positive obligation.

Amendment of Criminal Procedure (Jersey) Law 2018

Article 18 amends Article 103(3) of the Criminal Procedure (Jersey) Law 2018 (the "2018 Law"). This provides that an unrepresented defendant in a criminal trial is prohibited from cross-examining a complainant in respect of specified offences. Article 18 would add the domestic abuse offence (as well as the offence under Article 10 (failure to comply with a domestic abuse protection order)) to the list of specified offences. This engages Article 6 ECHR (right to a fair trial), which provides, inter alia, that in the determination of any criminal charge, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. A person's specific rights in respect of criminal proceedings include the right to defend himself (Article 6(3)(c)) and to examine or have examined witnesses against him (Article 6(3)(d)). As such, where the ability to cross-examine a witness is restricted this has the potential to infringe the rights accorded in Article 6.

The ECtHR's approach to alleged violations of Article 6(3)(d), due to restrictions on the ability to cross-examine a witness, is to consider the difficulties experienced by the defence in the context of the trial as a whole to see whether the trial was fair. This means that alternative ways of obtaining or admitting evidence (e.g. pre-trial) may be permissible provided appropriate procedural safeguards are in place. In each case, the question will be whether, taking account of the procedural safeguards put in place, the public interest in detecting and punishing crime overrides any prejudice that may be caused to the defendant. Articles 101, 102, 104 and 105 of the 2018 Law enable the court to consider the interests of justice and put sufficient safeguards in place to ensure that the trial remains fair in this respect. As such, the court powers afforded by these

Articles in the 2018 Law would make proceedings compatible with Article 6(3)(d) of the ECHR, in principle, in view of the safeguards attached to them.

EXPLANATORY NOTE

This Law, if adopted, would:

- create a new criminal offence of domestic abuse;
- allow the courts to issue domestic abuse protection orders, which are orders of potentially indefinite duration that are issued to prevent a person who has committed domestic abuse or a similar offence from committing further domestic abuse; and
- allow the courts to require a person who has been convicted of domestic abuse or a similar offence to provide information to police.

Part 1 (Articles 1 and 2) provides for how the Law is interpreted.

Article 1 defines terms used in the Law. Of particular importance are the definitions of “abusive” and “relevant offence”. Behaviour is abusive if it is an offence under Jersey law which involves physical or sexual abuse, violence, threats, harassment or neglect. Behaviour is also abusive if it is coercive or controlling, which is defined as behaviour that is reasonably likely to make a person dependent on another person, isolate a person, control, regulate or monitor a person’s day-to-day activities, or restrict a person’s freedom of action. A relevant offence is an offence of domestic abuse under Article 3 of the Law or any other offence that involves more than one act of abusive behaviour towards a person aged 16 or over to whom the offender is personally connected.

Article 2 defines “personally connected”. For behaviour to be domestic abuse, it must be behaviour towards a person to whom the offender is personally connected. A wide range of relationships are covered by the definition of personally connected. As well as marriages, civil partnerships, non-formal intimate personal relationships and family relationships, carers who provide certain services and foster parents are also included.

Part 2 (Articles 3 and 4) relates to the offence of domestic abuse.

Article 3 creates the new offence of domestic abuse. Domestic abuse is repeated abusive behaviour towards a person to whom the offender is personally connected that causes or is reasonably likely to cause harm to the person. The offence is limited to situations where both the offender and the person are aged 16 years or over. The offence includes acts committed outside of Jersey if the offender is habitually resident in Jersey. A person who commits the offence is liable to imprisonment for up to 5 years and to an unlimited fine.

Article 4 requires a court that is sentencing a person convicted of domestic abuse to treat the presence or involvement of a child or pregnant person as an aggravating factor.

Part 3 (Articles 5 to 10) provides for domestic abuse protection orders.

Article 5 allows a court to issue a domestic abuse protection order against a person aged 18 or over who has been convicted of a relevant offence. The court must be satisfied that there is a risk of the person committing domestic abuse and that the order is necessary.

