

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5008 GIBRALTAR Thursday 10th November 2022

B. 22/22

DOMESTIC ABUSE BILL 2022

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BILL

FOR

AN ACT to make provision in relation to domestic abuse; to create an offence in relation to controlling or coercive behaviour in intimate or family relationships; to provide for an offence of threatening to disclose private sexual photographs and films; to provide for an offence of strangulation; to make provision for the granting of measures to assist individuals in certain circumstances to give evidence; and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Domestic Abuse Act 2022.

Commencement.

2. This Act comes into operation on the day appointed by the Minister with responsibility for justice by notice in the Gazette and different days may be appointed for different purposes.

PART 1

CONTROLLING OR COERCIVE BEHAVIOUR

Controlling or coercive behaviour in an intimate or family relationship.

3.(1) A person (“A”) commits an offence if-

- (a) A repeatedly or continuously engages in behaviour towards another person (“B”) that is controlling or coercive;
- (b) at the time of the behaviour, A and B are personally connected (see subsection (7));
- (c) the behaviour has a serious effect on B; and
- (d) A knows or ought to know that the behaviour will have a serious effect on B.

(2) But A does not commit an offence under this section if at the time of the behaviour in question-

- (a) A has responsibility for B; and
- (b) B is under 16.

(3) For the purposes of this section the following shall be presumed to have responsibility for B-

- (a) any person who –
 - (i) has parental responsibility for him or her (within the meaning of the Children Act 2009); or
 - (ii) is otherwise legally liable to maintain him or her; and
- (b) any person who has care of B.

(4) A person who is presumed to be responsible for a child or young person by virtue of subsection (3)(a) shall not be taken to have ceased to be responsible for that child or young person by reason only that the person does not have care of that child or young person.

(5) A's behaviour has a "serious effect" on B if-

- (a) it causes B to fear, on at least two occasions, that violence will be used against B; or
- (b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities.

(6) For the purposes of subsection (1)(d) A "ought to know" that which a reasonable person in possession of the same information would know.

(7) A and B are "personally connected" if any of the following applies-

- (a) they are, or have been, married to each other;
- (b) they are, or have been, civil partners of each other;
- (c) they have agreed to marry one another (whether or not the agreement has been terminated);
- (d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
- (e) they are, or have been, in an intimate personal relationship with each other;

- (f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child (see subsection (8));
- (g) they are relatives.

(8) For the purposes of subsection (7)(f) a person has a parental relationship in relation to a child if-

- (a) the person is a parent of the child;
- (b) the person has parental responsibility for the child.

(9) In subsections (7) and (8)-

“civil partnership agreement” has the meaning given by section 86 of the Civil Partnership Act 2014;

“child” means a person under the age of 18 years;

“parental responsibility” has the same meaning as in the Children Act 2009;

“relative” in relation to a person, means—

- (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse, former spouse, civil partner or former civil partner; or
- (b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person’s spouse, former spouse, civil partner or former civil partner, and includes, in relation to a person who is cohabiting or has cohabited with another person, any person who would fall within paragraph (a) or (b) if the parties were married to each other or were civil partners of each other.

(10) In proceedings for an offence under this section it is a defence for A to show that-

- (a) in engaging in the behaviour in question, A believed that he or she was acting in B’s best interests; and
- (b) the behaviour was in all the circumstances reasonable.

(11) A is to be taken to have shown the facts mentioned in subsection (10) if-

- (a) sufficient evidence of the facts is adduced to raise an issue with respect to them; and

(b) the contrary is not proved beyond reasonable doubt.

(12) The defence in subsection (10) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

(13) A person guilty of an offence under this section is liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

Offences under section 3 committed outside Gibraltar.

4. If—

- (a) a person’s behaviour consists of or includes behaviour in a country or territory outside Gibraltar;
- (b) the behaviour would constitute an offence under section 3 if it occurred in Gibraltar; and
- (c) the person is a Gibraltarian within the meaning of section 2 of the Crimes Act 2011, or is ordinarily resident in Gibraltar,

the person is guilty in Gibraltar of that offence.

Guidance about investigation of offences under section 3.

5.(1) The Minister with responsibility for justice may issue guidance about the investigation of offences under section 3 to whatever persons the Minister considers appropriate.

(2) The Minister may revise any guidance issued under this section.

(3) The Minister must arrange for any guidance issued or revised under this section to be published.

PART 2

POWERS FOR DEALING WITH DOMESTIC ABUSE

Definition of “domestic abuse”.

6.(1) This section defines “domestic abuse” for the purposes of this Act.

(2) Behaviour of a person (“A”) towards another person (“B”) is “domestic abuse” if-

- (a) A and B are each aged 16 or over and are personally connected to each other; and
- (b) the behaviour is abusive.

(3) Behaviour is “abusive” if it consists of any of the following-

- (a) physical or sexual abuse;
- (b) violent or threatening behaviour;
- (c) controlling or coercive behaviour;
- (d) economic abuse (see subsection (4));
- (e) psychological, emotional or other abuse,

and it does not matter whether the behaviour consists of a single incident or a course of conduct.

(4) “Economic abuse” means any behaviour that has a substantial adverse effect on B’s ability to-

- (a) acquire, use or maintain money or other property; or
- (b) obtain goods or services.

(5) For the purposes of this Act A’s behaviour may be behaviour “towards” B despite the fact that it consists of conduct directed at another person (for example, B’s child).

(6) References in this Act to being abusive towards another person are to be read in accordance with this section.

(7) For the meaning of “personally connected”, see section 3(7).

Children as victims of domestic abuse.

7.(1) This section applies where behaviour of a person (“A”) towards another person (“B”) is domestic abuse.

(2) Any reference in this Act to a victim of domestic abuse includes a reference to a child who-

- (a) sees or hears, or experiences the effects of, the abuse; and
- (b) is related to A or B.

- (3) A child is related to a person for the purposes of subsection (2) if-
- (a) the person is a parent or, or has parental responsibility for, the child; or
 - (b) the child and the person are relatives.

(4) In this section-

“child” has the same meaning as in section 3(9);

“parental responsibility” has the same meaning as in section 3(9);

“relative” has the same meaning as in section 3(9).

Power to give a domestic abuse protection notice.

8.(1) A senior police officer may give a domestic abuse protection notice to a person (“P”) if conditions A and B are met.

(2) A domestic abuse protection notice is a notice prohibiting P from being abusive towards a person aged 16 or over to whom P is personally connected.

(Section 9 contains further provision about the provision that may be made by notices.)

(3) Condition A is that the senior police officer has reasonable grounds for believing that P has been abusive towards a person aged 16 or over to whom P is personally connected.

(4) Condition B is that the senior police officer has reasonable grounds for believing that it is necessary to give the notice to protect that person from domestic abuse, or the risk of domestic abuse, carried out by P.

(5) For the purposes of this Part, it is irrelevant if the abusive behaviour referred to in subsection (3) took place in Gibraltar or elsewhere.

(6) A domestic abuse protection notice may not be given to a person who is under the age of 18.

(7) In this Part, “senior police officer” means a member of the Royal Gibraltar Police who is of at least the rank of chief inspector.

(8) The Minister may by regulations amend the definition of “senior police officer” in subsection (7).

Provision that may be made by notices.

9.(1) A domestic abuse protection notice may provide that the person to whom the notice is given (“P”)—

- (a) may not contact the person for whose protection the notice is given;
- (b) may not come within a specified distance of any premises in Gibraltar in which that person lives.

“Specified” means specified in the notice.

(2) If P lives in premises in Gibraltar in which the person for whose protection the notice is given also lives, the notice may also contain provision—

- (a) prohibiting P from evicting or excluding that person from the premises;
- (b) prohibiting P from entering the premises;
- (c) requiring P to leave the premises.

