

**Domestic Abuse (Protection)
(Scotland) Bill
Data Protection Impact
Assessment for Legislation for
Bill Team use only**

October 2020



Scottish Government
Riaghaltas na h-Alba
gov.scot

Data Protection Impact Assessment for Legislation for Bill Team use only

This form is for Bill teams that are developing a legislative proposal or statutory guidance that will involve (explicitly or inherently) impacts on personal data.

The form works in conjunction with the Article 36(4) ICO consultation form, in the event your draft legislation meets the requirements for consultation with the ICO.

Your proposal may engage with Article 8 rights to privacy – this could come about in a variety of ways, for example, establishing a new organisation which will require information to be collected or shared, it may involve data sharing provisions explicitly, it may include requirements for an individual or organisation to be present in certain circumstances (e.g. for children or vulnerable people being interviewed) or it may involve powers to deliver services which will inherently require the processing of personal data in order to deliver those services. In such instances, an assessment of proposed provisions and the impact on data subjects must be undertaken.

Please note that the below questions seek to articulate how your proposals will meet the requirements of Article 35 of GDPR, Article 32 GDPR and other elements of both GDPR and Data Protection Act 2018, and seeks to assess the impact to individuals' personal data.

Article 35(1)

Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks.

Article 35(7)

The assessment shall contain at least:

- a) systematic description of the envisaged processing operations and the purposes of the processing, including, where applicable, the legitimate interest pursued by the controller;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;
- c) an assessment of the risks to the rights and freedoms of data subjects referred to in paragraph 1; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation [GDPR] taking into account the rights and legitimate interests of data subjects and other persons concerned.

Article 32 (Security of processing)

1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:

- a) the pseudonymisation and encryption of personal data;
- b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
- d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

2. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.

Title of proposal:	Domestic Abuse (Protection) (Scotland) Bill
Your department:	Scottish Government Criminal Law, Practice and Licensing Unit Criminal Justice Division
Contact email:	Linsay.Mackay@gov.scot
Data protection support email Data protection officer	dpa@gov.scot dataprotectionofficer@gov.scot
Is your proposal primary legislation, secondary legislation or a statutory measure?	Primary.
Name of primary legislation your measure is based on (if applicable)	N/A.
What stage is your legislation or statutory measure at and what are your timelines?	The Bill is currently being drafted with a view to introduction in Parliament in Autumn 2020. While a matter for Parliament to determine, we anticipate the following timeline: Stage 1 debate: early January 2021 Stage 2 debate: early February 2021 Stage 3 debate: late February 2021 Royal Assent: April 2021
Have you consulted with the ICO using the Article 36(4) form (please provide a link to it)?	Yes. See Annex A
If the ICO has provided feedback, please include this.	Yes. See Annex B
Have you held a public consultation yet?	Yes.
Were there any comments/feedback from the public consultation about privacy, information or data protection?	The only comments on GDPR matters related to a question as to whether there should be a statutory duty on the police, when making an application for a protective order to the courts, or putting in place protective measures, to refer a person at risk of domestic abuse to support services. Victims' groups made the point that while the police should offer to refer a person at risk to support services if they wished, it was important that the person at risk should retain control as to whether a referral is made. Those who did not support a mandatory requirement being placed on police expressed a concern as to whether it would be compatible with their obligations under GDPR and whether

	<p>support service provision was sufficiency comprehensive in some parts of the country to make such a referral.</p> <p>To note – the Bill does not provide for a statutory duty of referral to support services.</p>
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Version	Details of update	Version complete by	Completion Date
1	Draft	Lindsay Mackay	12/08/2020
2	Second draft	Lindsay Mackay	24/09/2020
3	Third draft	Lindsay Mackay	06/10/2020
4	Fourth draft	Lindsay Mackay	08/10/2020