Article 6 sets out what a domestic abuse protection order can do and how long it may be in force. A domestic abuse protection order can prohibit a person (“A”) who has committed domestic abuse against another person (“B”) from contacting or coming within a specified distance of B. If A and B live together, the order can require A to leave the home and prohibit A from entering the home or from evicting B from the home. The order can also require A to attend counselling or education and can impose any other requirement on A that the court considers necessary.

Article 7 requires a person against whom a domestic abuse protection order is issued to notify the police of the person's home address at the time the order is issued and of any changes to the address while the order is in force. A person who fails to provide true information commits an offence and is liable to imprisonment for up to 12 months and to an unlimited fine.

Article 8 gives a right of appeal against a decision relating to a domestic abuse protection order on the grounds that the decision was based on an error of law or fact.

Article 9 gives a right to apply to vary or revoke a domestic abuse protection order if, due to a change of circumstances, the terms of the order are no longer necessary or proportionate. An application can be made by the person against whom the order is issued, the person for whose protection the order is issued or by the Attorney General.

Article 10 creates an offence of failing to comply with a domestic abuse protection order. The offence includes acts committed outside of Jersey if the offender is habitually resident in Jersey. A person who commits the offence is liable to imprisonment for up to 5 years and to an unlimited fine.

Part 4 (Articles 11 to 15) relates to notification requirements that a court can impose on people convicted of domestic abuse or a similar offence.

Article 11 allows a court to order a person aged 16 or over to comply with the notification requirements (which are set out in Article 12) if the person has been convicted of a relevant offence.

Article 12 contains the notification requirements. While subject to the notification requirements, a person must notify the police of each name that the person uses and the person's home address. A person who fails to comply with the notification requirements commits an offence and is liable to imprisonment for up to 12 months and to an unlimited fine.

Article 13 gives a right of appeal against a decision relating to an order made under Article 11 on the grounds that the decision is based on an error in law or fact.

Article 14 gives a right to apply to vary or revoke an order made under Article 11 if, due to a change of circumstances, the order is no longer necessary or proportionate. An application can be made by the person to whom the order is issued or by the Attorney General.

Article 15 allows a police officer to disclose information about a person's conviction for a relevant offence, any domestic abuse protection order that has been issued against a person and any information provided by a person to comply with the notification requirements. A police officer can disclose information to a person if the person applies for the information or if the police officer considers that person is at a credible risk of harm. The Minister for Home Affairs can disclose information to a law enforcement authority in another jurisdiction.

Part 5 (Articles 16 to 19) contains closing provisions.

Article 16 allows the States to amend the Law by Regulations. Regulations can amend the definition of "relevant offence", amend the matters that are covered by the notification requirements, amend the time by which matters must be notified and allow a court to impose different notification requirements on different offenders or classes of offenders.

Article 17 provides for Rules of Court to be made to give effect to the Law.

Article 18 consequentially amends Article 103 of the Criminal Procedure (Jersey) Law 2018. That Article prevents a person charged with certain offences from cross-examining, in person, the complainant. The amendment adds the offences of domestic

abuse (Article 3) and failure to comply with a domestic abuse protection order (Article 10) to the list of offences to which Article 103 applies.

Article 19 gives the title of the Law and states that it will come into force on a day specified by the States by Act.



Jersey

DRAFT DOMESTIC ABUSE (JERSEY) LAW 202-

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Jersey

DRAFT DOMESTIC ABUSE (JERSEY) LAW 202-

A **LAW** to create an offence of domestic abuse, to provide for domestic abuse protection orders and to require people who commit domestic abuse offences to provide personal information to the police.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION

1 Interpretation

(1) In this Law –

“abusive”, in relation to behaviour, means behaviour that is –

- (a) an offence under Jersey law, whether statutory or customary, that involves –
 - (i) physical or sexual abuse,
 - (ii) violence or threats,
 - (iii) harassment, or
 - (iv) neglect; or
- (b) coercive or controlling;

“authorised officer” means the Chief Officer or another police officer authorised by the Chief Officer for that purpose;