Matters to be considered before giving a notice.

10.(1) Before giving a domestic abuse protection notice to a person (“P”), a senior police officer must, among other things, consider the following—

- (a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the giving of the notice (whether or not that person and P are personally connected);
- (b) the opinion of the person for whose protection the notice would be given as to the giving of the notice;
- (c) any representations made by P about the giving of the notice;
- (d) in a case where the notice includes provision relating to premises lived in by the person for whose protection the notice would be given, the opinion of any relevant occupant as to the giving of the notice.

(2) In subsection (1)(d) “relevant occupant” means a person other than P or the person for whose protection the notice would be given—

- (a) who lives in the premises, and
- (b) who is personally connected to—
 - (i) the person for whose protection the notice would be given, or
 - (ii) if P also lives in the premises, P.

(3) The officer must take reasonable steps to discover the opinions mentioned in subsection (1).

(4) It is not necessary for the person for whose protection a domestic abuse protection notice is given to consent to the giving of the notice.

Further requirements in relation to notices.

11.(1) A domestic abuse protection notice must be in writing.

(2) A domestic abuse protection notice given to a person (“P”) must state—

- (a) the grounds on which it has been given;
- (b) that a police officer may arrest P without warrant if the police officer has reasonable grounds for believing that P is in breach of the notice;
- (c) that an application for a domestic abuse protection order under section 14 will be heard by the magistrates’ court within 48 hours of the time of giving the notice (disregarding any days mentioned in section 15(3)) and a notice of the hearing will be given to P;
- (d) that the notice continues in effect until that application has been determined or withdrawn; and
- (e) the provision that the magistrates’ court may include in a domestic abuse protection order.

(3) The notice must be served on P personally by a police officer.

(4) On serving the notice on P, the police officer must ask P for an address at which P may be given the notice of the hearing of the application for the domestic abuse protection order.

(5) Subsection (6) applies where—

- (a) a senior police officer gives a domestic abuse protection notice to a person (“P”) who the officer believes is a person subject to service law in accordance with section 2(2) of the Armed Forces (Gibraltar) Act 2018;
- (b) the notice includes provision by virtue of section 9(2) prohibiting P from entering premises, or requiring P to leave premises; and
- (c) the officer believes that the premises fall within paragraph (a) of the definition of “service living accommodation” in section 96(1) of the Armed Forces Act 2006, as it applies to Gibraltar by virtue of the Armed Forces (Gibraltar) Act 2018.

(6) The officer must make reasonable efforts to inform P's commanding officer (within the meaning of section 360 of the Armed Forces Act 2006, as it applies to Gibraltar by virtue of the Armed Forces (Gibraltar) Act 2018) of the issuing of the notice.

Offence of breach of notice.

12.(1) A person commits an offence if the person without reasonable excuse-

- (a) fails to do something which the person is required to do by a domestic abuse protection notice; or
- (b) does anything which the person is prohibited from doing by such a notice.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding level 3 on the standard scale (or both).

(3) If a police officer has reasonable grounds for believing that a person is in breach of a domestic abuse protection notice, the police officer may arrest the person without warrant.

(4) A person arrested for breach of subsection (1) must be held in custody and brought before the magistrates' court—

- (a) before the end of the period of 24 hours beginning with the time of the arrest; or
- (b) if earlier, at the hearing of the application for a domestic abuse protection order against the person (see section 14(3)).

(5) In calculating when the period of 24 hours mentioned in subsection (4)(a) ends, the following days are to be disregarded—

- (a) any Saturday or Sunday; and
- (b) any day which is a bank holiday in Gibraltar under the Banking and Financial Dealings Act.

(6) If the person is brought before the court as mentioned in subsection (4)(a), the court may remand the person. (For power to remand a person brought before the court as mentioned in subsection (4)(b), see section 15(8).)

(7) The court may, when remanding the person on bail, require the person to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

(8) In section 21(1) of the Criminal Procedure and Evidence Act 2011 (entry for purpose of arrest, etc.), after paragraph (e) insert—

“(ea) arresting a person who the police officer has reasonable grounds for believing is in breach of a domestic abuse protection notice given under section 8 of the Domestic Abuse Act 2022;”.

Meaning of “domestic abuse protection order”.

13.(1) In this Part a “domestic abuse protection order” is an order which, for the purpose of preventing a person (“P”) from being abusive towards a person aged 16 or over to whom P is personally connected-

- (a) prohibits P from doing things described in the order; or
- (b) requires P to do things described in the order.

(2) A domestic abuse protection order may be made-

- (a) on application (see section 14); or
- (b) in the course of certain proceedings (see section 17).

(3) Section 18 sets out the conditions for making a domestic abuse protection order.

Domestic abuse protection orders on application.

14.(1) A court may make a domestic abuse protection order under this section against a person (“P”) on an application made to it in accordance with this section.

(2) An application for an order under this section may be made by—

- (a) the person for whose protection the order is sought;
- (b) the Commissioner of Police;
- (c) a person specified in regulations made by the Minister with responsibility for justice;
- (d) any other person with the leave of the court to which the application is to be made.

(3) Where P is given a domestic abuse protection notice by a senior police officer under section 8, the Commissioner of Police must apply for a domestic abuse protection order against P.

(For further provision about such applications, see section 15.)

(4) An application for an order under this section must be made to the Supreme Court, except where subsection (5) or (6) applies.

(5) An application made by the Commissioner of Police for an order under this section must be made by complaint to the magistrates' court.

(6) In a case where—

(a) P, and the person for whose protection the order is sought, are parties to any family or civil proceedings; and

(b) the court would have power to make a domestic abuse protection order under section 17 in those proceedings without an application being made,

an application for an order under this section may be made in those proceedings by the person for whose protection the order is sought.

(7) Where an application is made to the magistrates' court in accordance with this section—

(a) the magistrates' court may adjourn the hearing of the application;

(b) on the hearing of the application, section 28 of the Magistrates' Court Act (recalcitrant witnesses) does not apply in relation to the person for whose protection the order is sought, except where the person has given oral or written evidence at the hearing.

Applications where domestic abuse protection notice has been given.

15.(1) This section applies where, as a result of a person ("P") being given a domestic abuse protection notice under section 8, the Commissioner of Police is required by section 14(3) to apply for a domestic abuse protection order against P.

(2) The application must be heard by the magistrates' court not later than 48 hours after the notice was given to P.

(3) In calculating when the period of 48 hours mentioned in subsection (2) ends, the following days are to be disregarded—

(a) any Saturday and Sunday; and

(b) any day which is a bank holiday in Gibraltar under the Banking and Financial Dealings Act.

(4) P must be given a notice of the hearing of the application.

(5) The notice under subsection (4) is to be treated as having been given if it has been left at the address given by P under section 11(4).

(6) But if the notice has not been given because P did not give an address under section 11(4), the court may hear the application if satisfied that the Commissioner of Police has made reasonable efforts to give P the notice.

(7) If the court adjourns the hearing of the application, the notice continues in effect until the application has been determined or withdrawn.

(8) If—

- (a) P is brought before the court at the hearing of the application as a result of P's arrest by virtue of section 12(3) (breach of domestic abuse protection notice), and
- (b) the court adjourns the hearing,

the court may remand P.

Remand under section 15(8) of person arrested for breach of notice.

16.(1) This section applies where—

- (a) as a result of a person being given a domestic abuse protection notice under section 8, the Commissioner of Police has applied for a domestic abuse protection order against the person; and
- (b) the magistrates' court remands the person under section 15(8).

