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| **\\ois.gov.soj\sojdata\HAD_HomeDirs\YoungR2\Desktop\goj%20logo%20white%20english_2.png**  **CONSULTATION** |

**Draft Domestic Abuse (Jersey) Law 202-**

# The purpose of this consultation

This consultation is intended to seek opinions about what should be included in the draft Domestic Abuse (Jersey) Law 202-. The draft Law is attached for consideration and this paper addresses the key elements of that draft Law and outlines what they are intended to do and why. This draft Law is part of a broader package of measures intended to modernise Jersey’s approach to managing criminal offences, and to bring processes up to international standards. The draft Crime, Prejudice and Public Disorder (Jersey) Law 202- and the recent Bail, Criminal Procedure and Sexual Offences Laws have all been aimed at providing Jersey with a world leading criminal justice system and this draft Law forms part of this modernisation and enhancement process.

The consultation is in four parts:-

1. The first part provides us with interpretations of the vocabulary used and explores the definitions in depths that will assist in understanding the legislation.
2. Part two looks at the actual offences and aggravating factors
3. Part three looks at the tools that will be used to apply this law and the safeguards surrounding the application of those tools.
4. Part four provides us with some detail around the management of information in relation to suspects and addresses issues of compliance within the rules of data protection.

The end of the four sections ends with a short series of questions for respondents to consider. These are by no means the only questions raised by the draft Law but they are simply the ones on which we would like specific feedback. Respondents should feel free to make comment on any part of the draft Law, or on the points made in this consultation more widely.

**Why your views matter**

This consultation seeks to address domestic abuse through awareness, prevention, support and protection. It references the connections and provisions of other agencies and departments and reinforces the Government’s aim to make domestic abuse everyone’s business.

By consulting we aim to harness the knowledge and expertise of victims and survivors, support organisations and research experts. We are also interested in the views of all the stakeholders who deal with these issues everyday.

Our main aim through this work is to prevent domestic abuse by challenging the acceptability of abuse and addressing the underlying attitudes and norms that perpetuate it.

**CONSULTATION PROCESS**

This consultation report is divided into sections, each looking at a different aspect of the Law. There are a few key questions which you may wish to answer at the end of each section. You can also provide any additional comments that you want or submit any further information.

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| Public consultation | 06/10/21 |
| Publication of feedback report summarising the responses to consultation | TBC |
| Analysis of consultation feedback | TBC |

The next step will to make the changes necessary to the Law in light of the consultation feedback and to bring the draft Law to the States in due course.

**You can comment by mail or post using the details below-**

Email: CPPD@gov.je

Post: Strategic Policy, Planning and Performance Department

Government of Jersey

19-21 Broad Street

St Helier

JE2 3RR

**Closing date for comments: 17th November 2021**

**Data Protection**

Your personal information will not be shared outside of the team developing this legislation or published online as part of the consultation, but we may use it to notify you of progress and/or further consultations relating to development of the Law. Under Jersey’s Data Protection Law you have the right to ask us not to contact you again (withdraw your consent to the further processing of your information). This will, however, mean that we will be unable to keep you informed throughout the various stages of the project. Should you wish to exercise this right please contact us on tel. 01534 441924 or email [CPPD@gov.je](mailto:CPPD@gov.je).

We may quote or publish responses to this consultation including information being sent to the Scrutiny Office, quoted in a published report, reported in the media, published on [www.gov.je](https://admin.gov.je/), listed on a consultation summary,but will not publish the names and contact details of individuals without consent. Confidential responses will still be included in any summary of statistical information received and views expressed. Under the Freedom of Information (Jersey) Law 2011, information submitted to this consultation may be released if a Freedom of Information request requires it, but no personal data may be released.

For further information on how we handle personal data please visit gov.je/howweuseyourinfo.

The privacy notice can be found at the end of this document.

Q1. Do you give permission for your comments to be quoted?

* Yes, anonymously
* Yes, attributed

If yes, name to attribute comments to:

Email address:

Organisation to attribute comments to, where applicable:

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| **BACKGROUND** |

1. Domestic abuse has a negative impact on people and communities. It will cause people to suffer many ill effects including physical injury, fear and low self-esteem and it has an adverse impact upon mental health.
2. In the wider context we know that domestic abuse is disproportionately gendered. The majority of domestic abuse victims are women, with men far more likely to be perpetrators[[1]](#footnote-1). According to SafeLives’ estimates, in 2016/17, 95% of cases were for female victims. [[2]](#footnote-2) Data on domestic homicides shows that the majority of victims are women killed by men.
3. Estimated to affect one in four women and one in six men in their lifetime, domestic abuse is a complex and challenging issue which can wreck lives and devastate families. It has a number of different forms including: physical, emotional, financial, sexual, online, coercive control and harassment and stalking. Domestic abuse isn’t just limited to romantic relationships, it can also happen within family and carer relationships.
4. Jersey Domestic Abuse Support (JDAS), a referral agency and key member of the Jersey Safeguarding Partnership Board (JSPB), recorded 720 referrals since the start of 2020 to October 2020. Of the 720 referrals, 361 of those were classed as at significant risk of harm.
5. Domestic abuse in the Island remains high. 2017 saw 183 cases referred to the Multi-Agency Risk Assessment Conference (MARAC) which rose to 215 in 2018. Although 2020 saw a decrease to 177, we know that COVID 19 restrictions have played a part in a reduction in reporting crimes generally.
6. Comparatively, the number of victims of domestic violence in London has also risen significantly in recent years. In 2019, there were around 89,000 domestic abuse offences recorded by the Metropolitan Police, compared to just over 46,000 in 2011. These statistics are a snapshot of a much higher figure nationally.
7. Domestic abuse is acknowledged to be a key adverse childhood experience that has a huge impact on positive outcomes. Adverse Childhood Experiences (ACEs)[[3]](#footnote-3) is a recognised concern that acknowledges domestic violence as an impact factor on relationships which may continue into adulthood with a greater risk of developing poor outcomes concerning mental health, wellbeing, substance misuse or criminal behaviour.
8. Locally, the Children and Young Peoples Plan 2019-2023 aims to reduce the number of children involved in domestic abuse cases by early identification and proactive interventions. Ensuring that each unique individual child or young person’s needs are met in relation to their exposure to domestic abuse, including their recovery needs. Safelives recently estimated that 175 children in Jersey will be living with high risk domestic abuse; and 225 living with medium risk abuse. This risk is based on a Safelives Dash risk checklist used by the police and independent domestic violence advisers. A high risk for example would see at least 14 ticks on this check list. It is also estimated that on average, there will be around 30 children in Jersey each quarter living in households where their parent is at risk of serious harm including homicide. [[4]](#footnote-4)
9. Failing to deal effectively with domestic abuse in Jersey will expose many families vulnerable to lasting social and financial impact.
10. **OBJECTIVES**