“behaviour” includes –

- (a) doing something or saying or otherwise communicating something;
and

- (b) intentionally failing to do something or to say or otherwise communicate something;

“Chief Officer” means the Chief Officer of the States of Jersey Police Force;

“coercive or controlling”, in relation to behaviour by a person (“A”) towards another person (“B”), means behaviour that is reasonably likely to –

- (a) make B dependent on, or subordinate to, A;
- (b) isolate B from friends, family members or other sources of social interaction or support;
- (c) control, regulate or monitor B’s day-to-day activities; or
- (d) restrict B’s freedom of action;

“domestic abuse” means behaviour that constitutes an offence under Article 3;

“domestic abuse protection order” means an order issued by a court under Article 5;

“harm” means –

- (a) physical harm; or
- (b) psychological harm, including fear, alarm, distress, humiliation or degradation;

“notification requirements” means the requirements to notify an authorised officer of information under Article 12;

“personally connected” is defined in Article 2;

“police” means the States of Jersey Police Force;

“relevant offence” means –

- (a) an offence under Article 3; or
 - (b) any other offence or combination of offences under Jersey law, whether statutory or customary, that –
 - (i) involves the offender behaving abusively towards a person aged 16 or over to whom the offender is personally connected, and
 - (ii) consists of more than one act or failure to act.
- (2) Behaviour of a person may be behaviour towards another person despite the fact that it consists of conduct that makes use of another person or is directed at an animal or property.

2 Meaning of “personally connected”

- (1) Two people are personally connected if –
- (a) they are, or have been, married, in a civil partnership or in an intimate personal relationship;
 - (b) they have agreed to marry or enter into a civil partnership (even if the agreement has been terminated);
 - (c) they are, or have been, parents of the same child, or share, or have shared, parental responsibility for a child;

- (d) they are relatives; or
 - (e) one provides to the other a service described in Schedule 1 to the [Regulation of Care \(Jersey\) Law 2014](#) (which defines regulated activities for the purposes of that Law).
- (2) A person (“A”) is a relative of another person (“B”) if A, whether by blood, adoption, marriage or civil partnership, is –
- (a) the parent, child, stepparent, stepchild, grandparent or grandchild of B or B’s partner;
 - (b) the sibling, aunt, uncle, niece, nephew or first cousin of B or B’s partner; or
 - (c) the partner of a person to whom sub-paragraph (a) or (b) applies.
- (3) For the purposes of paragraph (2) –
- (a) “parent” includes an appointed foster parent (as defined in Article 1(1) of the [Children \(Jersey\) Law 2002](#)) or a person who has been awarded parental responsibility by a court order; and
 - (b) two people are partners if they –
 - (i) are married or in a civil partnership, or
 - (ii) are living together as spouses.

PART 2

DOMESTIC ABUSE OFFENCE

3 Domestic abuse – offence

- (1) A person who intentionally or recklessly engages in behaviour that is domestic abuse commits an offence and is liable to imprisonment for a term of 5 years and to a fine.
- (2) Behaviour of a person (“A”) towards another person (“B”) is domestic abuse if –
- (a) A and B are both aged 16 or over and are personally connected to each other;
 - (b) the behaviour is abusive;
 - (c) the behaviour consists of more than one act (or failure to act); and
 - (d) the behaviour causes, or is reasonably likely to cause, harm to B.
- (3) In determining whether behaviour causes, or is reasonably likely to cause, harm to B, a person must look at the cumulative effect (or reasonably likely cumulative effect) of all of the acts and failures to act (rather than the effect of each act or failure to act in isolation).
- (4) If a person who is habitually resident in Jersey engages in behaviour that is domestic abuse while in a jurisdiction outside of Jersey –
- (a) the person commits an offence under paragraph (1); and
 - (b) the person may be proceeded against in Jersey in respect of the offence.
- (5) A has a defence to an offence under this Article if –

- (a) in engaging in the behaviour, A held a reasonable belief that A was acting in B's best interests; and
- (b) the behaviour was reasonable in the circumstances.