(2) If the court has reason to suspect that a medical report will be required, the power to remand the person may be exercised for the purpose of enabling a medical examination to take place and a report to be made.

(3) If the person is remanded in custody for that purpose, the adjournment may not be for more than 3 weeks at a time.

(4) If the person is remanded on bail for that purpose, the adjournment may not be for more than 4 weeks at a time.

(5) If the court has reason to suspect that the person is suffering from mental disorder within the meaning of the Mental Health Act 2016, the court has the same power to make an order under section 664 of the Criminal Procedure and Evidence Act 2011 as it has under that section in the case of a defendant within that section.

(6) The court may, when remanding the person on bail, require the person to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

Domestic abuse protection orders otherwise than on application.

17.(1) A court may make a domestic abuse protection order under this section in any of the cases set out below.

Family proceedings

(2) A court may make a domestic abuse protection order against a person (“P”) in any family proceedings to which both P and the person for whose protection the order would be made are parties.

Criminal proceedings

(3) Where a person (“P”) has been convicted of an offence, the court dealing with P for that offence may (as well as sentencing P or dealing with P in any other way) make a domestic abuse protection order against P.

(4) But subsection (3) does not apply where the Court of Appeal is dealing with a person for an offence.

(5) A court by or before which a person is acquitted of an offence may make a domestic abuse protection order against the person.

(6) Where the Supreme Court allows a person’s appeal against a conviction for an offence, the Supreme Court may make a domestic abuse protection order against the person.

Civil proceedings

(7) A court may make a domestic abuse protection order against a person (“P”) in any relevant proceedings to which both P and the person for whose protection the order would be made are parties.

(8) In subsection (7) “relevant proceedings” means proceedings of a description specified in regulations made by the Minister with responsibility for justice.

Conditions for making an order.

18.(1) The court may make a domestic abuse protection order under section 14 or 17 against a person (“P”) if conditions A and B are met.

(2) Condition A is that the court is satisfied on the balance of probabilities that P has been abusive towards a person aged 16 or over to whom P is personally connected.

(3) Condition B is that the order is necessary and proportionate to protect that person from domestic abuse, or the risk of domestic abuse, carried out by P.

(4) It does not matter—

- (a) whether the abusive behaviour referred to in subsection (2) took place in Gibraltar or elsewhere, or
- (b) whether it took place before or after the coming into force of this section.

(5) A domestic abuse protection order may not be made against a person who is under the age of 18.

Matters to be considered before making an order.

19.(1) Before making a domestic abuse protection order against a person (“P”), the court must, among other things, consider the following—

- (a) the welfare of any person under the age of 18 whose interests the court considers relevant to the making of the order (whether or not that person and P are personally connected);
- (b) any opinion of the person for whose protection the order would be made—
 - (i) which relates to the making of the order, and
 - (ii) of which the court is made aware;
- (c) in a case where the order includes provision relating to premises lived in by the person for whose protection the order would be made, any opinion of a relevant occupant—
 - (i) which relates to the making of the order, and
 - (ii) of which the court is made aware.

(2) In subsection (1)(c) “relevant occupant” means a person other than P or the person for whose protection the order would be made—

- (a) who lives in the premises; and
- (b) who is personally connected to—
 - (i) the person for whose protection the order would be made, or
 - (ii) if P also lives in the premises, P.

(3) It is not necessary for the person for whose protection a domestic abuse protection order is made to consent to the making of the order.

Making of orders without notice.

20.(1) A court may, in any case where it is just and convenient to do so, make a domestic abuse protection order against a person (“P”) even though P has not been given such notice of the proceedings as would otherwise be required by rules of court.

(2) Subsection (1) does not apply in relation to the making of an order under section 14 on an application made in accordance with subsection (3) of that section (see instead section 15(4) to (6)).

(3) In deciding whether to exercise its powers under subsection (1), the court must have regard to all the circumstances, including—

- (a) any risk that, if the order is not made immediately, P will cause significant harm to the person for whose protection the order would be made;
- (b) in a case where an application for the order has been made, whether it is likely that the person making the application will be deterred or prevented from pursuing the application if an order is not made immediately; and
- (c) whether there is reason to believe that—
 - (i) P is aware of the proceedings but is deliberately evading service; and
 - (ii) the delay involved in effecting substituted service will cause serious prejudice to the person for whose protection the order would be made.

(4) If a court makes an order against a person by virtue of subsection (1), it must give the person an opportunity to make representations about the order—

- (a) as soon as just and convenient; and
- (b) at a hearing of which notice has been given to all the parties in accordance with rules of court.

Provision that may be made by orders.

21.(1) A court may by a domestic abuse protection order impose any requirements that the court considers necessary to protect the person for whose protection the order is made from domestic abuse or the risk of domestic abuse.

“Requirement” includes any prohibition or restriction.

(2) The court must, in particular, consider what requirements (if any) may be necessary to protect the person for whose protection the order is made from different kinds of abusive behaviour.

(3) Subsections (4) and (5) contain examples of the type of provision that may be made under subsection (1), but they do not limit the type of provision that may be so made.

(4) A domestic abuse protection order may provide that the person against whom a domestic abuse protection order is made (“P”)—

- (a) may not contact the person for whose protection it is made;
- (b) may not come within a specified distance of any premises in Gibraltar in which that person lives;
- (c) may not come within a specified distance of any other specified premises, or any other premises of a specified description in Gibraltar.

“Specified” means specified in the order.

(5) If P lives in premises in Gibraltar in which the person for whose protection the order is made also lives, the order may contain provision—

- (a) prohibiting P from evicting or excluding that person from the premises;
- (b) prohibiting P from entering the premises;
- (c) requiring P to leave the premises.

(6) Section 22 contains further provision about the requirements that may be imposed by a domestic abuse protection order.

Further provision about requirements that may be imposed by orders.

22.(1) Requirements imposed on a person by a domestic abuse protection order must, so far as practicable, be such as to avoid—

- (a) conflict with the person’s religious beliefs;
- (b) interference with any times at which the person normally works or attends an educational establishment;
- (c) conflict with the requirements of any other court order or injunction to which the person may be subject.

(2) A domestic abuse protection order that imposes a requirement to do something on a person (“P”) must specify the person who is to be responsible for supervising compliance with that requirement.

(3) Before including such a requirement in a domestic abuse protection order, the court must receive evidence about its suitability and enforceability from the person to be specified under subsection (2).

- (4) It is the duty of a person specified under subsection (2)—
- (a) to make any necessary arrangements in connection with the requirements for which the person has responsibility (the “relevant requirements”);
 - (b) to promote P’s compliance with the relevant requirements;
 - (c) if the person considers that—
 - (i) P has complied with all the relevant requirements, or
 - (ii) P has failed to comply with a relevant requirement,to inform the Commissioner of Police.
- (5) A person (“P”) who is subject to a requirement imposed by a domestic abuse protection order—
- (a) must keep in touch with the person specified under subsection (2) in relation to that requirement, in accordance with any instructions given by that person from time to time;
 - (b) if P changes home address, must notify the person specified under subsection (2) of the new home address;
 - (c) if P ceases to have any home address, must notify the person specified under subsection (2) of that fact.

These obligations have effect as requirements of the order.

Duration of orders.

23.(1) Subject to subsection (2), a domestic abuse protection order takes effect on the day on which it is made.

(2) If, on the day on which a domestic abuse protection order (“the new order”) is made against a person, the person is subject to another domestic abuse protection order (“the previous order”), the new order may be made so as to take effect on the previous order ceasing to have effect.

- (3) A domestic abuse protection order has effect—
- (a) for a specified period;
 - (b) until the occurrence of a specified event; or
 - (c) until further order.

“Specified” means specified in the order.