* The objectives for this reform are:-
* To provide a domestic abuse law that puts victims first and provides an effective response to perpetrators
* To provide a domestic abuse law that protects children
* Raise awareness and understanding of domestic abuse across statutory agencies and public attitude
* Provide a consistent and effective response to domestic abuse across all agencies
* Improve access to protection and redress thought the criminal justice system

1. **REASONS FOR CHANGE**

* No recognition that domestic abuse is a pattern of behaviour
* Psychological behaviours not captured
* Scale of domestic abuse in the Island not captured
* Need compliance with the Istanbul convention
* Need compliance with the UN Human Rights Convention
* Societal support for a new Domestic Abuse law

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| 1. **CURRENT LEGISLATION** |

**CURRENT LOCAL LEGISLATION**

1. There is presently no local legislation that covers coercive and controlling behaviour and no domestic abuse protection notices (DAPN) or domestic abuse prevention orders (DAPO) in the Island.
2. In common with England and Wales, a **Domestic Violence Disclosure Scheme (DVDS)**, more commonly referred to as “Clare’s Law”, is available to islanders in Jersey in policy format but not yet as statute legislation. Currently SOJP receive around 8-12 requests per year from members of the public and around 4-6 result in information being shared. Paladin, the National Stalking Advocacy Service, has also been vocal in its call for the government to create a domestic abuse register, arguing that it is the perpetrators of domestic abuse, not the victims that should be tracked.
3. Although there have been some related pieces of legislation introduced recently, (listed below) it is too early to conduct a review of the effectiveness of these new pieces of legislation which would provide evidence of their success or otherwise:-
4. **The Sexual Offences (Jersey) Law 2018** now defines consent, provides for a new offence of assault by penetration and introduces new offences relating to the sexual abuse of children including offences by adults against children and female genital mutilation.
5. **The Criminal Procedure (Bail) (Jersey) Law 2017** has brought a modern legislative regime that governs the granting of bail with the option to impose bail conditions. It does provide the police with new powers to help protect the victims and witnesses of domestic abuse insomuch as breaching bail carries a power of arrest, but the actual breach is not an offence per se so the suspect is often released again pending ongoing enquiries*.* Consequently, perpetrators will soon understand that there is no penalty when they breach bail and thus no deterrent.
6. **The Criminal Procedure (Jersey) law 2018** provides special measures for vulnerable victims and witnesses at court and additional opportunities for the introduction of evidence and bad character to the criminal justice process. Spouses, civil partners are compellable to give evidence on behalf of the defence or prosecution for offences specified in schedule 1 ( these are generally the more serious offences)
7. **The recent amendments to the Crime (Disorderly Conduct and Harassment) (Jersey) Law, 2008**, permits the Court to impose a restraining order on conviction for any offence (not just harassment). However, the Court must be satisfied that it is necessary to do so to protect the victim or any other person from further conduct which would amount to harassment, or from a perceived threat of violence. Restraining orders play an important role in managing the risks to victims and preventing further victimisation and risk of harm. Locally there is currently no legislation around stalking, rather incidents tend to fall in the category of harassment, however neither harassment or stalking capture the dynamic or sinister exploitation or control of an intimate relationship that this proposed legislation is aimed at.
8. The disorderly part of the law also provides for instances where a person uses words or behaves in a way that is abusive or threatening or engages in disorderly behaviour. This can be committed in public or private, however this does not apply where the perpetrator is disorderly inside a dwelling and the other person is also inside that dwelling. Therefore any kind of domestic abuse between couples would not be prosecutable if they were both at home together.
9. **Crime (Prejudice and Public Disorder) (Jersey) Law 201-** In addition, the public order elements of the draft Crime (Prejudice and Public Disorder) (Jersey) Law 201-, which will soon be lodged in the States, would provide that making threats to kill or cause harm are offences in themselves and it would also encompass the full sentiment of a domestic setting.
10. In more general terms, the following pieces of legislation all have some part to play in collating evidence for domestic abuse prosecutions:-
11. **Grave and Criminal/Common Assault/ Dangerous Driving (directed at partner) .** Currently an assault within a domestic situation is classified as either a common (for the lower end of the scale) or a grave and criminal assault (for more serious offences) and the circumstances in which the assault took place are included in the narrative of the charge report.
12. **Telecommunications offences.** Although Jersey does not have an offence of “Revenge Porn” as in the UK, Art 51 of the Telecommunications (Jersey) Law amended in 2017 can be used to prosecute anyone distributing revenge pornography, including publishing of sexual images on social media. Distributing any images of an individual, whether partner or otherwise is also currently prosecutable under the harassment law.
13. **(Conduct likely to) cause a breach of the peace.** Common law offence which is used where a person’s conduct is causing or likely to cause a breach of the peace and it relates to harm that was done or likely to be done to a person or in their presence, their property. This can be used in public or private .

**Art 73 Mental Health (Jersey) Law 2016**

1. This provides for an offence for managers/staff or any individual within an approved establishment who ill-treat or wilfully neglect a patient in their care. It does not cater for a carer relationship within a domestic situation (see section on carers within this draft law).

**Malicious damage**

1. This would cater for damage done to any property wilfully and maliciously and will also apply where property is jointly owned by a husband and wife.
2. **LEGISLATION FROM OTHER JURISDICTIONS**

**England and Wales**

1. **Section 76 of the Serious Crime Act 2015 (SCA)**
2. The new offence of “controlling and coercive behaviour in an intimate or family relationship” was introduced in England and Wales under the Serious Crime Act 2015 . ( Please see definition of coercive and controlling behaviour at section 1- Article 2)
3. The Domestic Abuse Act 2021 recently introduced, reflects our proposed new legislation including Domestic Abuse Protection Notices (DAPN) and Domestic Abuse Protection Orders

(DAPO).