4 Aggravating factors

- (1) In determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence under Article 3, a court must treat the presence of any of the following as aggravating factors –
 - (a) in committing the offence, the person directed abuse at a child or pregnant person;
 - (b) in committing the offence, the person made use of a child in directing abuse at another person;
 - (c) a child saw or heard the behaviour constituting the offence or was present when the offence was committed;
 - (d) the offence took place in circumstances where it was reasonably likely to directly affect a child.
- (2) If an aggravating factor is present, the court must state in open court that the offence was aggravated.
- (3) This Article does not limit the matters to which a court may have regard when determining the sentence to be imposed on, or other way of dealing with, the person.

PART 3

DOMESTIC ABUSE PROTECTION ORDERS

5 Issuing domestic abuse protection order

- (1) This Article applies to a person ("A") aged 18 or over who has been convicted of a relevant offence against another person ("B"), regardless of whether the offence or conviction occurred before or after the commencement of this Law.
- (2) A court may, on the application of the Attorney General, issue a domestic abuse protection order against A if the court is satisfied that –
 - (a) on the balance of probabilities, there is a risk of further domestic abuse by A towards B; and
 - (b) it is necessary to issue the order to protect B.
- (3) Before issuing a domestic abuse protection order, the court must –
 - (a) consider any statements made by A or B on the matter;
 - (b) consider the welfare of any person under the age of 18 whose interests the court considers relevant to the giving of the order (whether or not that person and A are personally connected); and
 - (c) if the order will limit or prevent A from entering the premises where B lives, take reasonable steps to discover and consider the opinion

of any other person who lives at the premises and is personally connected to A or B.

6 Content and duration of domestic abuse protection order

- (1) A domestic abuse protection order may –
 - (a) prohibit the person the order is issued against (“A”) from contacting the person for whose protection it is made (“B”);
 - (b) prohibit A from coming within a specified distance of B;
 - (c) prohibit A from coming within a specified distance of specified premises;
 - (d) if A and B live together at the same premises –
 - (i) require A to leave the premises,
 - (ii) prohibit A from entering the premises, and
 - (iii) prohibit A from evicting or excluding B from the premises;
 - (e) require A to attend specified counselling or education; and
 - (f) impose any other requirement on A that the court considers necessary to protect B from the risk of further domestic abuse carried out by A.
- (2) In imposing prohibitions or requirements on A in a domestic abuse protection order, the court must, so far as practicable, avoid –
 - (a) conflict with A’s religious beliefs;
 - (b) interference with A’s work or with A’s attendance at an educational establishment; and
 - (c) conflict with the requirements of any other court order or injunction to which A is subject.
- (3) A court that issues a domestic abuse protection order must specify the period for which the order is in force, which may be –
 - (a) until a specified date;
 - (b) until the occurrence of a specified event; or
 - (c) until a further order is made by the court.

7 Person issued domestic abuse protection order must give name and address

- (1) If a court issues a domestic abuse protection order against a person, the person must –
 - (a) as soon as practicable after the order is issued, notify an authorised officer of the address at which the person is residing; and
 - (b) while the order is in force, notify an authorised officer if the address at which the person is residing changes –
 - (i) if the person has prior knowledge of the change, at least 24 hours before the change, if this is possible, or
 - (ii) in any other case, as soon as reasonably practicable but, in any event, within 24 hours after the change.

- (2) A person who is required to provide information under this Article commits an offence and is liable to imprisonment for a term of 12 months and to a fine if the person –
 - (a) fails, without reasonable excuse, to provide the information within the required timeframe; or
 - (b) knowingly provides false information.

