

# Enhancing Legal Protections for Victims of Domestic Abuse

Response from the Commissioner for Older People for  
Northern Ireland

February  
2021

## Appendix 2 – Consultation Questionnaire

The Department of Justice is seeking your views on proposals to introduce Domestic Abuse Protection Notice and Orders. These are protective measures aimed at protecting victims of domestic abuse and deterring those who carry out abusive behaviour towards a partner, former partner or close family member. The notices and orders will be available to protect victims from domestic abuse, including physical violence and the threat of violence as well as non-physical abuse and coercive control.

As well as prohibitions, such as the alleged perpetrator not contacting the victim, coming within a certain distance of their home, not entering the home or requiring them to leave the home, the Department also proposes enabling powers that would allow the courts, in the longer term, to include positive requirements of the alleged perpetrator, such as attending a behavioural change programme, as conditions of the DAPO.

As far as possible it would be helpful for responses to be made online through the NI Direct Citizen Space website: <https://consultations.nidirect.gov.uk/doj-corporate-secretariat/enhancing-legal-protections>, where the document and response questionnaire can be found. This will assist for analysis purposes.

Please submit your response online, no later than close of play on Friday 12 February 2020. Alternatively you can:

Phone: 028 9052 0534

E-mail: [VAP@justice-ni.gov.uk](mailto:VAP@justice-ni.gov.uk)

Write to:

Community Safety Division

Department of Justice

Room A4.03

Castle Buildings

Stormont Estate

BELFAST

BT4 3SG

## **SECTION 1: ABOUT YOU**

### **Question (a):**

I am responding as... (Please tick one option only)

A member of the Public

On behalf of an organisation

Other.....(Please specify)

### **Question (b):**

Please enter your details below:

Name:

Organisation: Commissioner for Older People for Northern Ireland (COPNI)

Email Address:

**Question 1: Do you agree that we should introduce Domestic Abuse Protection Notices and Domestic Abuse Protection Orders?**

Yes

No

Don't know

No answer

**Please advise and give reasons for your response**

The Commissioner for Older People for Northern Ireland supports the proposals for new Domestic Abuse Protection Notices (DAPNs) for short term protection and Orders (DAPOs) for longer term protection.

The development of a more flexible 'whole system' approach which supports victims of domestic abuse and provides protection from physical and psychological abuse and coercion is to be welcomed.

COPNI's experience of working with vulnerable people experiencing domestic abuse supports the position that the wider justice system and third parties such as social workers should be empowered and expected to intervene in such cases. Progressing to a system which enables engaged stakeholders to protect people who can often be too afraid and unable to protect themselves would be a positive step towards reducing cases of prolonged abuse.

The move from a series of legal interventions which often require self-advocacy by the most vulnerable in our society, to a system in which a range of stakeholders (a victim, the PSNI, the courts and third parties) can protect victims is to be commended.

**Question 2: Do you agree that the proposed Domestic Abuse Protection Notices and Orders should apply to not only physical violence and threats of violence but also non-physical abusive behaviour?**

Yes

No

Don't know

No answer

**Please advise and give reasons for your response**

COPNI strongly supports the application of DAPNs and DAPOs for instances which include non-physical abusive behaviour. Our caseload in relation to older people, research and an increasing jurisprudential consensus recognise that non-physical abusive behaviour can have damaging impacts on individual and family life, similar to physical violence. As DAPNs and DAPOs are intended to provide protection from domestic abuse, for these interventions to be effective they must address all behaviours.

**Question 3: What length of time should a Domestic Abuse Protection Notice be valid for before the police have to apply to a magistrates' court for a Domestic Abuse Protection Order, the suggestion being up to four days?**

Up to 4 days

Up to 7 days

Other (please specify)

Don't know

No answer

**Please advise and give reasons for your response**

COPNI accept the principle of a DAPN period which is sufficiently long for a complete application for a DAPO to be made to a court. We believe that within reason an application should be before the court as soon as possible.

**Question 4: Do you agree that there should be multiple routes via which an application for a Domestic Abuse Protection Order can be made?**

Yes

No

Don't know

No answer

**Please advise and give reasons for your response**

COPNI welcomes the proposal to facilitate a range of avenues to gain a Domestic Abuse Protection Order. This approach signifies a commitment to recognising the importance of protection for domestic abuse victims and recognises that decisions have to be taken in challenging circumstances quickly by a range of agencies and statutory organisations – not just the courts.

This approach supports victims by sharing the responsibility for protection from domestic abuse across a range of stakeholders. It will enable statutory parties to protect victims who are sometimes unable to protect themselves, while empowering those victims who can make an application to do so.

**Question 5: Do you agree that regulations should specify the 'relevant third parties' who potentially would be able to apply for a Domestic Abuse Protection Order?**

Yes

No

Don't know

No answer

**Please advise and give reasons for your response**

COPNI welcome the proposal to empower relevant third parties to apply when appropriate for a Domestic Abuse Protection Order.