	Question	Comments
<i>Article 35(7)(a) – “purposes of the processing, including, where applicable, the legitimate interest pursued by the controller”</i>		
1	What issue/public need is the proposal seeking to address? What objective is the legislation trying to meet?	<p>The measures in the Bill and the information collected are being done for the purposes of law enforcement in terms of Part 3 of the Data Protection Act 2018 (DPA), namely, for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.</p> <p>Attached at Annex C is a data flow diagram, illustrating the flow of personal data and the relevant ‘competent authorities,’ involved, as per Schedule 7 DPA, namely Police Scotland and the Scottish Courts and Tribunals Service. No one other than the ‘competent authorities’ will be processing personal data arising from the new powers provided for in the Bill.</p> <p>The policy background and measures in the Bill are explained in further detail below. In short, the protective measures the Bill introduces can be seen as forming part of the ‘preventative turn’ of</p>

law enforcement, through the provision of new protective notices and orders administered by the police and the courts, which seek to prevent a person at risk from experiencing domestic abuse and requiring them to render themselves homeless while they secure longer term housing and safety options.

Policy background and the measures in the Bill

On 1 April 2019 the Domestic Abuse (Scotland) Act 2018 came into effect which created a specific standalone offence of domestic abuse covering not just physical abuse but other forms of psychological abuse that were previously difficult to prosecute.

During the passage of the Domestic Abuse Bill, in response to the call for evidence at Stage 1, a number of third sector respondents raised concerns that there is a gap in protection available to victims of domestic abuse. A person wishing to obtain protection from domestic abuse,

		<p>particularly in relation to keeping a perpetrator away from their home, can only do so if the perpetrator enters the criminal justice system or if the victim takes out a civil order against the perpetrator.</p> <p>Following consultation with third sector organisations and a formal public consultation, the First Minister announced that the Scottish Government will introduce legislation in this Parliament to introduce a new scheme of protective orders for people at risk of domestic abuse.</p> <p>The powers in the Bill are intended to fill a “gap” in that where someone is in a controlling relationship and experiencing domestic abuse (and where there may not be a sufficiency of evidence to the criminal standard of proof to pursue the matter through criminal justice channels) the victim is likely to lack the freedom of action to pursue, for example, a civil court process to remove a suspected perpetrator from a shared home.</p> <p>The measures in the Bill provide the police and courts with a power to issue a police imposed domestic abuse protection</p>
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		<p>notice (“DAPN”) and court imposed domestic abuse protection order (“DAPO”) where there are reasonable grounds to believe that the issuing of the notice/order is necessary to protect the person at risk (“person B”) from domestic abuse carried out by the perpetrator (“Person A”).</p> <p>The notices/orders may include prohibitions or requirements to protect the person at risk from further abuse e.g. a requirement to leave the home of the person at risk, and be prohibited from re-entering it while the order is in force; or e.g. a requirement not to approach or contact or attempt to approach or contact the person at risk.</p> <p>The police will only have the power to issue a DAPN where it is necessary for the purpose of protecting the person at risk from abusive behaviour by person A before the court can make an interim DAPO or full DAPO. If the police assess that there is time to secure a court imposed DAPO or interim DAPO, a police notice should not be imposed.</p> <p>Any decision made by the police to grant a protective notice will be made by a</p>
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		<p>senior constable, will be subject to early judicial oversight and the notice will only be in force for a limited period of time.</p> <p>Where the police issue a notice, an application for a court imposed order will have to be made no later than the first court day after service of the DAPN. A subsequent court imposed order can only be made for a maximum of two months and is capable of being extended for a maximum of one month.</p> <p>The court will have the power to make an interim order for a short period of time after receiving an application from the police on a full order. This is intended to allow an unbroken chain of protection for the person at risk pending a decision on a full order.</p> <p>The intention is that during the time in which the police and court imposed protective measures are in place, the person at risk will have the space to consider their long-term housing options and take steps to secure their safety. Depending on the circumstances, this could be through the pursuit of other longer term civil remedies, such an</p>
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		<p>exclusion order, non-harassment order or interdict or steps to remove a person from shared tenancy.</p> <p>Similar provision covering England and Wales, providing for ‘Domestic Violence Protection Notices’ and ‘Domestic Violence Protection Orders’ is contained at sections 24-33 of the Crime and Security Act 2010. Part 3 of the Domestic Abuse Bill, currently before the Westminster, contains provision which, if passed, will replace that scheme with a wider scheme of ‘Domestic Abuse Protection Notices and Orders.</p>
<p><i>Article 35(7)(c) “assessment of the risks to the rights and freedoms of data subjects” and Article 35(7)(b) “...necessity and proportionality of the processing operations”</i></p>		
2	<p>Does your proposal relate to the collection of personal data? If so, please explain how and what kind of personal data it might involve.</p> <p>Please also specify if this personal data will be sensitive or special category data or criminal convictions or offences?</p> <p>(Note: ‘special categories’ means personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data about a person’s sex life or sexual orientation and sensitive personal data means criminal information or history)</p>	<p>The DAPNs and DAPOs provided for in this Bill are necessary to fill a “gap” in current protections available to victims of domestic abuse, in that where someone is in a coercive and controlling relationship and experiencing domestic abuse, they are likely to lack the freedom of action to pursue, for example, a civil court process to remove a suspected perpetrator from a shared home.</p>