1. There is currently no Domestic Abuse Register in England and Wales, however, the recommendation from the stalking advisory service Paladin is that the Government should give a firm commitment to progress this.
2. **Republic of Ireland (ROI), Northern Ireland, Scotland and New Zealand all have similar legislation in place, including an aggravating factor where a child is involved.**

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| 1. **SECTION 1: INTERPRETATIONS AND DEFINITIONS** |

# WHAT IS DOMESTIC ABUSE?

**Article 2**

1. Domestic abuse is defined differently in different jurisdictions but in essence the philosophy is universal; an offence is committed where someone (regardless of gender or sexuality) engages in a course of behaviour that is abusive of another and both are aged 16 or over and are “personally connected” and are or have been in an intimate relationship or are family members. Domestic abuse does not only occur between couples but can involve other family members, e.g. parental abuse by a grown child or between older siblings.
2. This legislation will ensure that all victims and all types of domestic abuse are sufficiently captured and no victim is inadvertently excluded.
3. The abuse may be a single act or a number of acts (or a failure to act) which form a pattern, regardless of whether each action appears trivial in isolation. Coercive and controlling behaviour is by its very nature a pattern of behaviour as opposed to a single act.
4. **Age**
5. If we explore the definition provided in detail we see that both parties would need to be 16 years of age or over. In Jersey the age of majority is aligned with the United Kingdom at 18 years and until that time an individual is classed as a child. There is already protection for children under the age of 16 within the Children’s (Jersey) Law 2002 and it is important not to blur the lines between domestic abuse and child abuse and the impact delivery of child protection and safeguarding procedures.
6. **Behaviour**

Where behaviour is abusive it will generally encompass, but is not limited to, the following types of abuse:-

* Psychological
* Physical
* Sexual
* Financial
* Economic
* Emotional

1. There are many types of behaviour which can be exhibited as domestic abuse including manipulation, control and use of threats and humiliation which harm, frighten or punish a victim as well as failing to do or communicate something that causes harm. The definition also includes economic abuse which will cater for victims that are denied access to basic resources such as food, clothing or transportation. This could also include where a victim is forced into taking out a loan for example.
2. **Questions**

Question 1

Do you agree with the proposed statutory definition of domestic abuse?

Question 2

Do you agree with the listed behaviours?

a/ Should some not be included?

b/Are there some behaviours you think should be included that have not been listed here?

1. **Coercive and controlling behaviour**

**Article 3**

1. As discussed, there is currently no legislation to cater for this type of behaviour locally. Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
2. Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim. This new domestic abuse law will capture the dynamics of power and control which are present in many abusive relationships. Research carried out by Jane Monckton Smith found control was a key feature in 92% of domestic murders, obsession in 94%, and isolation from family and friends in 78%. [[5]](#footnote-5)
3. Behaviour should be classed as **coercive or controlling** if it fits the following criteria:-
4. As with domestic abuse, both parties are personally connected and aged 16 or over and it has a “serious effect” on a victim or is reasonably likely to.

Examples of “serious effect” include the following:-

* Physical or sexual abuse
* Violent, threatening or intimidating behaviour
* Economic abuse; any behaviour that has a substantial adverse effect on the victim’s ability to acquire, use or maintain money or property or obtain goods or services.
* Psychological, emotional or other abuse- including fear, alarm and distress. The alarm or distress should consist of a substantial adverse impact upon a victim’s usual day-to-day activities. Includes ill-treatment of household pets or other animals whose welfare significantly affects a person’s well-being
* It is a pattern of behaviour (for example, isolating from family members or friends)

The relevant effects would be :-

* Making a person dependent upon or subordinate to another. E.g, isolating from friends and family or other sources of support
* Controlling, regulating or monitoring another’s day to day activities
* Depriving or restricting a person’s activities
* Frightening, humiliating, degrading or punishing a person

**Patterns of behaviour**

1. Domestic abuse per se is defined as a single or number of acts, whereas coercive and controlling offences require patterns of behaviour on two or more occasions so that the ordinary arguments and friction are not criminalised. (Single incidents of abuse are not covered under coercive and controlling behaviour , although of course other laws would still apply for single incidents .) There should be no specific time frame between incidents and they do not have to be in immediate succession. It will be up the Court to decide whether two incidents occurring far apart in time still fall within the scope of an offence. Each case must be considered on an individual basis. As much evidence as possible must be gathered to show the repetitive nature.

**Questions**

Question 3

Is legislation that captures coercive and controlling behaviour appropriate and relevant for Jersey?

**Definition of personally connected/intimate partners :-**

1. **Article 4**

* An intimate partner or
* A and B live together or have lived together as if spouses or civil partners of each other *or*
* Are or have been in an intimate personal relationship (based on some longevity, a one night stand is not a relationship for example) with each other *or*
* Are members of the same family , including step relationships and recognised formal foster relationships.

1. If family members are not included, then the opportunity to cater for abuse within families will be missed. Domestic abuse can involve parental abuse by elder children for example or the wider extended family. There is however a risk of criminalising conduct which is a feature of many private relationships and which may provide a tool for parties to use for purely tactical reasons when their relationships breaks up. However, if such abuse is investigated thoroughly and powers are exercised reasonably, this would be an important additional tool*.*
2. ‘Personally connected’ should not include a landlord-tenant relationship or an employer/ee relationship unless there is some other personal connection. Parties should not be assumed to be ‘personally connected’ by reason only of the fact that they are occupying the same address (unless they also fit the criteria above of intimate partner or relationship)
3. It is not necessary for a person to have a sexual relationship with another person to establish a personal connection.
4. Recognised formal family relationships such as foster parents for example, will also be included in this definition.