8 Appeal against domestic abuse protection order

- (1) This Article applies in respect of a decision of a court to –
 - (a) issue a domestic abuse protection order against a person;
 - (b) refuse an application to issue a domestic abuse protection order against a person; or
 - (c) impose certain prohibitions or requirements in a domestic abuse protection order.
- (2) The following people may appeal against the decision on the grounds that the decision is based on an error of law or fact –
 - (a) the person against whom the order is (or would be) issued;
 - (b) the person for whose protection the order is (or would be) issued;
 - (c) the Attorney General.
- (3) An appeal must be made within 14 days after the decision is made –
 - (a) if the decision is made by the Magistrate’s Court, to the Royal Court; or
 - (b) if the decision is made by the Royal Court, to the Court of Appeal.
- (4) The following people have the right to be heard on an appeal –
 - (a) the person against whom the order is (or would be) issued;
 - (b) the person for whose protection the order is (or would be) issued;
 - (c) the Chief Officer;
 - (d) the Attorney General.
- (5) A court that hears an appeal under this Article may uphold, overturn or vary the decision as the court thinks appropriate.
- (6) A domestic abuse protection order that is the subject of an appeal –
 - (a) may be stayed (in part or in full) by the court to which the appeal is made until the appeal is determined; but
 - (b) otherwise continues to have effect until the appeal is determined.

9 Application to vary or revoke domestic abuse protection order due to change in circumstances

- (1) This Article applies if –
 - (a) a court issues a domestic abuse protection order against a person;and

- (b) due to the person's circumstances having significantly changed in the time since the order was issued, the terms of the order are no longer necessary or proportionate.
- (2) The following people may apply to the court that issued the order for the order to be varied or revoked –
 - (a) the person against whom the order is issued;
 - (b) the person for whose protection the order is issued;
 - (c) the Attorney General.
- (3) The following people have the right to be heard on an application –
 - (a) the person against whom the order is issued;
 - (b) the person for whose protection the order is issued;
 - (c) the Chief Officer;
 - (d) the Attorney General.
- (4) The court may vary or revoke the order if the court is satisfied that it is appropriate to do so.
- (5) A domestic abuse protection order that is the subject of an application –
 - (a) may be stayed (in part or in full) by the court to which the application is made until the application is heard; but
 - (b) otherwise continues to have effect until the application is heard.

10 Failure to comply with domestic abuse protection order

- (1) A person who, without reasonable excuse, fails to comply with a domestic abuse protection order commits an offence and is liable to imprisonment for a term of 5 years and to a fine.
- (2) If a person who is habitually resident in Jersey fails, without reasonable excuse, to comply with a domestic abuse protection order while in a jurisdiction outside of Jersey –
 - (a) the person commits an offence under paragraph (1); and
 - (b) the person may be proceeded against in Jersey in respect of the offence.

PART 4

NOTIFICATION REQUIREMENTS AND DISCLOSURE OF INFORMATION

11 Court may impose notification requirements

- (1) This Article applies to a person (“A”) aged 16 or over who has been convicted of a relevant offence, regardless of whether the offence or conviction occurred before or after the commencement of this Law.
- (2) A court may, on the application of the Attorney General, order that the offender be subject to the notification requirements if the court is satisfied that the order is necessary and proportionate to reduce the risk of further abusive behaviour by the offender.

- (3) If the court orders that an offender be subject to the notification requirements, the court must specify the period for which the order is in force, which may be –
 - (a) until a specified date;
 - (b) until the occurrence of a specified event; or
 - (c) until a further order is made by the court.
- (4) An order ceases to have effect (and the offender stops being subject to the notification requirements) –
 - (a) after the date or event specified in the order, if one is specified;
 - (b) if the offender’s conviction for the relevant offence is quashed or reversed on appeal; or
 - (c) if a court overturns the order under Article 13 or revokes the order under Article 14.

12 Requirement to notify police of details

- (1) A person who is subject to notification requirements must notify an authorised officer of each name the person uses and the person’s place of residence.
- (2) The person must make the notification –
 - (a) on the day the court orders that the person be subject to the notification requirements;
 - (b) every year on the anniversary of that day; and
 - (c) whenever the information required to be notified changes, in accordance with paragraphs (3) and (4).
- (3) If the person uses a name that has not been notified, the person must notify an authorised officer of the name within 24 hours after the person’s first use of the name.
- (4) If the person’s place of residence changes, the person must notify an authorised officer of the new address –
 - (a) if the person has prior knowledge of the change, at least 24 hours before the change, if this is possible; or
 - (b) in any other case, as soon as reasonably practicable but, in any event, within 24 hours after the change.
- (5) A person who, without reasonable excuse, fails to comply with this Article commits an offence and is liable to imprisonment for a term of 12 months and to a fine.