		<p>As such, where a person who is experiencing domestic abuse seeks advice on what they can do to ensure their safety when they are living with the perpetrator of the abuse, they may often be advised that if they are either unwilling or unable to pursue an action in the civil courts, the only course of action open to them is to make themselves homeless in order to protect themselves from abuse. The DAPNs and DAPOs prevent the person at risk from having to vacate their home and provides a safe space for them to seek longer term housing and safety options.</p> <p>In addition, the police and criminal courts would only have powers to impose protective measures similar to those contained in the Bill where the suspected perpetrator has entered the processes of the criminal justice system i.e. where there is an ongoing investigation or there is sufficient evidence with which to charge a relevant criminal offence. The measures in the Bill will provide the person at risk with some certainty about their protection which is immediate and crucially is independent of any</p>
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		<p>criminal investigation.</p> <p>The proposal does relate to the collection of personal data.</p> <p>Relevant personal data is personal data of suspected perpetrator (or “Person A”) of domestic abuse and personal data of the person at risk (or “Person B”) and where applicable any children living in the shared home. The following are examples of the personal data that may be collected:</p> <ul style="list-style-type: none">(a) the name and address of the suspected perpetrator (“Person A”);(b) the name and address of person at risk (“Person B”);(c) the name and age of any children living in the shared home;(d) welfare concerns in relation to a child living with Person B;(e) representations made by Person A or Person B;(f) the grounds on which the police notice or court order has been issued i.e. details of the abusive behaviour by Person A towards Person B and the necessity of a protective police notice or court order.
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		<p>Ultimately the precise personal data to be collected will be an operational matter for the police as a data controller when considering whether the test provided for in the Bill is met i.e.</p> <ul style="list-style-type: none">• person A has engaged in behaviour which is abusive of person B;• it is necessary for a domestic abuse protection order to be made for the purpose of protecting person B from abusive behaviour by person A; and• it is necessary to make the notice for the purpose of protecting person B from abusive behaviour by person A before the sheriff can make an interim domestic abuse protection order or a domestic abuse protection order. <p>The person data gathered will be managed by the downstream data controllers as per Annex C. It is therefore the operational responsibility of the data controllers to</p>
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		<p>assess and review principles such as proportionality; fairness and storage limitation.</p> <p><u>Wider context:</u></p> <p>Personal data gathered and processed by the police and courts in the relation to a protective notice or protective order is the same personal data they ordinarily would obtain and process in a suspected case of domestic abuse where the perpetrator is dealt with through the criminal process i.e. name, address, details of why the police consider a person has been subject to domestic abuse or is at risk of domestic abuse, which necessitates further action, in this instance, the issuing of a protective police notice for onward application to a court for a protective court order.</p> <p>The information would be the same or similar as to that which is gathered and processed e.g.</p> <ul style="list-style-type: none">• during the police investigative phase involving suspected cases of domestic abuse• following perpetrator's arrest, charge and report to the Crown Office and Procurator