**Carers**

1. ‘Personally connected’ should include care-carer relationships, dependent upon the following criteria:-
2. A carer should be defined as an individual employed or working in a regulated activity under Schedule 1 to the Regulation of Care (Jersey) Law 2014.  As things stand this would capture all individuals working in care homes (including children’s homes and women’s refuge), home care, and adult day care services.
3. The Care (Standards and Requirements) (Jersey) Regulations 2018 and Regulation of Care (Jersey) Law 2014 are currently being updated to develop regulations around care home providers and adult day centres, children’s homes etc. These Regulations place a wide range of duties on care providers, including around safeguarding care receivers, ensuring that staff are suitably fit and proper people and that appropriate restraint and control policies are in place.
4. It is acknowledged that incorporating professional and non- professional carer relationships could have unintended consequences, e.g. paid carers who legitimately have to undertake actions that the person they are caring for does not want nor understand would have to be protected. However, Article 3 (2) (b) provides that it is not an offence where a person acts in the reasonable belief that it was in the other person’s best interest. Additionally, in considering the offence the following would have to be taken into account:- where the abuse involves a position of trust or authority, the nature and intensity of the relationship, e.g. how much and where they spend their time together and the manner in which that time is ordinarily spent and the duration of the relationship.
5. The carer relationship offence would be around the exploitation of vulnerability as opposed to hate crime - for example in elder abuse. It is broader than that defined in the safeguarding section of the mental health (Jersey) law 2016 as it should focus on the domestic link with some recognised intimacy and not restricted to medical facilities.
6. It is worth noting that carers were considered as a category within the Domestic Abuse Law 2021 in England and Wales but according to Victoria Atkins MP, excluded on the basis that “the Government believe that it is vital we ensure the thrust and aim of this offence – namely to protect victims of domestic abuse from perpetrators – is not diluted. We will, however, continue to work with James (James Cartlidge MP) and others to determine whether there are other solutions to this problem” [[6]](#footnote-6)

**Questions**

Question 4

Are there any categories or relationships that you think are missing or should not be included ?

**Summary**

1. The definition of domestic abuse provides us with a delineation of certain categories, such as age, types of behaviour and the types of relationships that will be covered within this legislation, for example, carers and partners or family members. Coercive and controlling behaviour is not presently captured anywhere else within local legislation and it will include psychological abuse.

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| **SECTION 2: OFFENCES - CRIMINAL INTENT (*MENS REA)*** |

**Article 5**

1. The offence is committed when a person either knowingly or where they ought to know, or persistently with intent, or recklessly engages in behaviour that is abusive. It would be enough for a reasonable person to see that such behaviour would, under normal circumstances, cause harm. A person’s vulnerability and perhaps inability to display obvious impacts of harm should not preclude them from the same protection as a person who can reflect such harm.
2. It should have a serious effect on a relevant person or a reasonable person would consider the course of behaviour to be *likely* to cause that person to suffer physical, financial or psychological harm. This will also allow further opportunities to take the onus away from victim where perhaps the victim is unaware or unable to recognise the abuse. Where the victim is unaware the law should require some *mens rea* on the part of the suspect*. i.e* there must be awareness by at least one party. Without this caveat an offence could be committed by someone when both parties are unaware and it would not be appropriate to pursue a prosecution but it is brought by the involvement of a third party witness, for example.
3. The reckless aspect will of course capture the perpetrator who claims they were unaware of the impact of their behaviour. It does not need to depend on the course of behaviour actually causing harm, it is sufficient that the offender is reckless as to whether the course of behaviour causes harm. This condition would be met in a reckless situation where, for example, the accused is persistently verbally abusive and demeaning towards their partner/connected person but claims that they did not intend the behaviour to cause harm. It is therefore sufficient that a reasonable person would consider it likely that the behaviour would result in the partner/connected person suffering physical or psychological harm, degradation, punishment or intimidation. The intention would be that the scope of the offence would include behaviour that may not be directly made towards the intended victim but would be intended to harm them (or reckless to the intent). The test would be based on whether a reasonable person would consider the behaviour is likely to cause harm.

**Exclusion from offence**

1. **Article 6**
2. It will not be controlling or coercive behaviour if one of the party has parental responsibility for the other and that person is aged between 16 or 17 (under the age of 16 is catered for by child protection laws). Equally, it will not be a domestic abuse offence if the suspected party can show that he or she acted in the reasonable belief that they were acting in the best interests of the other person and under the circumstances the behaviour was reasonable. E.g. protecting a person who has a gambling addiction from spending money.
3. **Aggravating factor involving the use of a child**
4. **Article 7**
5. The Domestic Abuse Law 2021 recognises that using children to direct abuse or directing abuse at children can make them victims of domestic abuse in their own right. The Victims’ Commissioner, Dame Vera Baird QC stated “It is essential that children are recognised as not mere bystanders when it could not be clearer that they are victims in their own right, who can be profoundly affected by domestic abuse in their childhood.”
6. Locally in support of the Children and Young People’s plan this domestic abuse legislation will include an aggravating factor in relation to the *involvement* of a child. For example, if A directs behaviour at a child or makes use of a child in directing such behaviour at B. If a child sees or hears, or is present during an incident that A directs at B– in this context a child should be under the age of 18 and not the person partaking in the domestic*.* Anyone over 16 involved in a domestic should be treated within the domestic abuse offence detailed above. Most children under the age of 18 are still living at home and susceptible to the effects of domestic abuse, regardless of whether they are a dependent family member. It is not intended to capture those incidents where a child witnesses an incident just in passing by a window for example. The behaviour must be directed at the child for the offence to take place.

**Questions**

Question 5

Do you agree that the use of a child in a domestic abuse offence should be an aggravating factor?

**Summary**

1. *Mens rea* or criminal intent is an important factor within this legislation and the reckless aspect will of course capture those claiming to be unaware. This law will not criminalise those acting in a genuine carer or supportive capacity or those with parental responsibility where it can be shown that the behaviour was reasonable in the circumstances. The law will not interfere with the duty of a parent or anyone acting in that capacity, to parent their child.

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| **SECTION 3: DOMESTIC ABUSE PROTECTION NOTICES AND ORDERS (DAPN AND DAPO)** |

1. In September 2019 Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services identified that the suitability of Domestic Violence Protection Notices (DVPN’s) and Domestic Violence Protection Orders (DVPO’s) (now known as Domestic Abuse Protection Notices and Domestic Abuse Protection Orders ) should be considered for Jersey. These measures would bring together the strongest elements from existing protective orders, creating a single flexible pathway for victims, police and other practitioners.

**Domestic Abuse Protection Notice (DAPN)**

1. **Article 8**
2. This would be used pre -charge, to anyone over 18, authorised by a senior police officer(rank not below a superintendent) where it is necessary to give notice to protect a person from domestic abuse. A DAPN is an emergency non-molestation and eviction notice. Therefore it could also include using or threatening violence, intimidating and harassing. There must in all cases be a prohibition on molesting the victim, either generally or with regard to a particular type of conduct.
3. This would follow a similar process that already exists for harassment notices and must be served personally on the suspect by a police officer and the suspect must provide an address for the protection order within 48 hours.