(4) A domestic abuse protection order may also specify periods for which particular requirements imposed by the order have effect.

Breach of order.

24.(1) A person who is subject to a domestic abuse protection order commits an offence if without reasonable excuse the person fails to comply with any requirement imposed by the order.

(2) In a case where the order was made against the person without that person being given notice of the proceedings, the person commits an offence under this section only in respect of behaviour engaged in at a time when the person was aware of the existence of the order.

(See also section 30(5) and (6), which makes similar provision where an order has been varied.)

(3) Where a person is convicted of an offence under this section in respect of any behaviour, that behaviour is not punishable as a contempt of court.

(4) A person may not be convicted of an offence under this section in respect of any behaviour which has been punished as a contempt of court.

(5) A person guilty of an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or both.

(6) If a person is convicted of an offence under this section, it is not open to the court by or before which the person is convicted to make, in respect of the offence, an order for conditional discharge.

(7) In proceedings for an offence under this section, a copy of the original domestic abuse protection order, certified by an officer of the court that made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those matters is admissible in those proceedings.

Arrest for breach of order.

25.(1) This section applies where a relevant court has made a domestic abuse protection order against a person (“P”).

(2) In this section “relevant court” means—

- (a) the Supreme Court; or
- (b) a court which made a domestic abuse protection order against a person in family or civil proceedings.

(3) A person mentioned in subsection (4) may apply to the relevant judge for the issue of a warrant for P’s arrest if the person considers that P has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(4) The persons referred to in subsection (3) are—

- (a) the person for whose protection the order was made;
- (b) where the order was made under section 14, the person who applied for the order (if different);
- (c) any other person with the leave of the relevant judge.

(5) The relevant judge may issue a warrant on an application under subsection (3) only if—

- (a) the application is substantiated on oath; and
- (b) the relevant judge has reasonable grounds for believing that P has failed to comply with the order or is otherwise in contempt of court in relation to the order.

(6) If—

- (a) P is brought before a relevant court as a result of a warrant issued under this section; and
- (b) the court does not immediately dispose of the matter,

the court may remand P.

(7) Schedule 1 contains further provision about remand under this section.

(8) In this section “the relevant judge” means—

- (a) where the order was made by the Supreme Court, a judge of that court;
- (b) where the order was made in family proceedings, a judge of the court that made the order;
- (c) where the order was made in civil proceedings, a judge of the court that made the order.

(9) For the power of a police officer to arrest P without warrant for breach of a domestic abuse protection order, see section 42 of the Criminal Procedure and Evidence Act 2011.

Notification requirements.

26.(1) Subsections (2) to (6) apply where a person is subject to a domestic abuse protection order.

(2) The person must, within the period of three days beginning with the day on which the order is made, notify the police of the information in subsection (3).

(3) The information referred to in subsection (2) is-

- (a) the person's name and, if the person uses one or more other names, each of those names;
- (b) the person's home address.

(4) If the person uses a name which has not been notified under this section, the person must, within the period of three days beginning with the day on which the person first uses that name, notify the police of the same.

(5) If the person changes home address, the person must, before the end of the period of three days beginning with the day on which that happens, notify the police of that fact.

(6) If the person ceases to have any home address, the person must, before the end of the period of three days beginning with the day on which that happens, notify the police of that fact.

(7) The Minister with responsibility for justice may by regulations specify further notification requirements which a court may impose when making or varying a domestic abuse protection order.

In this subsection a "notification requirement" is a requirement for the person against whom the order is made to provide specified information to the police.

(8) The requirements imposed by subsections (2) to (6) do not apply where –

- (a) the person is subject to another domestic abuse protection order (and accordingly those requirements already apply);
- (b) the person is subject to notification requirements under Part 13 of the Crimes Act 2011.

(9) If on any day the person ceases to be subject to any notification requirements as mentioned in subsection (8)(a) or (b), the requirements imposed by subsections (2) to (6) apply to the person on and after that day, but as if the reference in subsection (2) to the day on which the order was made were a reference to that day.

(10) For provisions about how to give a notification under subsection (2), (4), (5) or (6) see section 27.

Further provision about notification under section 26.

27.(1) A person gives a notification under section 26(2), (4), (5) or (6) by-

- (a) attending at a police station; and
- (b) giving an oral notification to-
 - (i) a police officer, or
 - (ii) any person authorised for the purpose by the officer in charge of the station.

(2) A notification given in accordance with this section must be acknowledged in writing.

Offences relating to notification.

28.(1) A person (“P”) commits an offence if P-

- (a) fails, without reasonable excuse, to comply with a requirement imposed by or under section 26; or
- (b) notifies the police, in purported compliance with such a requirement, of any information which P knows to be false.

(2) A person guilty of an offence under subsection (1) is liable-

- (a) on summary conviction to imprisonment for a period not exceeding 12 months, or to a fine, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or both.

(3) A person commits an offence under subsection (1)(a) on the day on which the person first fails, without reasonable excuse, to comply with a requirement imposed by or under section 26.

(4) The person continues to commit the offence throughout any period during which the failure continues.

(5) But the person may not be prosecuted more than once in respect of the same failure.

Variation and discharge of orders.

29.(1) A court may vary or discharge a domestic abuse protection order made by that or any other court.

This is subject to section 30.

- (2) A court may vary or discharge a domestic abuse protection order under this section—
 - (a) on the application of a person mentioned in subsection (3); or
 - (b) in any case in which it could make a domestic abuse protection order under section 17.
- (3) The persons referred to in subsection (2)(a) are—
 - (a) the person for whose protection the order was made;
 - (b) the person against whom the order was made (“P”);
 - (c) where the order was made under section 14, the person who applied for the order;
 - (d) the Commissioner of Police.
- (4) Before deciding whether to vary or discharge an order under this section, the court must hear from—
 - (a) the Commissioner of Police, should he wish to be heard; and
 - (b) in a case where the person for whose protection the order was made is seeking to discharge the order, or to remove or make less onerous any requirement imposed by the order, the person for whose protection it was made.
- (5) Section 19 (matters to be considered before making an order) applies in relation to the variation or discharge of a domestic abuse protection order as it applies in relation to the making of such an order, but as if references to the person for whose protection the order would be made were references to the person for whose protection the order was made.
- (6) Section 20 (making of orders without notice) applies in relation to the variation of a domestic abuse protection order as it applies in relation to the making of such an order, but as if—
 - (a) references to the person for whose protection the order would be made were references to the person for whose protection the order was made;
 - (b) subsection (2) were omitted; and

- (c) the reference in subsection (4) to making representations about the order were a reference to making representations about the variation.

(7) The court may make any order varying or discharging a domestic abuse protection order that it considers appropriate.

This is subject to subsections (8) to (11).

(8) The court may include an additional requirement in the order, or extend the period for which the order, or a requirement imposed by the order, has effect, only if it is satisfied that it is necessary to do so in order to protect the person for whose protection the order was made from domestic abuse, or the risk of domestic abuse, carried out by P.

(9) The court may remove any requirement imposed by the order, or make such a requirement less onerous, only if satisfied that the requirement as imposed is no longer necessary to protect the person for whose protection the order was made from domestic abuse, or the risk of domestic abuse, carried out by P.

(10) If it appears to the court that any conditions necessary for a requirement to be imposed are no longer met, the court—

- (a) may not extend the requirement; and
- (b) must remove the requirement.

(11) The court may discharge the order only if satisfied that the order is no longer necessary to protect the person for whose protection the order was made from domestic abuse, or the risk of domestic abuse, carried out by P.

Variation and discharge: supplementary.

30.(1) Any application to vary or discharge a domestic abuse protection order under section 29 must be made to the court that made the order.