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		<p>Fiscal Service</p> <ul style="list-style-type: none"> • during the course of subsequent court handling once criminal proceedings have been raised. <p>The only difference in this instance is that the police will apply to a <u>civil</u> court (and not report the matter to our prosecution authority for proceedings in a criminal court) for imposition of the court protective order.</p> <p>Having regard to section 42 DPA, and the question of safeguards, the police and courts as the data controllers have existing policies and procedures in place when carrying out sensitive processing to ensure compliance with section 42 DPA and it is expected they will continue to do so when administering the protective notices and orders provided for in this Bill.</p> <p>The processing of personal data for the purpose of administering the DAPNs and DAPOs fulfil a number of the prescribed purposes within Schedule 8 DPA, namely:</p> <ul style="list-style-type: none"> • statutory purposes • safeguarding of
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		<p>children and individuals</p> <ul style="list-style-type: none">• judicial acts <p>It is also worth highlighting that there are existing civil remedies available to a person who is at risk of domestic abuse e.g.</p> <p>It is possible for a person at risk to apply to a court for a civil 'exclusion order' to exclude the perpetrator from a shared home. A person can apply to court for an exclusion order which can suspend the rights of a person's spouse, civil partner or, in certain circumstances, cohabitant from living in the family home. An exclusion order can be granted by the court if it appears to the court that the making of the order is necessary for the protection of the applicant or any child of the family from any conduct or threatened or reasonably apprehended conduct of the other party which is or would be injurious to the physical or mental health of the applicant or child.</p> <p>A person at risk of domestic abuse can also apply to the civil courts for an interdict or for a non-harassment order (NHO). An interdict or NHO can include conditions such as prohibiting the subject of the order from phoning,</p>
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		<p>texting or otherwise attempting to contact the person who has taken out the order, approaching or following them, or loitering outside their home or place of work.</p> <p>Accordingly, there are existing examples of civil courts processing the same type of personal data that is gathered and processed for the protective measures under the Bill when in a domestic context.</p> <p>Under the Bill, breach of a police notice or court issued order is a criminal offence and therefore normal criminal channels are used which does not involve the processing of data that is not already routinely carried out.</p>
<p><i>Article 35(7)(a) “purposes of the processing, including, where applicable, the legitimate interest pursued by the controller” and Article 35(7)(b) “...necessity and proportionality of the processing operations”</i></p>		
<p>3</p>	<p>How will your proposal engage with Article 8 ECHR? How will your proposal balance rights and requirements with Article 8 rights? If impinging on Article 8 rights, what is your justification for doing so – why is it necessary?</p> <p>Article 8 ECHR: Right to respect for private and family life</p> <p>1. Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or</p>	<p>The orders will likely interfere with person A’s Article 8 rights, especially if they prohibit them from entering the family home and from maintaining a relationship with the person at risk and potentially their children. Any interference must be in accordance with law, in pursuit of a legitimate aim, and be necessary in a democratic society.</p> <p>A measure will be in accordance with the law if it is set out in domestic law which is clear,</p>

