

STATES OF JERSEY



DRAFT DOMESTIC ABUSE (JERSEY) LAW 202- (P.69/2022): COMMENTS

**Presented to the States on 19th April 2022
by the Children, Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

The Draft Domestic Abuse (Jersey) Law 202- (hereafter ‘the draft Law’) was lodged by the Minister for Home Affairs and is due to be debated at the last sitting of the current States Assembly on 25th April 2022. The requirement for specific legislation to tackle domestic abuse has existed for some time, and the Children, Education and Home Affairs Panel (hereafter ‘the Panel’) welcomes the fact that this has now been developed. The Panel has been briefed on several occasions during the development of the draft Law and would like to place on record its thanks to the Minister and Officers for keeping it abreast of developments. It would, however, stress that the draft Law has been lodged very late in the current political term and, unfortunately, there has been a significant material change to the legislation from the versions that were initially presented to the Panel.

Purpose of the draft Law

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. The inclusion of the aggravated circumstance in relation to a pregnant person was suggested by the Panel during its initial briefings on the draft Law and it is pleased that this has been included within the final draft.

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 2010, 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 2021. This also serves as a codification of the ‘Clare’s Law’ 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. The Panel does note, however, that there is no notification requirement on offenders in this regard.

Key issues

Whilst the Panel supports the introduction of this important legislation, there are a number of key points that it would like to raise as follows:

Removal of Domestic Abuse Protection Notices

The Panel notes that the version of the draft Law that was publicly consulted on in late 2021 contained Domestic Abuse Protection Notices (DAPN's) which were intended to be a tool that the States of Jersey Police Force could issue for a period of 48 hours in order to remove a suspected offender from the residence of a victim in order to investigate whether to arrest or not. However, this has been completely removed from the final version of the legislation. The Panel discussed this matter at length during its most recent briefing on Monday 4th April 2022 in order to understand the rationale for removing them entirely.

It was explained to the Panel that, as a result of further consultation with the Courts, concern had been raised over the application of both the DAPN's and DAPO's in the previous version of the legislation. It is noted by the Panel that the main concern raised by the Courts was twofold; firstly, both DAPN's and DAPO's (in the previous version of the draft Law) were tools that could be used pre-conviction. As such, it is understood by the Panel that this created potential resource implications for the Courts in terms of having to manage and run appeals processes outside of those currently in place. Secondly, concern was raised that there was no check and balance or accountability for the Police in relation to issuing DAPN's. As a result of this consultation, DAPN's were removed entirely from the draft Law and DAPO's have been brought post-conviction.

Furthermore, it was explained that changing the DAPO from ostensibly a civil action to a criminal matter (post-conviction) ultimately renders the DAPN with little procedural use for the Police as they would not have a means to be held to account for their application as an appeals process would not be possible through the courts. It is noted that, in place of the proposed pre-conviction arrangements of DAPN's and DAPO's, pre-charge bail conditions can be used instead. Furthermore, post-charge bail conditions can also be set which cover the 'gaps' left by removal of DAPN's and change to the DAPO application.

The Panel holds concern around the removal of the DAPN's from the draft Law. One aspect of this which was discussed at length was whether or not removing the DAPN could be seen as limiting the levels of protection available to victims. Without DAPN's and DAPO's pre-conviction, and a reliance on bail Law instead, the question remains as to whether the threshold at which protections are put in place is too high.

Time available to scrutinise the draft Law

This point is intrinsically linked to the Panel's previous point in relation to the removal of DAPN's and changes to DAPO's. As stated in the introduction to these comments, the Panel has been briefed on numerous occasions during the development of the draft Law. However, the substantial material change in relation to DAPN's was first presented to the Panel during its briefing on 4th April 2022 (3 weeks prior to the debate). As Members will be aware, the 10th of March was the final lodging deadline in order for propositions to be debated in the current Assembly. Since the final lodging date, the Assembly has spent two weeks debating the Bridging Island Plan and then a further week on States Business during the week beginning 28th March. As such, there was no time during the initial three weeks of the draft Law being lodged for the Panel to undertake its work. Given the substantive change to the draft Law, this has not allowed the Panel sufficient time to undertake detailed scrutiny of the changes.

This in turn has led to substantial discussion within the Panel as to whether it wished to address the issue through an amendment reinstating DAPN's. Ultimately, it was agreed that, without sufficient time to conduct scrutiny to a level that would be expected, the Panel was not in a position to do so itself. The issue of time being available to the Panel to undertake its role effectively is something that has been raised in respect of previous legislation lodged late in this political term. Whilst the Panel has been briefed during development of the draft Law, the significant material change has come forward far later than would be expected as per the set timescale within the Code of Engagement between the Executive and Scrutiny Panels/PAC.

At the same time, the Panel notes the requirement for legislation to tackle domestic abuse and has found itself in an impossible position as a result. Had the draft Law been brought forward earlier in the political term, then the Panel would have had the option to 'call in' the legislation under Standing Order 72 in order to undertake further scrutiny. However, given the debate falls on the last sitting, 'calling in' the legislation would have meant that it would fall away and would have to be lodged by a future Council of Ministers, of which there is no assurance that it would be taken forward. The Panel would suggest that this is not an acceptable position for it to be put in and, as a result, the level of debate possible on the draft Law has been weakened.

Senator Vallois' amendment

As the Panel concluded it was unable to bring forward its own amendment to reinstate the DAPN's it notes that Senator Vallois has lodged an amendment as an independent member in order to achieve this. This was done with the Panel's knowledge and Senator Vallois informed the Panel of her decision to do so prior to the lodging deadline. Given the Panel's view that it was not in a position to bring an amendment itself, it will not take a definitive position on the Senator's amendment, however, the Panel is of the opinion that the amendment does set out a number of reasons for the introduction of DAPN's that will be important for Members to note during the debate.

Conclusion

The Panel supports the introduction of legislation in order to tackle domestic abuse, however, there are two key points that it considers are important to reiterate to Members ahead of the debate:

1. There has been a substantial change to the legislation from versions the Panel was previously briefed on with the removal of DAPN's and moving the issuance of DAPO's post-conviction. Given the time available to the Panel to scrutinise the legislation it has not been able to conclude whether they should be reinstated as previously drafted. Senator Vallois has brought forward an amendment as an independent States Member in order to reinstate DAPN's which the Panel would draw Members' attention to.
2. The legislation has been brought forward very late in the current political term. Due to the Bridging Island Plan debate and penultimate States sitting, the Panel has had very limited time in which to conduct any detailed scrutiny on the draft Law. This, coupled with the substantive change to the legislation, has placed the Panel in an incredibly difficult position. There is no doubt that legislation to tackle domestic abuse is required, however, the level of protection afforded to victims under the draft Law is a point the Panel cannot provide assurance over.

As a result of the points set out above, the Panel shall be including the legislation as an area for consideration by its successor Panel within its legacy report. It would also suggest that, should the draft Law be adopted, a period of review as to its effectiveness without the DAPN's is taken forward by the Minister for Home Affairs should Senator Vallois' amendment not be adopted.