Regarding 'specifying' third parties, COPNI recognise that there is a balance to be struck between enabling parties familiar with the case to apply for a DAPO and limiting applications to appropriate parties. Nevertheless, a wide variety of third parties identify domestic abuse cases. So by strictly limiting / specifying those who can apply for a DAPO there is a risk that instances of abuse might not be able to be fully pursued. Indeed, it should be noted that engagement with public services personnel such as health and social care and housing officials is limited in some circumstances and locations in Northern Ireland. Consequently, COPNI maintains that allowing for a broad interpretation of 'relevant third parties' may be justified to ensure cases of abuse are brought to light.

Similarly, COPNI recognise that placing a power/responsibility on third parties which are specified may lead to significant legal, training and resource issues for those involved.

**Question 6: Which individuals/organisations should be identified as potential 'relevant third parties'?**

Yes

No

Don't know

No answer

**Please advise and give reasons for your response**

Please see response above to Question 5.

**Question 7: Do you agree that courts should be able to make Domestic Abuse Protection Orders of their own volition during other proceedings, including in criminal trials?**

Yes

No

Don't know

No answer

**Please advise and give reasons for your response**

COPNI agrees that courts should be able to make DAPOs of their own volition where appropriate during all types of proceedings.

COPNI welcomes the proposal on the principle that it would place responsibility for challenging domestic abuse on the wider justice system rather than primarily on the individual victim.

**Question 8: Following the introduction of Domestic Abuse Protection Orders across Northern Ireland more generally, and in the longer term, do you agree that courts should be able to impose positive requirements as well as prohibitions as part of the conditions attached to the proposed order?**

Yes

No

Don't know

No answer



**Please advise and give reasons for your response**

COPNI recognises that enabling courts to impose positive requirements as well as prohibitions as part of DAPO conditions would have the potential to challenge offending behaviour more effectively. Allowing courts to impose conditions such as participation in behaviour management courses or alcohol/drug treatment programmes can contribute to reducing re-offending.

**Question 9: Do you agree that courts should be able to require individuals subject to a Domestic Abuse Protection Order to notify personal details to the police?**

Yes

No

Don't know

No answer

**Please advise and give reasons for your response**

Courts should be empowered to require individuals subject to a DAPO to notify personal details to the police to ensure the effective monitoring of the orders and any conditions attached.

**Question 10: If so, what personal details should the courts be able to require individuals to provide to the police?**

**Please advise and give reasons for your response**

Those subject to DAPNs or DAPOs should be required to advise the police of their address and any change of address during the course of the notice or order. COPNI consider it proportionate that a court could impose further notification requirements such as details of with whom they live, their intimate relationships and any associated family members. It would be effective if the notification of personal details then also assists in ensuring that the Domestic

Violence and Abuse Disclosure Scheme already in operation maintains an up to date and accurate record.

**Question 11: As well as enabling conditions to protect the victim, should it be open to the courts to impose conditions within the Domestic Abuse Protection Order requiring the alleged perpetrator not to approach or contact any associated children?**

Yes

No

Don't know

No answer

**Please advise and give reasons for your response**

The Commissioner for Older People for Northern Ireland has a duty to protect and promote the wellbeing of older people in society. While matters directly and primarily affecting children are outside his purview, he accepts the logic of this proposal.

**Question 12: Should provision be made that would, in the longer term, enable courts to be given an express power to impose electronic monitoring as a condition of a Domestic Abuse Protection Order?**

Yes

No

Don't know

No answer

**Please advise and give reasons for your response**

Measures such as electronic monitoring may reduce violations of DAPOs, reduce future incidences of abuse, and reassure victims where appropriate.

**Question 13: What safeguards should be put in place relating to any use of electronic monitoring with Domestic Abuse Protection Orders?**

- Yes
- No
- Don't know
- No answer

**Please advise and give reasons for your response**

**Question 14: Do you agree that breach of the proposed order should be a criminal offence?**

- Yes
- No
- Don't know
- No answer

**Please advise and give reasons for your response**

The seriousness of domestic abuse requires that breach of an order intended to address such behaviour should be a criminal offence. Sufficiently robust interventions and correlative criminal sanctions are important to ensure that all sectors of the justice system utilise DAPOs.

**Question 15: If you do agree that breach of the proposed order should be a criminal offence, should it be possible for breach to alternatively be punished as a contempt of court?**

- Yes

- No
- Don't know
- No answer

**Please advise and give reasons for your response**

Breach of a DAPO should be a criminal offence.

**Question 16: Do you agree that courts should have flexibility in determining how long to impose a Domestic Abuse Protection Order for?**

- Yes
- No
- Don't know
- No answer

**Please advise and give reasons for your response**

It is reasonable for the courts to have flexibility in determining the length of time that a DAPO be imposed to meet the individual circumstances of cases.

**Question 17: Do you agree that courts should be able to vary or discharge Domestic Abuse Protection Orders either of their own volition or at the request of the victim, or alleged perpetrator, or the applicant?**

- Yes
- No
- Don't know
- No answer

**Please advise and give reasons for your response**

The courts should be able to vary or discharge DAPOs of their own volition. Varying or discharging DAPOs at the request of the victim, alleged perpetrator or applicant must have safeguards which reduce the risk of further offending. Specifically, there must be safeguards that ensure that the victim has not been pressurised into making an application for, or acquiescing with, a variation or discharge of a DAPO.