	<p>morals, or for the protection of the rights and freedoms of others.</p>	<p>foreseeable and adequately accessible.</p> <p>Here the law will be set out in primary legislation which prescribes the criteria for granting a DAPN and a DAPO. The definition of what amounts to “abusive behaviour” is non-exhaustive. The definition has been chosen for consistency with the Domestic Abuse (Scotland) Act 2018.</p> <p>The definition of “abusive behaviour” will be clearly defined in statute and this modern concept of domestic abuse is one which is now regularly considered by the police when investigating offences under section 1 of the Domestic Abuse (Scotland) Act 2018 and imposing investigative liberation conditions and undertaking conditions.</p> <p>We are of the view that the measures are “in accordance with the law.</p> <p>An interfering measure must pursue a legitimate aim.</p> <p>Here the primary aim is the protection of the rights of others, namely the person at risk (person B). It is well-recognised in human rights law that the State has a positive obligation to take appropriate steps to protect vulnerable people – including women and children affected by domestic violence – from threats which pose a risk</p>
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		<p>to their lives, their right to be free from inhuman and degrading treatment and their physical integrity (Articles 2, 3 and 8 ECHR).</p> <p>We are of the view that the orders pursue a legitimate aim.</p> <p>A measure must be necessary in a democratic society.</p> <p>The notion of “necessity” means that the interference must correspond with a pressing social need, and, in particular, must remain proportionate to the legitimate aim pursued.</p> <p>The need to protect persons at risk from domestic abuse can be categorised as a pressing social need.</p> <p>Before granting these orders, the police and courts will have to be satisfied that they are necessary for the overarching purpose which is to protect the person at risk from abusive behaviour by person A.</p> <p>For police issued notices, prohibitions and requirements can only be imposed if they are contained in the exhaustive list provided for in the Bill and are necessary for the overarching purpose of the notice. The police, by virtue of section 6 of the Human Rights Act 1998,</p>
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		<p>will be under an obligation to act in a way which is compatible with the ECHR.</p> <p>Although there will be no court oversight at the time a police notice is imposed, there are some safeguards built into the legislation which will assist the police in balancing the rights of the interested parties e.g. an obligation to have regard to any representations made by the person against whom the order is to be made.</p> <p>In addition, it is the intention that DAPNs can only be granted by constables holding the rank of Inspector or above.</p> <p>We are of the view the measures are necessary in a democratic society.</p>
<p><i>Article 35(7)(b) "...necessity and proportionality of the processing operations"</i> <i>Article 35(7)(c) "assessment of the risks to the rights and freedoms of data subjects"</i> <i>Article 35(7)(d) "measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with [GDPR] taking into account the rights and legitimate interests of data subjects and other persons concerned"</i> <i>Note Article 32 GDPR for s.4 also</i></p>		
4	<p>Will your proposal require you to regulate:</p> <ul style="list-style-type: none"> <input type="checkbox"/> technology <input type="checkbox"/> behaviour of individuals using technology <input type="checkbox"/> technology suppliers <input type="checkbox"/> technology infrastructure <input type="checkbox"/> information security <p>(Non-exhaustive examples might include whether your proposal requires online surveillance, regulation of online behaviour, the creation of centralised databases accessible by multiple organisations, the supply or creation of particular technology solutions or platforms, or any of the areas covered in questions 4a or 4b.)</p>	No

