

# CRIME AND SECURITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Domestic violence*

#### *Section 24: Power to issue a domestic violence protection notice*

78. *Section 24* creates a new power for a senior police officer to issue a Domestic Violence Protection Notice (DVPN). The purpose of a DVPN is to secure the immediate protection of a victim of domestic violence (V) from future violence or a threat of violence from a suspected perpetrator (P). A DVPN prohibits P from molesting V and, where they cohabit, may require P to leave those premises.
79. The issue of a DVPN triggers an application for a Domestic Violence Protection Order (DVPO). This is an order lasting between 14 and 28 days, which prohibits P from molesting V and may also make provision about access to shared accommodation by P and V. Sections 27 to 30 deal with DVPOs.
80. *Section 24* sets out the conditions and considerations that must be met in order for the police to issue a DVPN.
81. *Subsection (1)* creates the power for a senior police officer, of rank of superintendent or higher (the “authorising officer”), to issue a DVPN.
82. *Subsection (2)* sets out the test for issuing a DVPN. A DVPN may be issued where the authorising officer has reasonable grounds for believing that, firstly, P has been violent or has threatened violence towards an associated person, V, and that, secondly, the issue of a notice is necessary in order to secure the protection of V from violence or the threat of violence. “Associated person” is defined in *subsection (9)* (see below).
83. *Subsections (3) and (4)* set out particular matters that the authorising officer must take into consideration before issuing a DVPN. The authorising officer must consider the welfare of any child whose interests the officer considers relevant. The authorising officer must take reasonable steps to find out the opinion of V as to whether the DVPN should be issued. Consideration must also be given to any representation P makes in relation to the issuing of the DVPN. Where the DVPN is to include conditions in relation to the occupation of premises shared by P and V, reasonable steps must also be taken to find out the opinion of any other associated person who lives in the premises.
84. While the authorising officer must take reasonable steps to discover V’s opinion, and must take this into consideration, the issue of the notice is not dependent upon V’s consent, as the authorising officer may nevertheless have reason to believe that V requires protection from P. *Subsection (5)* specifies that an authorising officer may issue a DVPN, regardless of consent from V.
85. *Subsection (6)* ensures that a DVPN must contain provision to prohibit P from molesting V for the duration of the DVPN. As set out in *subsection (7)*, this may include molestation in general, particular acts of molestation, or both.

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86. *Subsection (8)* specifies that where P and V share living premises, the DVPN may explicitly: prohibit P from evicting or excluding V from the premises; prohibit P from entering the premises; require P to leave the premises; or prohibit P from coming within a certain distance of the premises (as specified in the DVPN) for the duration of the DVPN. It does not matter for these purposes whether the premises are owned or rented in the name of P or V.
87. *Subsection (9)* specifies the definition of “associated person”, for whom the DVPN would seek to provide protection. The definition is that given in section 62 of the Family Law Act 1996 and includes persons:
- who are, or have been, married to each other or civil partners of each other;
  - who are cohabitants or former cohabitants;
  - who live, or have lived, in the same household, otherwise than merely by reason of one of them being the other’s employee, tenant, lodger or boarder;
  - who are relatives;
  - who have agreed to marry one another or to enter into a civil partnership agreement (whether or not that agreement has been terminated);
  - who have or have had an intimate personal relationship with each other which is or was of significant duration.
88. Under *subsections (10) and (11)*, where a DVPN is issued which prevents P from entering premises, and the authorising officer believes that P is subject to service law and the premises are service living accommodation, then the authorising officer must make reasonable efforts to inform P’s commanding officer that the notice has been issued. “Service living accommodation” carries the same meaning as in section 96(1)(a) of the Armed Forces Act 2006, being a building or part of a building which is occupied for the purposes of Her Majesty’s Armed Forces and is provided exclusively for use as living accommodation. Section 32 provides for the issuing of a DVPN in respect of such premises by the Ministry of Defence Police.