* The notice must be in writing. It must state:-
* The grounds for which it has been given
* The fact that a breach is an offence
* The fact that unless the notice is withdrawn, an application for domestic abuse order may be presented before the Magistrate within 48 hours of the time of the notice.

1. The police officer would need a reasonable belief that domestic abuse has taken place and that is it is necessary to protect a person from abuse, violence or the threat of violence. It would be based on the ‘balance of probabilities’, the civil burden of proof and not the criminal standard. These notices and orders may be used following a domestic incident to provide short-term protection to the victim when arrest has not been made but positive action is required, or where an arrest has taken place but the investigation is in progress. The authorising officer would need to consider what the DAPN will seek to achieve and why this cannot be obtained by any other or less disruptive means, e.g. pre charge bail conditions and whether the risk is too great to allow a suspect to return to home address. (As previously discussed, while the bail law allows for conditions to be imposed upon a suspect, breach of bail is not an offence *per se*)
2. Particular attention must be given to the need to safeguard and promote the welfare of children and the presence of any child (under 18) may influence the decision to issue a DAPN. The risk assessment completed at every domestic attended by police will help form part of the information provided to the senior officer authorising the DAPN.
3. The DAPN would last for up to 48 hours (The 48 hours timescale will not count Christmas day, Good Friday, Saturday’s or bank holiday’s.)
4. **Article 9 +10**

Offence

1. The person served with a DAPN must provide the police officer their full name and address within 24 hours and of any change of such details.

**Domestic Abuse Protection Order (DAPO)**

1. **Article 11**
2. Within 48 hours of the DAPN being served on the perpetrator, an application by police to the Magistrate’s court for a DAPO *may* (not must)be made . If it was a compulsory process everyone served a DAPN would have to attend court regardless of whether the situation has been resolved at this initial stage. However in order for the Court to issue a DAPO brought by the police from a DAPN that DAPN must be in date. The police cannot just renew a DAPN once it has expired, new evidence would be required. A notice of the hearing of the DAPO should be served at the address provided by the suspect at the time of the DAPN and at the same time as the DAPN if possible but can be served later.
3. The police and any victim of a domestic abuse offence may themselves apply to the Magistrate’s Court for DAPO. A DAPO can be issued regardless of whether a DAPN has been issued to cater for the fact that sometimes a suspect could be arrested directly without having been served a DAPN and taken straight to court. (Please note that the wording of article 11 (2) is likely to change.)
4. In common with UK proposals, DAPO’s will not be subject to a statutory time limit but if still in existence, subject to review at least every 12 months. This acknowledges the often complex and time- consuming nature of domestic abuse investigations which may require lengthy mobile phone investigations for example.
5. These notices and orders should only relate to suspects who are over 18 to help prevent the situation where someone under 18 is made homeless and or criminalised.
6. The notices and orders provide similar powers to emergency banning orders which are used in many European jurisdictions and are recommended by the Council of Europe. Restraining orders and DAPN’s would both provide a right to a Court hearing to determine whether they should remain in place. However, locally there is a requirement for a conviction before a restraining order can be considered. In the UK a restraining order is put in place at point of charge and can remain in place regardless of successful conviction or not. DAPO/DAPN’s would help bridge this gap. Neither require the victim’s active support although of course the views of the victim will always be taken into consideration.
7. Balancing the needs of victims and suspects is the challenge for any civilized society. DAPO’s and DAPN’s can be applied where arresting, bailing or charging a person is not an option. The introduction of DAPN and DAPO’s locally would add a further tool for safeguarding victims in the aftermath of a violent domestic incident as well as the ability to separate parties where appropriate. The DAPN/DAPO process does not aim to replace the criminal justice system in respect of charge and bail of a perpetrator but it will combine the strongest elements of the various existing orders and provide a flexible pathway for victims and practitioners. It would be issued where no other enforceable restriction can be used, e.g where there is insufficient evidence to charge a perpetrator and provide protection to a victim via bail conditions. Any DAPN would need to come with a power of arrest that can put people before the Court for any breaches and any such breaches should be a criminal offence. ( in UK a breach of DVPO is a civil breach of a court order ) It is also important that there is no conflict between bail conditions and terms of a DAPN.
8. **Risks**
9. The key questions will be around accommodation.
10. Where both parties are joint parties, one or the other can be excluded by this order. The act of exclusion does not remove the excluded party from the lease and the excluded party remains responsible jointly for the rent. However, where the victim is *not* named on the tenancy they are then unable to remain in the property without agreement of the tenancy holder. In the local context if the excluded party ceased paying the rent and rent arrears begun to accrue, the unqualified tenant would be under no obligation to pay. For Andium Homes, the only option is to evict and for private landlords the impact could be catastrophic if rent went unpaid for any length of time. It may also cause issues with income support entitlement if the occupant was not entitled.
11. However, the States of Jersey Police already work with partners in respect of the Bail Law to ensure victims are not disadvantaged by tenancy agreements etc. if a partner is bailed away from the home address.
12. Acknowledging the human rights implications of making a person temporarily homeless as a result of the issuing of a DAPN/DAPO, that person should be signposted to suitable emergency accommodation. In the UK a DVPN information leaflet is provided with the DVPN notice itself, which provides details of organisations and agencies that provide support. Where there is a risk of article 3 Human Rights breach (freedom from torture and inhuman or degrading treatment) is suggested that the DAPN should not be imposed. It is worth noting that there is no *specific* accommodation for men or transgender people experiencing domestic abuse (although Aztec house and Sanctuary house are sometimes used). The Jersey Homelessness Strategy, published in January 2021 identified “gaps in homelessness provision in Jersey, particularly around emergency provision for families, vulnerable young people and women who have not suffered domestic abuse”. Furthermore the strategy identifies that the migration policy seeks to address gaps by reviewing the income support after 6 months and equal status for partners and children of entitled or licensed workers. The review recommends a wholly inclusive safety net with minimum level of provision available or all, including those with limited residential status.
13. **Article 13**
14. Where the parties live at the same address, the provisions of the DAPO would have “any requirements that the court considers necessary to protect the person for whose protection the order is made, including positive requirements” such as attending JDAP ( Jersey Domestic Abuse Programme)- domestic abuse prevention training- delivered by the Jersey Probation and After-Care Service for example . It could also include:-

* Prohibit the suspect from evicting or excluding the victim from the premises
* Prohibit the suspect from entering the premises
* Require the suspect to leave the premises
* Prohibit the suspect from coming within a specified distance of the premises.
* Any requirement that the court considers necessary to protect the victim from the risk of domestic abuse.