4a	<p>Please explain how your proposal will regulate behaviour using technology or the use of technology.</p> <p>Please consider/address any issues involving:</p> <ul style="list-style-type: none"> ○ Identification of individuals online (directly or indirectly, including the combining of information that allows for identification of individuals); ○ Surveillance (necessary or unintended); ○ Tracking of individuals online, including tracking behaviour online; ○ Profiling; ○ Collection of 'online' or other technology-based evidence ○ Artificial intelligence (AI); ○ Democratic impacts e.g. public services that can only be accessed online, voting, digital services that might exclude individuals or groups of individuals <p>(Non-exhaustive examples might include online hate speech, use of systems, platforms for delivering public services, stalking or other regulated behaviour that might engage collection of evidence from online use, registers of people's information, or other technology proposals that impact on online safety, online behaviour, or engagement with public services or democratic processes.)</p>	n/a
4b	Will your proposal require establishing or change to an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?	No

<p><i>Article 35(7)(b) "...necessity and proportionality of the processing operations"</i> <i>Article 35(7)(c) "assessment of the risks to the rights and freedoms of data subjects"</i> <i>*Note exemptions from GDPR principles where applicable</i></p>		
5	<p>Please provide details of whether your proposal will involve the collection or storage of evidence or investigatory powers (e.g. fraud, identify theft, misuse of public funds, criminal activity, witness information, online behaviour, victim information or other monitoring of online behaviour)</p>	<p>It will involve the collection and storage of evidence by the police – i.e. the grounds upon which the police consider person A has behaved abusively towards person B and why the police consider a notice is necessary for person B's protection, any views of the person at risk, any representations made by person A, any child welfare considerations.</p>
<p><i>Article 35(7)(b) "...necessity and proportionality of the processing operations"</i> <i>Article 35(7)(c) "assessment of the risks to the rights and freedoms of data subjects"</i> <i>Article 35(7)(d) "measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with [GDPR] taking into account the rights and legitimate interests of data subjects and other persons concerned"</i></p>		
6	<p>Would your proposal affect a specific group e.g. children, vulnerable individuals, elderly people? (Please specify)</p>	<p>Persons at risk of domestic abuse and suspected perpetrators of domestic abuse</p>
7	<p>Will your Bill necessitate the sharing of information to meet the objectives of your proposal?</p> <p>If so, are the appropriate legal gateways for sharing personal data included?</p> <p>Would your proposal benefit from appointing or specifying Data Controllers/creating obligations in law for responsibility for managing personal data?</p> <p>(Please provide details of data sharing, e.g. if there is a newly established organisation, if it is new sharing with an already established third party organisation, if it is with a specified individual or class of individuals, or any other information about the sharing provision/s.)</p>	<p>Related to question 2 above – information collected will be shared by the police in an application to a civil court – and therefore the sharing of personal data with the court.</p> <p>There are appropriate legal gateways for the sharing of personal data – the sharing/lodging of information held by the police with the court will be governed by existing civil court rules.</p>
8	<p>Is there anything potentially controversial or of significant public interest in your policy proposal?</p>	<p>Significant public interest</p>

	<p>Are there any potential unintended consequences with regards to the provisions e.g. would unintended surveillance or profiling be an outcome of information collection provisions; will the public's personal information have appropriate safeguards – could those safeguards interfere with the ability to investigate crime or protect the public etc. Please provide details about how you are balancing competing interests where they relate to personal data.</p>	
9	<p>Will any of the provisions affect/engage ECHR rights in addition to Article 8 e.g.:</p> <p>Article 6 right to a fair trial (and rights of the accused)</p> <p>Article 10 right to freedom of expression</p> <p>Article 14 rights prohibiting discrimination</p> <p>Or any other convention or treaty rights?</p>	<p>The Bill engages rights in relation to article 6 (right to fair trial), article 8 (right to respect for private and family life, home and correspondence) and article 1 protocol 1 ECHR (protection of property).</p> <p>It is considered the potential interferences with these rights in particular cases are necessary in the protection of the rights and freedoms of others. Given the harms caused by domestic abuse, it is proportionate for there to be a limited interference with the identified rights.</p> <p>It is considered the provisions of the Bill are compatible with the ECHR.</p>
10	<p>Are there legacy provisions in other legislation that need to be addressed/repealed etc. in your current proposal?</p> <p>(This might include, for example, the creation of statutory regulations (which would need enabling powers in Bills; or provisions repealing older legislation; or reference to existing powers (e.g. police or court powers etc.).</p>	No
11	<p>Will this proposal necessitate an associated code of conduct?</p> <p>If so, what will be the status of the code of conduct (statutory, voluntary etc.)?</p>	It is not considered the proposal necessitates an associated code of conduct to be produced by the Scottish

		<p>Government. As the data controllers in this instance are Police Scotland and Scottish Courts and Tribunals Service, it is considered these bodies, which operate independently of the Scottish Government, are best placed to create any further guidance if needed, to ensure their staff comply with their obligations under the DPA e.g. principles of necessity and proportionality of the processing operations, storage limitation and the undertaking of regular reviews to ensure compliance with the statutory duties of the data controller. The Scottish Government will continue to have ongoing engagement with Police Scotland and SCTS as operational implementation planning takes place.</p>
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Summary – Data Protection Impact Assessment