***Section 25: Contents and service of a domestic violence protection notice***

89. *Subsection (1)* sets out the details that must be specified in the DVPN, which include the grounds for issuing a DVPN; the fact that a power of arrest attaches to the DVPN; the fact that the police will make an application for a DVPO which will be heard in court within a 48 hour period; the fact that the DVPN will continue to be in effect until the DVPO application is determined; and the provisions that may be included in a subsequent DVPO.
90. *Subsection (2)* specifies the procedure for issuing a DVPN. A DVPN can only be served on P by a constable, and must be personally served and in writing.
91. *Subsection (3)* requires the constable serving the DVPN to ask P to supply an address in order to enable P to be given notice of the hearing for the DVPO.

***Section 26: Breach of a domestic violence protection notice***

92. Should P breach the conditions of the DVPN, then a constable may arrest P without warrant as set out in section 25(1)(b).
93. *Subsection (1)* requires that if P is arrested, P must be held in custody and brought before the magistrates’ court that will hear the application for the DVPO. P must be brought before this court at the latest within a period of 24 hours beginning with the time of arrest. However, if the DVPO hearing has already been arranged to take place within that 24 hour period, then P is to be brought before the court for that hearing.

94. If P is brought before the court in advance of the DVPO hearing, then the court may remand P under *subsection (2)*.
95. If the court adjourns the DVPO hearing by virtue of section 27(8), the court may remand the person under *subsection (3)*.
96. In calculating when the period of 24 hours mentioned in *subsection (1)(a)* ends, Sundays, Christmas Day, Good Friday and all other bank holidays (in England and Wales, as per the Banking and Financial Dealings Act 1971) are to be disregarded (see *subsection (4)*).

### ***Section 27: Application for a domestic violence protection order***

97. *Subsections (1) and (2)* specify that once a DVPN has been issued, a police constable must apply to the magistrates' court for a DVPO.
98. *Subsection (3)* states that the magistrates court hearing must be no later than 48 hours after the time when the DVPN was served. Sundays, Christmas Day, Good Friday and all other bank holidays (in England and Wales, as per the Banking and Financial Dealings Act 1971) are to be excluded from this 48-hour period (see *subsection (4)*).
99. *Subsections (5) to (7)* cover the steps to be taken to give P notice of the DVPO hearing. Under *subsection (5)*, notice of the hearing must be given to P. If P gave an address for the purposes of service at the point of issue of the DVPN, then the notice is deemed given if it is left at that address. Where no address has been given by P, then under *subsection (7)* the court must be satisfied that reasonable efforts have been made to give P the notice of the hearing.
100. *Subsection (8)* provides that the magistrates' court may adjourn the hearing of an application for a DVPO. If the hearing is adjourned, under *subsection (9)* the DVPN continues in effect until the application is determined by the court.
101. *Subsection (10)* operates to prevent V being compelled, under section 97 of the Magistrates' Courts Act 1980, to attend the hearing of an application for a DVPO or to answer questions, unless V has given oral or written evidence at the hearing.

### ***Section 28: Conditions for and contents of a domestic violence protection order***

102. **Section 28** details the two conditions that must be met for a DVPO to be made, as set out in *subsections (2) and (3)*.
103. The first condition is that the court must be satisfied on the balance of probabilities that P has been violent, or threatened violence, towards an associated person, V.
104. The second condition is that the court thinks the DVPO is necessary to secure the protection of V from violence, or the threat of violence, from P.
105. *Subsection (4)* specifies particular matters a court must consider prior to making a DVPO, where it is made aware of these matters. These are: the welfare of any child whose interests the court considers relevant to the DVPO: the opinion of V; and, where the DVPO is to include conditions in relation to the occupation of premises shared by P and V, the opinion of any other associated person who lives in the premises.
106. It is not necessary that V consent to the order. *Subsection (5)* specifies that a court may issue a DVPO regardless of whether or not V consents.
107. *Subsection (6)* provides that a DVPO must contain provision explicitly prohibiting P from molesting V for the duration of the DVPO. As set out in *subsection (7)*, this may include molestation in general, particular acts of molestation, or both.
108. *Subsection (8)* specifies that where P and V share living premises, the DVPO may explicitly: prohibit P from evicting or excluding V from the premises; prohibit P from

entering the premises; require P to leave the premises; or prohibit P from coming within a certain distance of the premises (as specified in the DVPO) for the duration of the DVPO. This provision can be made irrespective of who owns the premises.