1. A DAPO can prevent the perpetrator from returning to a residence and from having contact with the victim for a period specified by the Court . Both the DAPN and DAPO should contain a condition prohibiting the perpetrator from molesting the victim. The intention being to give the alleged domestic abuse victim sufficient breathing space to make decisions and seek help/support and to prevent the perpetrator from further molesting the victim. They formally record the suspect being made aware that his/her conduct is causing the victim alarm and distress and must cease. It also puts the suspect on notice that a continuation of the behaviour could amount to a criminal offence.
2. The court is also bound to recognise and where possible, accommodate a suspect’s religious beliefs and educational and work requirements.
3. **Article 14**
4. The DAPO can be amended or revoked by the court upon application by the Attorney General or the suspect.

**Questions**

Question 6

Do you agree that there is a need for DAPN’s and DAPO’s?

Question 7

Do you agree with the variety of restrictions and obligations that a DAPO can enforce?

Question 8

Who do you think should be able to apply for a DAPO?

**Summary**

DAPN’s and DAPO’s will provide the police and courts with the ability to protect victims with the application of appropriate and relevant restrictions. While the powers are wide ranging there are safeguards in place that will govern when and by whom and under what circumstances such powers can be used

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| **PART 4 DOMESTIC ABUSE REGISTER AND DISCLOSURE OF INFORMATION** |

**Domestic Abuse Register (DAR)**

1. **Article 16**
2. “Survivors of domestic abuse are often repeat victims; one in three domestic violence victims have been attacked more than once across England in Wales.”[[7]](#footnote-7) Locally, the Domestic Homicide Review [[8]](#footnote-8) recommended that the States of Jersey Police should have the ability to maintain a register of persons convicted of a domestic abuse offence by the Court.
3. This would allow the police to maintain up to date information about repeat and serious perpetrators, increase understanding and reduce crimes which account for such high demand on police time. Most importantly, it would put the police in a much stronger position to protect the victims and survivors of domestic violence. Unlike current reporting requirements, police would be given the information they require to actively manage risk based on the offending history of repeat perpetrators. This would allow the police to make interventions when necessary and visit offenders to ensure that potential partners of those individuals are as safe as possible. The DAR would provide the police with a clear framework, with recognised and consistent processes for the exercise of these powers in the context of domestic abuse. It provides one more step in the direction of taking the onus away from the victim to disclose, back to the suspect.
4. Introducing a system to track serial perpetrators of domestic abuse could vastly improve the way police forces are able to proactively track and manage the risk presented by the most dangerous perpetrators of domestic abuse. A domestic abuse register would have thresholds which are uniform across England and Wales (including Jersey) and so would provide a consistent level of protection and risk management regardless of boundaries. It would also track serial offenders and firmly place the onus on the offender to keep the police up to date on their living situation and their relationship status.
5. The Court would place someone on the DAR for a given period of time and that person would automatically fall off of the register once that period of time had elapsed. There would be no requirement to attend Court to request removal as currently exists with the Sex Offender’s Register.
6. The domestic abuse register would be managed through existing Multi-Agency Public Protection Arrangements. This system has been in operation for registered sex offenders for a number of years and allows police forces to conduct risk assessments to categorise the threat posed by offenders. The category of risk posed by each offender is then used to inform SOJP as to whether the offender requires a high-level of proactive policing or a lower level of monitoring through existing partnership arrangements.
7. Ultimately, this would encourage proactive risk management by placing the onus on domestic abuse offenders to register their details with the police so that their offending history is known by local officers.
8. The Jersey Office of the Information Commissioner and the States of Jersey Police have been engaged and subject to final administrative workings, the Information Commissioner is content that this could operate in the same manner as the Sex Offender’s Register.
9. **Article 17**
10. Any person convicted of a domestic abuse offence must notify the Chief Police Officer or his/her nominee of their name, address and any person with whom they have an intimate personal relationship. While recognising the difficulties in establishing when a connection becomes a “relationship” it will be incumbent upon the suspect to notify the police of any developing connections and for the police to then discern the risks. This will enable the police to work proactively to disrupt potential relationships where appropriate.

Question 9

Do you agree that a domestic abuse register is necessary?

Question 10

Do you think we need this legislation should cover other jurisdictions with appropriate legislation to cater for offenders travelling into or out of Jersey?

**Domestic Violence Disclosure Scheme (DVDS)**

1. **Article 11**
2. This will put the procedure’s that the police currently use to disclose relevant information, (commonly known as Claire’s Law) , into statute.
3. The Scheme has two functions:

* “Right to ask” – this enables someone to ask the police about a partner’s previous history of domestic violence or violent acts.
* “Right to know” - police can proactively disclose information in prescribed circumstances. This currently happens on an ad hoc basis in Jersey with officers making a Public Interest Disclosure (PID) to individuals due to a range of concerns.

1. The Domestic Violence Disclosure Scheme (DVDS) was implemented across all forces in England and Wales in March 2014. The current mechanism is not in statute and is dependent on an individual asking about an offender’s history, meaning many abusers may be missed. The DVDS (Clare’s Law) can provide potentially lifesaving information on the history of a partner, and in turn allow individuals to make an informed choice based on the risks involved in starting a relationship with a person.
2. A disclosure would be made lawfully by the police under the scheme, based on police common law powers to disclose information where it is necessary to prevent crime, providing the disclosure also complies with established case law as well as data protection and human rights legislation. It must be reasonable and proportionate for the police to make the disclosure, based on a credible risk of violence or harm.
3. The DVDS would provide the police with a clear framework, with recognised and consistent processes, for the exercise of these powers in the context of domestic abuse.
4. **Risks**
5. Recognising that this has the potential to infringe upon civil liberties there would be a number of conditions to be met prior to disclosure. Locally the States of Jersey Police (SOJP) are already proactive in trawling intelligence and notifying partners of potential abusers under the current DVDS scheme but without the surety of formal statute.
6. Any decision to disclose would be based on the facts of each individual case, and the police would seek legal advice where applicable.