This is subject to subsection (2).

(2) Where—

- (a) the order was made under section 17 on an appeal in relation to a person's conviction or sentence for an offence; or
- (b) the order was made by a court under that section against a person committed or remitted to that court for sentencing for an offence,

any application to vary or discharge the order must be made to the court by or before which the person was convicted.

(3) A domestic abuse protection order made by the Supreme Court may be varied or discharged under section 29 only by the Supreme Court.

(4) An order that has been varied under section 29 remains an order of the court that first made it for the purposes of any further application under that section.

(5) Subsection (6) applies in a case where—

- (a) an order made against a person is varied under section 29 so as to include an additional requirement, or to extend the period for which the order, or a requirement imposed by the order, has effect; and
- (b) the person was not given notice of the proceedings.

(6) The person commits an offence under section 24 only if—

- (a) the behaviour constituting the offence was engaged in at a time when the person was aware of the making of the variation; and
- (b) the behaviour would not have constituted an offence under that section in the absence of the variation.

Appeals.

31.(1) A person listed in subsection (2) may appeal against any decision of a court on an application for a domestic abuse protection order under section 14 (to the extent that it would not otherwise be so appealable).

(2) The persons referred to in subsection (1) are—

- (a) the person for whose protection the order was sought;
- (b) the person who applied for the order (if different); and
- (c) where the court made a domestic abuse protection order under section 14, the person against whom it was made.

(3) A person against whom a domestic abuse protection order is made under subsection (3), (5) or (6) of section 17 may appeal against the making of the order (to the extent it would not otherwise be so appealable) as if it were a sentence passed on the person for the offence referred to in that subsection (assuming, in a case within section 17(5) or (6), that the person had been convicted of the offence).

(4) A person against whom a domestic abuse protection order is made may appeal against a variation of the order under section 29 that is made in a case within subsection (3), (5) or (6) of section 17 (to the extent it would not otherwise be so appealable) as if the varied order were a sentence passed on the person for the offence referred to in that subsection (assuming, in a case within section 17(5) or (6), that the person had been convicted of the offence).

(5) A person listed in subsection (6) may appeal against any decision of a court under section 29 in relation to a domestic abuse protection order (to the extent it would not otherwise be so appealable, whether under subsection (4) or otherwise).

(6) The persons referred to in subsection (5) are—

- (a) the person for whose protection the order was made;
- (b) the person against whom the order was made (“P”);
- (c) where the order was made under section 14, the person who applied for the order;
- (d) the Commissioner of Police.

(7) An appeal arising by virtue of subsection (1) or (5)—

- (a) in the case of a decision made by a magistrates’ court, is to be made to the Supreme Court;
- (b) in the case of a decision made by the Supreme Court, is to be made to the Court of Appeal.

For the powers of the Supreme Court or Court of Appeal on such an appeal, see section 32(4).

(8) If, in the case of an appeal arising by virtue of subsection (1) or (5) in respect of a decision made by the Supreme Court or a court in family or civil proceedings, the person making the appeal was not a party to the proceedings in that court, the person is to be treated for the purposes of that appeal as if the person had been a party to those proceedings.

Further provision about appeals.

32.(1) Before determining any appeal relating to a domestic abuse protection order (whether or not an appeal under section 31), the court must hear from the Commissioner of Police should he wish to be heard.

(2) Subsection (3) applies to—

- (a) an appeal made to the Supreme Court by virtue of section 31(7)(a);
- (b) an appeal made to the Court of Appeal by virtue of section 31(7)(b).

(3) On an appeal to which this subsection applies, the court may, on a review of the decision appealed against—

- (a) confirm, vary or revoke any part of the decision;

- (b) refer the matter back to the court that made the decision with a direction to reconsider and make a new decision in accordance with its ruling;
 - (c) make any order which the court that made the decision appealed against could have made;
 - (d) make any incidental or consequential orders that appear to it to be just.
- (4) For the purposes of section 30 (variation and discharge: supplementary)—
- (a) a domestic abuse protection order that has been confirmed or varied on an appeal (whether under subsection (3)(a) or otherwise) remains an order of the court that first made it; and
 - (b) a domestic abuse protection order made by a court on an appeal (whether under subsection (3)(c) or otherwise) is to be treated as an order made by the court whose decision was appealed against.

Nature of certain proceedings under this Part.

33.(1) Proceedings before a court arising by virtue of section 17(3), (5) or (6), and proceedings before a court arising by virtue of section 29(2)(b) in any case within section 17(3), (5) or (6), are civil proceedings (like proceedings before a magistrates' court under section 14 or 29(2)(a).

(2) The court is not restricted in the proceedings to considering evidence that would have been admissible in the criminal proceedings in which the person concerned was convicted or (as the case may be) acquitted.

(3) The court may adjourn any proceedings arising by virtue of section 17(3), (5) or (6), or any proceedings arising by virtue of section 29(2)(b) in any case within section 17(3), (5) or (6), even after sentencing or acquitting the person concerned or allowing the person's appeal.

(4) A domestic abuse protection order may be made or varied in addition to an order discharging the person conditionally or absolutely.

Special measures for witnesses.

34.(1) Sections 427 to 445 of the Criminal Procedure and Evidence Act 2011 apply to relevant proceedings under this Part as they apply to criminal proceedings, but with-

- (a) the omission of the provisions of that Act mentioned in subsection (2) (which make provision only in the context of criminal proceedings); and
 - (b) any other necessary modifications.
- (2) The provisions are –
- (a) section 429(4);

- (b) section 433(9)(e);
- (c) section 435;
- (d) section 445.

(3) Rules of court made under or for the purposes of the sections of the Criminal and Procedure and Evidence Act 2011 specified in subsection (1) apply to relevant proceedings under this Part –

- (a) to the extent provided by rules of court; and
- (b) subject to any modifications provided by rules of court.

(4) Section 462 of that Act (restrictions on reporting directions given under that Part) applies with any necessary modifications –

- (a) to a direction under section 431 of that Act as applied by this section;
- (b) to a direction discharging or varying such a direction.

Section 463 of that Act (offences) apply accordingly.

(5) In this section “relevant proceedings under this Part” means –

- (a) proceedings under section 14, 17(2) or (7), 24 or 29(2)(a);
- (b) proceedings arising by virtue of section 17(3), (5) or (6);
- (c) proceedings arising by virtue of section 29(2)(b) in any case within section 17(3), (5) or (6);
- (d) proceedings on an appeal relating to a domestic abuse protection order (whether or not an appeal under section 31).

Guidance.

35.(1) The Minister with responsibility for justice may issue guidance relating to the exercise by relevant persons of functions under or by virtue of this Part.

(2) In this section “relevant person” means –

- (a) a member of the Royal Gibraltar Police;
- (b) a person specified in regulations under subsection (2)(c) of section 14 for the purpose of making applications for orders under that section.

(3) A relevant person must have regard to any guidance issued under this section when exercising a function to which the guidance relates.

(4) The Minister with responsibility for justice may from time to time revise any guidance issued under this section.

(5) Before issuing or revising guidance under this section, the Minister with responsibility for justice must consult such persons as the Minister considers appropriate.

(6) Subsection (5) does not apply in relation to any revisions of guidance issued under this section if the Minister considers the proposed revisions of the guidance are insubstantial.

(7) The Minister must publish –

(a) any guidance which may be issued under this section; and

(b) any revisions of that guidance.

Interpretation of Part 2.