109. *Subsection (9)* attaches a power of arrest to the DVPO which can be exercised if a police constable has reasonable grounds for believing that P is in breach of the DVPO. In these circumstances, the constable may arrest P without warrant.
110. *Subsections (10) and (11)* specify the duration of the DVPO. A DVPO may be in force for a minimum of 14 days from the day on which it is made, to a maximum of 28 days from the day on which it is made. The DVPO must state the period for which it is to be in force.

### ***Section 29: Breach of a domestic violence protection order***

111. *Subsection (1)* requires that if P is arrested by virtue of section 28(9) (which provides that a DVPO must state that a person may be arrested on breach of a DVPO), P must be held in custody and brought before a magistrates' court within a period of 24 hours beginning with the time of arrest. *Subsection (2)* specifies that if the matter is not disposed of when P is brought before the court, the court may remand the person.
112. In calculating when the period of 24 hours mentioned in *subsection (1)* ends, Sundays, Christmas Day, Good Friday and all other bank holidays (in England and Wales, as per the Banking and Financial Dealings Act 1971) are to be disregarded (see *subsection (3)*).

### ***Section 30: Further provision about remand***

113. **Section 30** makes further provision about remand of a person by a magistrates' court under section 26(2) or (3) or section 29(2).
114. *Subsection (2)* makes a minor modification to section 128 of the Magistrates' Courts Act (which makes provision about remand in custody or on bail) in its application to these provisions.
115. *Subsection (3)* gives the court the power to remand P for the purposes of allowing a medical report to be made, and *subsections (4) and (5)* provide that, in such a case, the adjournment may not be for more than three weeks at a time if P is remanded in custody and not for more than four weeks at a time if P is remanded on bail.
116. *Subsection (6)* gives the court the same power as it has in respect of an accused person to make an order under section 35 of the Mental Health Act 1983 if it suspects that P is suffering from a mental disorder. Section 35 of that Act enables a court to remand an individual to a hospital specified by the court for a report on his mental condition. Such a remand may not be for more than 28 days at a time or for more than 12 weeks in total.
117. Under *subsection (7)*, when remanding a person on bail, the court may impose requirements which appear to the court as necessary to ensure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

### ***Section 31: Guidance***

118. **Section 31** provides that the Secretary of State may, after consultation with specified stakeholders, issue and publish guidance. *Subsection (2)* requires that when exercising functions to which the guidance relates, police officers must have regard to it.

### ***Section 32: Ministry of Defence Police***

119. **Section 32** creates a new power for a senior officer in the Ministry of Defence Police to issue a DVPN under section 24 for the protection of an associated person, V, in relation to premises that are occupied for the purposes of the Armed Forces and are provided as living accommodation.

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120. *Subsection (1)* creates the power for a senior officer in the Ministry of Defence Police, not below the rank of superintendent (the “authorising officer”), to issue a DVPN for the protection of V, but only if V or P lives in service living accommodation.
121. *Subsection (2)* specifies that where a member of the Ministry of Defence police issues a DVPN under *subsection (1)* the DVPN may, by virtue of section 24(8), also apply to any other premises in England or Wales lived in by P and V.

***Section 33: Pilot schemes***

122. **Section 33** provides that the Secretary of State may make an order to allow any provision under sections 24 to 32 to come into force for a limited period of time. The purpose of such an order is to allow an assessment of the effectiveness of the provision in practice.
123. *Subsections (2) and (3)* provide that the Secretary of State may make different provision for different areas, and that more than one order may be issued under this section.