12	Do you need to specify a Data Controller/s?	No
13	Do you need to include information collection duties or powers (legal basis for processing)?	No
14	Do you need to include explicit information sharing provisions (as related to duties, legal gateways, express powers): <ul style="list-style-type: none"> ○ From one public sector organisation to another public sector organisation; ○ From a public sector organisation to a private sector organisation, charity, etc.; ○ Between public sector organisations; ○ Between individuals (e.g. practitioners/ service users/sole traders etc.); Upon request from a nominated (or specified) organisation?	No
15	Have you included any safeguards for personal data/interference with Article 8 rights?	<p>Yes - there are some safeguards built into the legislation which will assist the police in balancing the rights of the interested parties e.g. an obligation to have regard to any representations made by the person against whom a police notice is to be made.</p> <p>In addition, DAPNs can only be granted by constables holding the rank of Inspector or above.</p>
16	Have you included any safeguards for personal data/interference with other rights?	No
17	Will the collection of personal data affect decisions made about individuals, groups or categories of persons, or might provisions result in the denial of a right or rights?	Yes – the collection of personal data will help inform whether a DAPN or DAPO should be imposed, that may result in the exclusion of the person subject to the notice or order from a home they share with the person at risk of domestic abuse, for a limited period of time.
18	<p>Please summarise the key elements to be included for Bill drafters; please highlight risks to personal data, any comments about mitigating those risks, including any costs or options for addressing those risks through legislation.</p> <p>This should be included in the Bill Instruction.</p> <p>The Bill provides a new power for the police to impose DAPNs and to apply to the courts for DAPOs, to protect persons at risk of domestic abuse. This will require the transmission to the court of personal data relating to the person against whom the order is sought. However, specific provision is not required in the Bill as the police have a number of existing powers to apply to the courts for protective orders (e.g. risk</p>	

<p>of sexual harm orders, forced marriage protection orders) and we anticipate the same processes will be used by the police and courts to manage any risks relating to the use of personal data.</p>

ANNEX A

This annex sets out the Enquiry Form as submitted to the ICO on 23 May 2019, with the response attached at Annex B.

1. Annex A: Article 36(4) Enquiry Form	
<p>This form is for public authorities that are developing a legislative proposal or statutory guidance that relates to personal data. It will provide a template for you to enter information relevant to Article 36(4) of the General Data Protection Regulation (GDPR) in order to streamline the process of consulting with the Information Commissioner's Office (ICO).</p>	
Title of proposal:	Domestic Abuse (Protective Orders) (Scotland) Bill
Your department:	Scottish Government Criminal Law, Practice and Licensing Unit Criminal Justice Division
Contact email:	Linsay.Mackay@gov.scot
Data Protection Officer Contact email: (If different from above)	Stuart.Gardner@gov.scot
Is your proposal primary legislation, secondary legislation or a statutory measure?	Primary legislation
Name of primary legislation your measure is based on (if applicable)	n/a
Provide a broad summary of which aspects of your proposal relate to personal data	<p><u>Background to the Bill</u></p> <p>On 1 April 2019 the Domestic Abuse (Scotland) Act came into effect which created a specific standalone offence of domestic abuse covering not just physical abuse but other forms of psychological abuse that were previously difficult to prosecute.</p>

During the passage of the Domestic Abuse Bill, in response to the call for evidence at Stage 1, a number of third sector respondents raised concerns that there is a gap in protection available to victims of domestic abuse. A person wishing to obtain immediate or long-term protection, particularly in relation to keeping a perpetrator away from their home, can only obtain such protection if the perpetrator enters the criminal justice system or if the victim takes out a civil order against the perpetrator.

Following consultation with third sector organisations and a formal public consultation, the First Minister announced that the Scottish Government will introduce legislation in this Parliament to introduce a new scheme of protective orders for people at risk of domestic abuse.

The powers in the Bill are intended to fill a “gap” in that where someone is in a controlling relationship and experiencing domestic abuse (and where there may not be a sufficiency of evidence to the criminal standard of proof to pursue the matter through criminal justice channels) the victim is likely to lack the freedom of action to pursue, for example, a civil court process to remove a suspected perpetrator from a shared home.

The measures in the Bill are intended to protect victims of domestic abuse from having no choice but to render themselves homeless in order to escape an immediate risk of abuse from someone living with them and to give them a safe space to begin to seek further, longer term interventions if desired. The intention is that during the time in which the police and court imposed protective measures are in place, the person at risk will have the space to consider their long-term housing options and take steps to secure their safety. Depending on the circumstances, this could be through the pursuit of an exclusion order, non-harassment order or interdict or steps to remove a person from shared tenancy.