36.(1) In this Part –

“domestic abuse protection notice” has the meaning given by section 8;

“domestic abuse protection order” has the meaning given by section 13;

“home address”, in relation to a person, means-

(a) the address of the person’s sole or main residence in Gibraltar; or

(b) if the person has no such residence –

(i) the address or location of a place in Gibraltar where the person can regularly be found;

(ii) if there is more than one such place, the address or location of whichever one of those places the person selects;

“requirement”, in relation to a domestic abuse protection order, is to be read in accordance with section 21(1).

(2) Any reference to changing home address includes a reference to a case where –

(a) a person acquires a home address at any time; and

(b) immediately before that time, the person did not have a home address.

(3) See also-

- (a) section 3(7) (definition of “personally connected”);
- (b) section 6 (definition of “domestic abuse”).

PART 3

DOMESTIC HOMICIDE REVIEWS

Establishment and conduct of reviews.

37.(1) In this section “domestic homicide review” means a review of the circumstances in which the death of a person aged 16 or over has, or appears to have, resulted from violence, abuse or neglect by a person to whom he or she was personally connected held with a view to identifying the lessons to be learnt from the death.

(2) The Minister with responsibility for justice may in a particular case direct a specified person or body within subsection (4) to establish, or to participate in, a domestic homicide review.

(3) It is the duty of any person or body within subsection (4) establishing or participating in a domestic homicide review (whether or not held pursuant to a direction under subsection (2)) to have regard to any guidance issued by the Minister with responsibility for justice as to the establishment and conduct of such reviews.

(4) The persons and bodies within this subsection are—

- (a) the Commissioner of Police;
- (b) the Chief Executive Officer of the Care Agency;
- (c) the Gibraltar Health Authority.

(5) The Minister with responsibility for justice may by order amend subsection (4).

PART 4

OFFENCES INVOLVING ABUSIVE OR VIOLENT BEHAVIOUR

Threats to disclose private sexual photographs and films with intent to cause distress.

38.(1) Section 97B of the Crimes Act 2011 is amended in accordance with subsections (2) to (9).

(2) In both headings after “Disclosing” insert “, or threatening to disclose,”.

(3) For subsection (1) substitute-

“(1) A person commits an offence if-

- (a) the person discloses, or threatens to disclose, a private sexual photograph or film in which another individual (“the relevant individual”) appears;
- (b) by so doing, the person intends to cause distress to that individual; and
- (c) the disclosure is, or would be, made without the consent of that individual.”.

(4) In subsection (2)-

- (a) after “disclose” insert “, or threaten to disclose,”;
- (b) for “the individual mentioned in subsection (1)(a) and (b)” substitute “the relevant individual”.

(5) After subsection (2) insert-

“(2A) Where a person is charged with an offence under this section of threatening to disclose a private sexual photograph or film, it is not necessary for the prosecution to prove-

- (a) that the photograph or film referred to in the threat exists; or
- (b) if it does exist, that it is in fact a private sexual photograph or film.”.

(6) In subsection (4)(a), after “disclosure” insert “, or threat to disclose,”.

(7) In subsection (5)-

- (a) in paragraph (a), for “the individual mentioned in subsection (1)(a) and (b)” substitute “the relevant individual”;
- (b) in paragraph (b), for “the individual mentioned in subsection (1)(a) and (b)” substitute “the relevant individual”.

(8) For subsection (8) substitute –

“(8) A person charged with an offence under this section is not to be taken to have intended to cause distress by disclosing, or threatening to disclose, a photograph or film merely because that was a natural and probable consequence of the disclosure or threat.”.

(9) In section 97D of the Crimes Act 2011, in subsection (5)(c), for “the person mentioned in section 97B(1)(a) and (b)” substitute “the relevant individual (within the meaning of section 97B)”.

Strangulation or suffocation.

39. After section 167 of the Crimes Act 2011 insert-

“Strangulation or suffocation.

167A.(1) A person (“A”) commits an offence if –

- (a) A intentionally strangles another person (“B”), or
 - (b) A does any other act to B that-
 - (i) affects B’s ability to breathe, and
 - (ii) constitutes battery of B.
- (2) It is a defence to an offence under this section for A to show that B consented to the strangulation or other act.
- (3) But subsection (2) does not apply if-
- (a) B suffers serious harm as a result of the strangulation or other act, and
 - (b) A either-
 - (i) intended to cause B serious harm, or
 - (ii) was reckless as to whether B would suffer serious harm.
- (4) A is to be taken to have shown the fact mentioned in subsection (2) if-
- (a) sufficient evidence of the fact is adduced to raise an issue with respect to it; and
 - (b) the contrary is not proved beyond reasonable doubt.
- (5) A person guilty of an offence under this section is liable-
- (a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or both.

(6) In this section “serious harm” means –

- (a) grievous bodily harm, within the meaning of section 166 of the Crimes Act 2011;
- (b) wounding, within the meaning of that section; or
- (c) actual bodily harm, within the meaning of section 176 of the Crimes Act 2011.”.

Consent to serious harm for sexual gratification not a defence.

40.(1) This section applies for the purposes of determining whether a person (“D”) who inflicts serious harm on another person (“V”) is guilty of a relevant offence.

(2) It is not a defence that V consented to the infliction of serious harm for the purposes of obtaining sexual gratification (but see subsection (4)).

(3) In this section –

“relevant offence” means an offence under sections 166, 167 or 176 of the Crimes Act 2011;

“serious harm” means –

- (a) grievous bodily harm within the meaning of section 166 of the Crimes Act 2011;
- (b) wounding, within the meaning of that section; or
- (c) actual bodily harm, within the meaning of section 176 of the Crimes Act 2011.

(4) Subsection (2) does not apply in the case of an offence under section 167 or 176 of the Crimes Act 2011 where –

- (a) the serious harm consists of, or is a result of, the infection of V with a sexually transmitted infection in the course of sexual activity; and
- (b) V consented to the sexual activity in the knowledge or belief that D had the sexually transmitted infection.

(5) For the purposes of this section it does not matter whether the harm was inflicted for the purposes of obtaining sexual gratification for D, V or some other person.

(6) Nothing in this section affects any enactment or rule of law relating to other circumstances in which a person’s consent to the infliction of serious harm may, or may not, be a defence to a relevant offence.

PART 5

PROTECTION FOR VICTIMS, WITNESSES, ETC. IN LEGAL PROCEEDINGS

Special measures in criminal proceedings for offences involving domestic abuse.

41.(1) Part 19 of the Criminal Procedure and Evidence Act 2011 is amended in accordance with this section.

(2) In section 429(4) (witness eligible for assistance on grounds of fear or distress about testifying), after “a sexual offence” insert “or any other offence where it is alleged that the behaviour of the accused amounted to domestic abuse within the meaning of the Domestic Abuse Act 2022 (see section 6 of that Act)”.

(3) In section 438(4)(a) (evidence given in private) after “sexual offence” insert “or any other offence where it is alleged that the behaviour of the accused amounted to domestic abuse within the meaning of the Domestic Abuse Act 2022 (see section 6 of that Act)”.

(4) In section 450 (complainants in proceedings for sexual offences), after “a sexual offence” insert “or any other offence where it is alleged that the behaviour of the accused amounted to domestic abuse within the meaning of the Domestic Abuse Act 2022 (see section 6 of that Act)”.

(5) For section 451(3)(a) (child complainants and other child witnesses) substitute –

“(a) any sexual offence, any other offence where it is alleged that the behaviour of the accused amounted to domestic abuse within the meaning of the Domestic Abuse Act 2022 (see section 6 of that Act) or any offence of violence;”.

Special measures in civil proceedings: victims of domestic abuse, etc.

42.(1) The Chief Justice may make rules of court enabling the court to make a special measures direction in relation to a person who is a party or witness in civil proceedings where that person is, or is at risk of being, a victim of domestic abuse.