**Question 11**

Do you agree with the rationale for this legislation?

**Summary**

1. Bringing “Clare’s Law” into statute and the introduction of a domestic abuse register will provide the police with a set of recognised procedures for recording and sharing information with a relevant person regarding a partner’s previous or spent convictions. The purpose of the scheme and register is to increase public safety and afford victims better protection by helping them to make informed decisions.

**Summary of questions**

1. The questions at the end of the sections above are repeated below for convenience. You are free to make any comment you like in respect of the questions, but please do indicate clearly if you are answering yes or no so we can gauge the level of support for each proposal (or if you are unsure).

Summary of questions

**Domestic abuse offences**

|  |  |  |  |
| --- | --- | --- | --- |
| **Question 1** |  | **Do you agree with the proposed statutory definition of domestic abuse ?** | |
| Yes |  | *Detail* | |
| No |  |  | |
| Unsure |  |  | |
|  |  |  | |
|  |  |  | |
| **Question 2** |  | **Do you agree with the listed behaviours? Should some not be included or are there other behaviours that you think should be included that have not been listed here?** | |
| Yes |  | *Detail* | |
| No |  |  | |
| Unsure |  |  | |
| **Coercive and controlling behaviour** | | |
| **Question 3** |  | **Is legislation that captures coercive and controlling behaviour appropriate and relevant for Jersey ?** | |
| Yes |  | *Detail* | |
| No |  |  | |
| Unsure |  |  | |
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| --- | --- | --- |
| **Question 4** |  | **Are there any categories or relationships that you think are missing or should not be included ?** |
| Yes |  | *Detail* |
| No |  |  |
| Unsure |  |  |
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| **Question 5** |  | **Do you agree that the use of a child in a domestic abuse offence should be an aggravating factor?** |
| Yes |  | *Detail* |
| No |  |  |
| Unsure |  |  |
|  |  | **Domestic abuse protection notices and orders (DAPN) (DAPO)** |
| **Question 6** |  | **Do you agree that there is a need for DAPN’s and DAPO’s?** |
| Yes |  | *Detail* |
| No |  |  |
| Unsure |  |  |
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| **Question 7** |  | **Do you agree with the variety of restrictions and obligations that a DAPO can enforce?** |
| Yes |  | *Detail* |
| No |  |  |
| Unsure |  |  |

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| --- | --- | --- |
| **Question**  **8** |  | **Who do you think should be able to apply for a DAPO?** |
| Yes |  | *Detail* |
| No |  |  |
| Unsure |  |  |
|  |  | **Domestic abuse register** |
| **Question**  **9** |  | **Do you think that a domestic abuse register is necessary?** |
| Yes |  | *Detail* |
| No |  |  |
| Unsure |  |  |

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| --- | --- | --- |
| **Question 10** |  | **Do you think we need this legislation should cover other jurisdictions with appropriate legislation to cater for offenders travelling into or out of Jersey?** |
| Yes |  | *Detail* |
| No |  |  |
| Unsure |  |  |
|  |  | **Domestic Violence Disclosure Scheme (DVDS)** |
| **Question 11** |  | **Do you agree with the rationale for this legislation?** |
| Yes |  | *Detail* |
| No |  |  |
| Unsure |  |  |

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| **Question 12** |  | **Do you have any other comments on the structure or content of the draft law?** |
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Thank you for taking the time to complete the questionnaire. Lastly, would you like to make any comment about the consultation itself and suggest how we might improve public engagement in future?