13 Appeal against imposition of notification requirements

- (1) This Article applies in respect of a decision of a court to –
 - (a) order that a person be subject to the notification requirements; or
 - (b) refuse an application for an order that a person be subject to the notification requirements.
- (2) The person or the Attorney General may appeal the decision on the grounds that it is based on an error in law or fact.

- (3) An appeal must be made within 14 days after the decision is made –
 - (a) if the decision is made by the Magistrate’s Court, to the Royal Court;
 - (b) if the decision is made by the Royal Court, to the Court of Appeal;
or
 - (c) if the decision is made by the Youth Court, to the Youth Appeal Court.
- (4) A court that hears an appeal under this Article may uphold the order, overturn the order or vary the order as the court thinks appropriate.
- (5) An order that is the subject of an appeal continues to have effect while the appeal is determined.

14 Application to vary or revoke notification requirements order

- (1) This Article applies if –
 - (a) a court orders that a person be subject to the notification requirements; and
 - (b) due to the person’s circumstances having significantly changed in the time since the order was issued, the order is no longer necessary or proportionate.
- (2) The person or the Attorney General may apply to the court that issued the order for the order to be varied or revoked.
- (3) The court may vary or revoke the order if the court is satisfied that it is appropriate to do so.
- (4) An order that is the subject of an application continues to have effect while the application is determined.

15 Police may disclose information

- (1) This Article applies to the following information –
 - (a) details of a person’s conviction for a relevant offence;
 - (b) details of any domestic abuse protection orders that have been issued against the person (even if an order is no longer in force);
 - (c) information provided by a person to comply with the notification requirements.
- (2) A police officer may disclose information –
 - (a) to a person who applies for the information to be disclosed; or
 - (b) to a person who the police officer considers is at a credible risk of harm from the person to whom the information relates, if the disclosure is proportionate and reasonable in the circumstances.
- (3) A police officer must comply with any relevant guidance issued by the Chief Officer when disclosing, or deciding whether to disclose, information under this Article.
- (4) The Minister for Home Affairs may disclose information to a law enforcement authority in another jurisdiction, either proactively or on request.

- (5) Nothing in this Article prevents a person from disclosing information that the person is otherwise by law permitted or authorised to disclose.

PART 5

OTHER MATTERS

16 Regulations

The States may by Regulations amend this Law to –

- (a) amend the definition of “relevant offence”;
- (b) amend the matters required to be notified under the notification requirements;
- (c) amend the time by which a person must comply with the notification requirements; and
- (d) allow the court to impose different notification requirements on different offenders or classes of offenders.

17 Rules of Court

- (1) The Criminal Procedure Rules Committee may make any Rules of Court necessary or convenient to give effect to this Law.
- (2) The powers under Article 112 of the [Criminal Procedure \(Jersey\) Law 2018](#) and Articles 19 and 40 of the [Court of Appeal \(Jersey\) Law 1961](#) include the power to make any Rules of Court necessary or convenient to give effect to this Law.
- (3) Rules of Court made under this Article may provide for the court to sit in private in proceedings in which the court is exercising, or considering exercising, a power under this Law.
- (4) Paragraph (3) does not limit paragraph (1) or (2), any other rule-making power or any other power of the court to sit in private.

18 Amendment of [Criminal Procedure \(Jersey\) Law 2018](#)

After Article 103(3)(ea) of the [Criminal Procedure \(Jersey\) Law 2018](#) there is inserted –

“(eb) an offence under Article 3 or 10 of the Domestic Abuse (Jersey) Law 202-;”.

19 Citation and commencement

This Law may be cited as the Domestic Abuse (Jersey) Law 202- and comes into force on a day to be specified by the States by Act.