(2) Rules made by virtue of subsection (1) must, in particular, provide for the court to consider-

(a) whether –

(i) the quality of the person’s evidence, or

(ii) where the person is a party to the proceedings, the person’s participation in the proceedings,

is likely to be diminished by reason of vulnerability, and

(b) if so, whether it is necessary to make one or more special measures directions.

(3) Until such time as rules of court are made, any rules on vulnerable witnesses made from time to time by the Civil Procedure Rules 1998 shall apply.

(4) In this section-

“civil proceedings” means –

- (a) proceedings in the Supreme Court;
- (b) proceedings in the magistrates’ court other than criminal proceedings;
- (c) proceedings in the civil division of the Court of Appeal;

“special measures” means such measures as may be specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings;

“special measures direction” means a direction by the court granting special measures.

Special measures in family proceedings: victims of domestic abuse.

43.(1) This section applies where rules of court provide that the court may make a special measures direction in relation to a person (“P”) who is a party or witness in family proceedings.

(2) Subject to this and any other legislation-

- (a) the provisions of Part 3A and Practice Direction 3A of the Family Procedure Rules 2010 of England and Wales as amended from time to time shall apply in Gibraltar with such modifications (for example, in nomenclature) as the circumstances in Gibraltar may require; and
- (b) references to the “Domestic Abuse Act 2021” shall be read as references to this Act.

(3) The Chief Justice may make rules supplementing, amending or modifying the Family Procedure Rules 2010 as they apply to Gibraltar.

(4) Where P is, or is at risk of being, a victim of domestic abuse carried out by a person listed in subsection (5), it is to be assumed that the following matters are likely to be diminished by reason of vulnerability-

- (a) the quality of P’s evidence;
- (b) where P is a party to the proceedings, P’s participation in the proceedings.

(5) The persons referred to in subsection (2) are –

- (a) a party to the proceedings;
- (b) a relative to the party to the proceedings (other than P);
- (c) a witness in the proceedings.

(6) Rules of court may provide for an exception to the provision made by virtue of subsection (2) where P does not wish to be deemed to be eligible for the making of a special measures direction by virtue of that subsection.

(7) In this section-

“family proceedings” has the meaning given by the Children Act 2009;

“relative” has the meaning given by section 3(9), and references to “relative” in the Family Procedure Rules 2010 shall be taken to have the same meaning as in this Act;

“special measures” means such measures as may be specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings;

“special measures direction” means a direction by the court granting special measures.

PART 6

INFORMATION SHARING

Information-sharing.

44.(1) The Minister with responsibility for justice may by regulations make provision –

- (a) enabling or requiring a relevant person to inform a designated person in relation to an education provider of an incident of domestic abuse concerning a child who is a pupil or a student of the education provider;
- (b) for the purpose of or in connection with functions exercisable by a relevant person or a designated person accordingly.

(2) For the purposes of this section –

- (a) a relevant person is a person of a description (or acting in a particular capacity) specified in regulations under this section;
- (b) a designated person in relation to an education provider is a person of a description (or acting in a particular capacity) specified in regulations under this section;
- (c) an education provider is –

- (i) a Government school within the meaning of the Education and Training Act;
 - (ii) the College of Further Education;
 - (iii) an independent school within the meaning of the Education and Training Act; or
 - (iv) a non-school body which provides pre-school education (or any facility or setting at which pre-school education is provided),
- (d) an incident is one whether alleged or proved;
- (e) a child is a person under 18 years of age.
- (3) A relevant person, as may be referred to in regulations under this section, must be a person who has functions of a public nature.
- (4) Regulations under this section may include provision –
- (a) describing what is to be regarded as an incident of domestic abuse concerning a child;
 - (b) concerning –
 - (i) pupils or students generally, or particular categories of pupil or student,
 - (ii) education providers generally, or particular categories of provider (or particular facilities or settings within different categories);
 - (c) stating who is to be regarded as a pupil or a student of an education provider;
 - (d) setting out circumstances in or reasons for which –
 - (i) a relevant person may or must give information to a designated person or a designated person may or must give information to a relevant person;
 - (ii) a different person (including of a description specified) may or must give information to a relevant person or a designated person;
 - (e) with respect to information –
 - (i) regulating or limiting the use or disclosure of information by a relevant person or a designated person;
 - (ii) specifying offences and penalties for unauthorised use or disclosure of information.

(5) Regulations under this section may include provision involving such further matters as the Minister with responsibility for justice considers appropriate.

PART 7

SUPPLEMENTARY AND FINAL PROVISIONS

Amendment of the Crimes Act 2011.

45. In section 95(1) of the Crimes Act 2011 delete “under section 92, 92A, 94 or 94A”.

Power of Minister with responsibility for justice to make consequential amendments.

46.(1) The Minister may by regulations make provision that is consequential on any provision made by this Act.

(2) The power to make regulations under this section may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an Act passed before, or in the same session of Parliament as, this Act.

Power to make transitional or saving provision.

47.(1) The Minister with responsibility for justice may by regulations make such transitional or saving provision as the Minister considers appropriate in connection with the coming into force of any provision of this Act.

(2) Regulations under this section may (among other things) make any adaptations of provisions of this Act brought into force that appear to be appropriate in consequence of other provisions of this Act not yet having come into force.

Regulations.

48. The Minister may make Regulations under this Act generally, for carrying out the purposes of this Act and in particular –

- (a) may make provision for the prohibition of cross-examination in person in civil or family proceedings;
- (b) may make different provision for different purposes;
- (c) may contain supplementary, incidental, consequential, transitional or saving provision.

Repeal of the Domestic Violence and Matrimonial Proceedings Act, 1998.

49.(1) The Domestic Violence and Matrimonial Proceedings Act, 1998 is repealed.

(2) Proceedings under the Domestic Violence and Matrimonial Proceedings Act, 1998 that had commenced before the coming into operation of this section must continue under that Act as if it had not been repealed.

SCHEDULE 1

Section 25

FURTHER PROVISION ABOUT REMAND UNDER SECTION 25

Introductory

1. This Schedule applies where a court has power to remand a person (“P”) under section 25.

Remand in custody or on bail

2.(1) The court may remand P in custody or on bail.

(2) If remanded in custody, P is to be committed to custody to be brought before the court—

- (a) at the end of the period of remand, or
- (b) at such earlier time as the court may require.

(3) The court may remand P on bail—

- (a) by taking from P a recognizance (with or without sureties) conditioned as provided in paragraph 3, or
- (b) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 7 and, in the meantime, committing P to custody as mentioned in sub-paragraph (2).

(4) Where P is brought before the court after remand, the court may further remand P.

3.(1) Where P is remanded on bail, the court may direct that P’s recognizance be conditioned for P’s appearance—

- (a) before the court at the end of the period of remand, or
- (b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

(2) Where a recognizance is conditioned for P’s appearance as mentioned in sub-paragraph (1)(b), the fixing of a time for P next to appear is to be treated as a remand.

(3) Nothing in this paragraph affects the power of the court at any subsequent hearing to remand P afresh.

4. The court may not remand P for a period exceeding eight clear days unless—

- (a) the court adjourns proceedings for the purpose mentioned in paragraph 5(1), or

- (b) P is remanded on bail and both P and the person who applied for the warrant under section 25 consent.

This is subject to paragraph 6.

Remand for medical examination and report.

5.(1) If the court has reason to suspect that a medical report will be required, the power to remand a person under section 25 may be exercised for the purpose of enabling a medical examination to take place and a report to be made.

(2) If the person is remanded in custody for that purpose, the adjournment may not be for more than 3 weeks at a time.

(3) If the person is remanded on bail for that purpose, the adjournment may not be for more than 4 weeks at a time.