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# Privacy Notice

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| **Strategic Policy, Planning and Performance Department**  **Crime (Prejudice and Public Disorder) Law consultation**  **Privacy Notice (Fair Processing Notice)**  The Council of Ministers is registered as a ‘Controller’ under the Data Protection (Jersey) Law 2018 as we collect and process personal information about you. Our registration number is 16051. We process and hold your information in order to provide public services and meet our statutory obligations. This notice explains how we use and share your information. Information may be collected on a paper or online form, by telephone, email, or by a member of our staff, or in some cases, by another government department.  We will continually review and update this privacy notice to reflect changes in our services and feedback from service users, as well as to comply with changes in the law. | | | |
| **WHAT** | | **WHY** | |
| **What information do we collect about you?**  We may collect the following types of information about you:   * Name * Email address * Postal address * Organisation you represent   We will not hold or process the names and contact details of persons other than the person making contact (or persons authorised). Should we receive this information, it will be securely and confidentially deleted and/or disposed of. | | **Why do we collect information about you?**  We need to collect and hold information about you, in order to:   * seek views of islanders and other stakeholders on the development of the Crime (Prejudice and Public Disorder) Law * provide policy advice to Ministers * register your interest in this subject area, in order that we can respond after the consultation closes * respond to Freedom of Information Requests | |
| **HOW** | | | |
| **How will we use the information about you and who will we share your data with.**  Protecting your privacy and looking after your personal information is important to us. We work hard to make sure that we have the right policies, training and processes in place to protect our manual and electronic information systems from loss, corruption or misuse. Where necessary we use encryption, particularly if we are transferring information out of the department. Encryption means the information is made unreadable until it reaches its destination.  We will use the information you provide in a manner that conforms to the Data Protection (Jersey) Law 2018.  We may not be able to provide you with a service unless we have enough information or your permission to use that information.  We will endeavour to keep your information accurate and up to date and not keep it for longer than is necessary. In some instances the law sets the length of time information has to be kept. Please ask to see our retention schedules for more detail about how long we retain your information.  Where necessary, we may disclose your information to other Government of Jersey departments or organisations, either to fulfil your request for a service to comply with a legal obligation, or where permitted under other legislation. Examples of this include, but are not limited to: where the disclosure is necessary for the purposes of the prevention and/or detection of crime; for the purposes of meeting statutory obligations; or to prevent risk of harm to an individual, etc. These departments and organisations are obliged to keep your details securely, and only use your information for the purposes of processing your service request. We will only do this, where possible, after we have ensured that sufficient steps have been taken by the recipient to protect your personal data and where necessary we will ensure that the recipient has signed a Data Sharing Agreement.  A Data Sharing Agreement sets out the purpose of the sharing and the rules that must be followed when processing your data.  We may need to pass your information to other departments or organisations outside the Government of Jersey who either process information on our behalf, or because of a legal requirement. We will only do so, where possible, after we have ensured that sufficient steps have been taken by the recipient to protect your personal data.  We will not disclose any information that you provide ‘in confidence’, to anyone else without your permission, except in the few situations where disclosure is required by law, or where we have good reason to believe that failing to share the information would put someone else at risk. You will be told about this unless there are exceptional reasons not to do so.  We do not share or process your information overseas. We do not use web services that are hosted outside the European Economic Area.  At no time will your information be passed to organisations for marketing or sales purposes or for any commercial use without your prior express consent. | | | |
| **Publication of your information** | **E-Mails** | | **Telephone Calls** |
| We may need to publish your information on our website and/or in the Jersey Gazette for the following reasons:   * Where we are required by law to publicise certain information, for example the name of persons to appear at an examination in public, associated with a review of the Island Plan * Where we are required to provide statistical information about a group of people; although your data will be anonymised to protect your identity. * Where you have responded to a public consultation, although your comments will be anonymised to protect your identity. | If you email us we may keep a record of your email address and a copy of the email for record keeping purposes.  For security reasons we will not include any confidential information about you in any email we send to you. We would also suggest that you keep the amount of confidential information you send to us via email to a minimum or use our secure online services where possible or correspond with us by post.  We will not share your email address or your email contents unless is it necessary for us to do so; either to fulfil your request for a service; to comply with a legal obligation, or where permitted under other legislation. | | We do not record or monitor any telephone calls you make to us using recording equipment, although if you leave a message on our voicemail systems your message will be kept until we are able to return your call or make a note of your message. File notes of when and why you called may be taken for record keeping purposes. We will not pass on the content of your telephone calls, unless is it necessary for us to do so; either to fulfil your request for a service; to comply with a legal obligation, or where permitted under other legislation. |
| **Your rights** | | | |
| **You can ask us to stop processing your information**  You have the right to request that the Strategic Policy, Planning and Performance Department (on behalf of the Council of Ministers) stop processing your personal data in relation to any of our services. However, this may cause delays or prevent us delivering a service to you. Where possible we will seek to comply with your request but we may be required to hold or process information to comply with a legal requirement.  **You can withdraw your consent to the processing of your information**  In the few instances when you have given your consent to process your information, you have the right to withdraw your consent to the further processing of your personal data. However, this may cause delays or prevent us delivering a service to you. We will always seek to comply with your request but we may be required to hold or process your information in order to comply with a legal requirement.  **You can ask us to correct or amend your information**  You have the right to challenge the accuracy of the information we hold about you and request that it is corrected where necessary. We will seek to ensure that corrections are made not only to the data that we hold but also any data held by other organisations/parties that process data on our behalf. | | **You request that the processing of your personal data is restricted**  You have the right to request that we restrict the processing of your personal information. You can exercise this right in instances where you believe the information being processed is inaccurate, out of date, or there are no legitimate grounds for the processing. We will always seek to comply with your request but we may be required to continue to process your information in order to comply with a legal requirement.  **You can ask us for a copy of the information we hold about you**  You are legally entitled to request a list of, or a copy of any information that we hold about you.  You can [submit a subject access request (SAR) using our online form](https://one.gov.je/AchieveForms/?mode=fill&form_uri=sandbox-publish://AF-Process-0aaa4251-97f8-4525-99c2-ec4661ac542b/AF-Stage-16e6fae1-a88d-4792-90c1-33092a9964b5/definition.json&process=1&process_uri=sandbox-processes://AF-Process-0aaa4251-97f8-4525-99c2-ec4661ac542b&process_id=AF-Process-0aaa4251-97f8-4525-99c2-ec4661ac542b&_ga=2.53575148.513729453.1527153592-1231347188.1518176188).  However where our records are not held in a way that easily identifies you, for example a land registry, we may not be able to provide you with a copy of your information, although we will do everything we can to comply with your request. | |
| **Complaints** | | | |
| **You can complain to us about the way your information is being used**  If you have an enquiry or concern regarding how the Strategic Policy, Planning and Performance Department processes your personal data you can:  Telephone: +44 (0)1534 445443  Email: oneSPPP@gov.je  Strategic Policy, Planning and Performance Department  19 – 21 Broad Street  St Helier  Jersey  JE2 3RR  **Or you can also complain to the Central Data Protection Unit about the way your information is being used**    Telephone: +44 (0)1534 440514  Email: [DataProtection2018@gov.je](mailto:DataProtection2018@gov.je)  Central Data Protection Unit  3rd Floor  28-30 The Parade  St Helier  Jersey  JE2 3QQ | | **You can also complain to the Information Commissioner about the way your information is being used**  The Office of the Information Commissioner can be contacted in the following ways:  Telephone: +44 (0)1534 716530  Email: [enquiries@oicjersey.org](mailto:enquiries@oicjersey.org)  Office of the Information Commissioner 2nd Floor  5 Castle Street  St Helier  Jersey  JE2 3BT | |

1. Office for National Statistics (2017). Domestic Abuse in England and Wales; Crown Prosecution Service (2016-17). Violence against women and girls report, 10th edition [↑](#footnote-ref-1)
2. Office for National Statistics (2017). Domestic Abuse in England and Wales; Crown Prosecution Service (2016-17). Violence against women and girls report, 10th edition [↑](#footnote-ref-2)
3. **Adverse Childhood Experiences Study** (**ACE Study**) is a research study conducted by the U.S. [health maintenance organization](https://en.wikipedia.org/wiki/Health_maintenance_organization) [Kaiser Permanente](https://en.wikipedia.org/wiki/Kaiser_Permanente) and the [Centers for Disease Control and Prevention](https://en.wikipedia.org/wiki/Centers_for_Disease_Control_and_Prevention) [↑](#footnote-ref-3)
4. Jersey Safeguarding Partnership Board, p 24 [↑](#footnote-ref-4)
5. Monckton-Smith, Jane and Szymanska, Karolina and Haile, Sue (2017) Exploring the Relationship between Stalking and Homicide [↑](#footnote-ref-5)
6. Victoria Atkins MP Parliamentary Under Secretary of State (Minister for Safeguarding, Minister for Women) 2021 [↑](#footnote-ref-6)
7. 5 Office for National Statistics, Intimate personal violence and partner abuse, accessed 18/12/1 [↑](#footnote-ref-7)
8. Published by the Safeguarding Partnership Board August 2021 [↑](#footnote-ref-8)