**Question 18: What safeguards should be put in place to ensure that the Domestic Abuse Protection Order is not varied or discharged because the victim is being pressurised by the alleged perpetrator?**

**Please advise and give reasons for your response**

NA

**Question 19: Do you have any views about how the Domestic Abuse Protection Notice/Order process can contribute to better perpetrator management?**

Yes

No

Don't know

No answer

**Please advise and give reasons for your response**

**Question 20: How can we ensure that the alleged perpetrator is not able to use the DAPN/DAPO process to further abuse a victim?**

**Please advise and give reasons for your response**

NA

**Question 21: It is intended to pilot DAPNs and DAPOs in two geographical locations. Do you have any views on this?** Yes No Don't know No answer**Please advise and give reasons for your response**

COPNI supports the piloting of these measures in two geographical areas. In particular, COPNI recognises that resources and third party service provision/engagement is likely to vary according to location. Without exploring these aspects of DAPNs and DAPOs and necessary adjustments, the full intention of the measures is less likely to be realised.

**Question 22: Do you have any views as to the two locations that Domestic Abuse Protection Orders could be piloted in, possibly Belfast and one 'more rural' area (dependant on numbers)?** Yes No Don't know No answer**Please advise and give reasons for your response**

**Question 23: Do you have any other comments you wish to make regarding the introduction of Domestic Abuse Protection Notices and Orders?**

Yes

No

Don't know

No answer

**Please advise and give reasons for your response**

**It would be helpful if you reference which part of the document you are commenting on.**

**Question 24: Do you have any comments to make on the potential implications the introduction of Domestic Abuse Protection Notices and Orders may have on equality, in terms of the impact of the proposals for different groups?**

Yes

No

Don't know

No answer

**Please advise and give reasons for your response**

There has been relatively little public consideration of the impact of domestic abuse on older people. Until recently this element present in many instances of domestic abuse, has been largely overlooked.<sup>1</sup>

More broadly, COPNI notes that significant numbers of older people have unsatisfactory experiences of the justice system and experience high levels of fear of crime. COPNI's 2019 report 'Crime and Justice' found that for a range of offences 'the PSNI's outcomes ... continue to be lower for older people than for other age groups'.<sup>2</sup> Similarly, 'almost one in six adults aged 65-74 in Northern Ireland reported high levels of concern about being a victim of crime in their own home'.<sup>3</sup>

The proposals arrive in a context in which there is: i) evidence of poorer outcomes for older victims of crime; ii) heightened fear of crime among older people; and iii) an absence of prior consideration of older people's experiences of domestic abuse. Consequently, COPNI urges that appropriate deliberation be given as to how the proposed measures may most effectively meet the needs of older victims of domestic abuse given these barriers to equal access to justice.

The introduction of the legislative changes must also be assessed in the context of the wider legislative programme and consideration given to how the new orders will sit alongside the Mental Health Act requirements and the new Adult Protection Bill to avoid duplication and confusion. In promoting protections for older persons it will be vital that training and guidance on the DAPN and DAPO also reflect the context of the wider protections and legislation required and available.

**Question 25: Is there an opportunity to better promote equality of opportunity or good relations as part of the proposals?**

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<sup>1</sup>Briefing: Domestic Abuse Bill 2019-2021, Age UK, April 2020, p.2, available at: <https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/equality-and-human-rights/domestic-abuse-bill---age-uk-briefing-note---second-reading-hc---april-2020.pdf>

<sup>2</sup>Crime and Justice: The Experience of Older People in Northern Ireland, COPNI, 2019, p.6, available at: <https://www.copni.org/media/1540/206567-online-a4-crime-report-56p.pdf>

<sup>3</sup>Crime and Justice: The Experience of Older People in Northern Ireland, COPNI, 2019, p.9, available at: <https://www.copni.org/media/1540/206567-online-a4-crime-report-56p.pdf>



- Yes
- No
- Don't know
- No answer

**Please advise and give reasons for your response**

**Question 26: Do you have any comments on the potential implications the introduction of Domestic Abuse Protection Notices and Orders may have on human rights?**

- Yes
- No
- Don't know
- No answer

**Please advise and give reasons for your response**

DAPNs and DAPOs promote safeguarding the right to respect for private and family life (Human Rights Act 1998, Schedule 1 Article 8).

**Question 27: Do you have any comments on the potential implications the introduction of Domestic Abuse Protection Notices and Orders may have in rural areas?**

- Yes
- No
- Don't know
- No answer

**Please advise and give reasons for your response**

**Question 28: Do you have any comments you wish to make regarding the financial impact of the introduction of Domestic Abuse Protection Notices and Orders?**

Yes

No

Don't know

No answer

**Please advise and give reasons for your response**

It is likely that there will be a significant financial cost attendant to the introduction of DAPNs and DAPOs such as investment by third parties, police training, legal aid and court resources.