(4) Sub-paragraph (5) applies if there is reason to suspect that a person who has been arrested under a warrant issued on an application made under section 25 is suffering from mental disorder within the meaning of the Mental Health Act 2016.

(5) The court has the same power to make an order under section 664 of the Criminal Procedure and Evidence Act 2011 (remand to hospital for report on mental condition) as it has under that section in the case of a defendant (within the meaning of that section).

Further remand.

6.(1) If the court is satisfied that a person (“P”) who has been remanded is unable by reason of illness or accident to appear or be brought before the court at the end of the period of remand, the court may further remand P in P’s absence.

(2) The power under sub-paragraph (1) may, in the case of a person who was remanded on bail, be exercised by enlarging the person’s recognizance and those of any sureties for the person to a later time.

(3) Where a person (“P”) remanded on bail is bound to appear before the court at any time and the court has no power to remand P under sub-paragraph (1), the court may (in P’s absence) enlarge P’s recognizance and those of any sureties for P to a later time.

(4) The enlargement of P’s recognizance is to be treated as a further remand.

(5) Paragraph 4(1) (limit of remand) does not apply to the exercise of the powers conferred by this paragraph.

Postponement of taking of recognizance.

7. Where under paragraph 2(3)(b) the court fixes the amount in which the principal and the sureties, if any, are to be bound, the recognizance may afterwards be taken by a person prescribed by rules of court, with the same consequences as if it had been entered into before the court.

Requirements imposed on remand on bail.

8. The court may, when remanding a person on bail in accordance with this Schedule, require the person to comply, before release on bail or later, with any requirements that appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

EXPLANATORY MEMORANDUM

This Bill makes provision in relation to domestic abuse.

The Bill is divided into separate Parts.

Part 1 creates a new offence criminalising controlling or coercive behaviour in an intimate or family relationship where the behaviour has a serious effect on the victim. The new offence would not apply where the behaviour in question is perpetrated by a parent, or a person who has parental responsibility, against a child under 16. This is because the criminal law, in particular the child cruelty offence in section 172 of the Crimes Act 2011 already covers such behaviour. A limited defence is provided where the accused believes he or she was acting in the best interests of the victim and can show that in the particular circumstances their behaviour was objectively reasonable. The defence would not be available where a victim has been caused to fear violence (as opposed to being seriously alarmed or distressed). This defence is intended to cover, for example, circumstances where a person was a carer for a mentally ill spouse, and by virtue of his or her medical condition, he or she had to be kept at home or compelled to take medication, for his or her own protection or in his or her own best interests. In this context, the person's behaviour might be considered controlling, but would be reasonable under the circumstances. The evidential burden will apply to the defence, that is, it will be enough for a defendant to produce sufficient evidence for the matter to be considered by the jury; it would then be for the prosecution to demonstrate to the criminal standard of proof, namely beyond reasonable doubt, that the defence has not been made out.

Part 1 also defines domestic abuse. The definition applies for the purposes of the Act, but it is expected to be adopted more generally, for example by frontline practitioners. There are also provisions recognising that domestic abuse can impact on a child who sees or hears, or experiences the effects of the abuse, and it treats such children as victims of domestic abuse in their own right.

Part 2 of the Bill creates new powers to deal with domestic abuse in Gibraltar; these include domestic abuse protection notices (issued by senior RGP officers) and domestic abuse protection orders (issued by the Courts).

Domestic abuse protection notices are issued to persons by police officers of at least the rank of chief inspector where the officer believes that the person has been abusive to a personally connected person and that the notice is necessary to protect that person from abuse or the risk of abuse. This is an immediate notice to bridge the gap between noting the abuse or risk thereof and a formal application for an order before a court. The notice prohibits that person from being abusive to the other person and may include provisions to prohibit contact or stop the person going within a certain distance of the victim's home. If the person lives in Gibraltar other conditions such as prohibiting them from evicting the person from the "family" home and prohibiting P from entering the home or requiring P to leave the home.

Before issuing a notice the officer must take into account - the welfare of any child, the opinion of the victim, representations made by P and the opinion of any other residents of the premises

who is also personally connected. The officer needs to take reasonable steps to obtain the above representations and opinions.

Breach of a notice is an offence and a police officer may arrest the person without a warrant and take the person before the magistrates' court.

The domestic abuse protection order is a court issued version of the notice made on application or as a part of other proceedings (including family, criminal and civil actions). The application for an order may be made by the person for whose protection the order is sought or the Commissioner of Police.

The conditions for making the order and the matters to be considered are similar to those for a notice. The court needs to be satisfied on the balance of probabilities that P has been abusive towards a personally connected person and that the order is necessary and proportionate to protect that person from domestic abuse by P. Applications in emergencies may be made without notice to P.

The Bill contains a non-exclusive list of what can be included in the order. It differs from a notice in the requirement that someone be responsible for supervising compliance with the requirement where the requirement means that P must do something. That person has duties under section 22(4) to arrange and promote compliance and report failings to the Commissioner of Police.

A breach of order is a criminal offence with a penalty of up to 5 years' imprisonment.

The final sections of Part 2 deal with variation and discharge of orders and appeals from them (which can be by the person against whom the order is made, the person applying or the person to be protected). The appeal can be regarding any decision including not making the order. Section 33 establishes the nature of certain proceedings under this Part and section 34 provides that some provisions of the Criminal Procedure and Evidence Act 2011 will apply to those proceedings as they apply to criminal proceedings.

Part 3 provides for guidance on the establishment and conduct of domestic homicide reviews, so that statutory agencies can learn lessons from them. The relevant authorities have a duty to have regard to guidance issued by the Minister for Justice when establishing or conducting such a review. The relevant authorities are listed as the Commissioner of Police, the Chief Executive Officer of the Care Agency and the Gibraltar Health Authority. It is envisaged that the guidance will encourage multi-agency reviews in relevant cases and will provide details as to leadership, format, timing and participants depending on the individual circumstances of the case. The Minister has the power to direct a review to be established in a particular case, specifying who must establish and/or participate in such a review.

Part 4 contains amendments to the Crimes Act 2011 to create new offences including the offence of threatening to disclose intimate images. The three specific substantive defences to the original substantive offence at section 97B of the Crimes Act would be available in relation to any threat to disclose. A new provision is added to ensure that the prosecution will not have to prove the private sexual photograph or film referred to in the threat exists, so long as the individual is said to feature in them.

A new offence of non-fatal strangulation or suffocation of another person is also created. The use of choking or strangulation as a form of domestic abuse or violence is well documented as is the fact that such behaviour may be undercharged or minimalised if there is no physical injury caused. This offence is not limited to persons who are connected. The Bill also clarifies the law on the use of the so-called “rough sex defence” by restating, in statute, the broad legal principle established in the case of *R v Brown*, that a person cannot consent to actual bodily harm or to other more serious injury, or by extension, to their own death.

Part 5 amends the Criminal Procedure and Evidence Act 2011 to protect complainants and make them eligible for special assistance on the grounds of fear or distress as victims of sexual offences would be. It also provides for rules of court on special measures in civil proceedings and family proceedings.

Part 6 provides that the Minister for justice may make regulations to enable information to be shared with an education provider about an incident of domestic abuse concerning a child who is a pupil or a student of that provider. The section sets out the extent and nature of what may be provided for in regulations, including what is deemed to be an education provider (to include pre-school education provision, schools and colleges, who are pupils or students and what is deemed to be a domestic abuse incident concerning a child). The section also provides that the regulations can set out circumstances in which information can be shared, deals with enabling powers around unauthorised disclosure of information as well as the offences and penalties associated with this.

Part 7 contains supplementary and consequential provisions.