Similar provision covering England and Wales,

providing for 'Domestic Violence Protection Notices' and 'Domestic Violence Protection Orders' is contained at sections 24-33 of the Crime and Security Act 2010. Part 3 of the Domestic Abuse Bill, currently before the Westminster, contains provision which, if passed, will replace that scheme with a wider scheme of 'Domestic Abuse Protection Notices and Orders.

What the Bill does

The Bill provides the police with a power to issue a 'domestic abuse protection notice' where they have reasonable grounds to believe that the person to be subject to the notice ("person A") has been abusive towards their partner or ex-partner ("person B") and that they have reasonable grounds to believe that the issuing of the notice is necessary to protect person B from domestic abuse or the risk of domestic abuse, carried out by person A.

Where the police issue a 'domestic abuse protection notice' they are required to apply within a short period of time for a court-imposed 'domestic abuse protection order' which has effect for a longer period of time. The exact length of time the police notice and court order run for is still to be agreed, but equivalent legislation in England and Wales requires that where a police notice is made, the court must determine whether to make an order within 48 hours, and the court order can run for up to 28 days.

The definition of abusive behaviour in the Bill reflects the same definition in the Domestic Abuse (Scotland) Act 2018, which created a "course of conduct" offence – enabling physical, psychological and controlling behaviour to be prosecuted at once. Like the 2018 Act, the scope of the orders are restricted to abusive behaviour (or suspected abusive behaviour) by a partner or ex-partner.

The exact details of the powers that a police notice/ court order can impose is subject to final agreement but in general terms, they may include prohibitions or requirements to protect the person

at risk from further abuse e.g.

- A requirement to leave the home of the person at risk, and be prohibited from re-entering it while the order is in force;
- A requirement to refrain from approaching or contacting the person at risk;
- A requirement to refrain from coming within a specified distance of the home of the person at risk;
- A requirement to refrain from evicting or excluding the person at risk from the home and;
- A requirement to surrender keys to the shared home

These conditions reflect the sort of conditions that may be imposed when a suspected perpetrator is being investigated by police during the course of a criminal matter, where a suspect can be released on 'investigative liberation'¹; when a suspect has been charged with a criminal offence and is released from police custody on undertaking conditions², or when an accused has appeared at court and the court imposes bail conditions.

It should be noted policy is still being finalised and provisions remain in draft at the present time.

Personal data

Personal data gathered and processed by the police and courts in the relation to a protective notice or protective order is the same personal data they ordinarily would obtain and process in a suspected case of domestic abuse where the perpetrator (or 'person A') is dealt with through the criminal process i.e. name, address, details of why the police consider a person has been subject to domestic abuse or is at risk of domestic abuse, which necessitates further action, in this instance, the issuing of a protective police notice for onward application to a court for a protective court order.

¹ <http://www.legislation.gov.uk/asp/2016/1/part/1/chapter/2/crossheading/investigative-liberation>

² <http://www.legislation.gov.uk/asp/2016/1/part/1/chapter/3/crossheading/police-liberation>

The information would be the same or similar as to that which is gathered and processed e.g.

- during the police investigative phase involving suspected cases of domestic abuse
- following perpetrator's arrest, charge and report to the Crown Office and Procurator Fiscal Service
- during the course of subsequent court handling once criminal proceedings have been raised.

The only difference in this instance is that the police will apply to a civil court (and not report the matter to our prosecution authority for proceedings in a criminal court) for imposition of the court protective order.

It is worth highlighting that there are existing civil remedies available to a person who is at risk of domestic abuse e.g.

- it is possible for a person at risk to apply to a court for a civil 'exclusion order' to exclude the perpetrator from a shared home. A person can apply to court for an exclusion order which can suspend the rights of a person's spouse, civil partner or, in certain circumstances, cohabitant from living in the family home. An exclusion order can be granted by the court if it appears to the court that the making of the order is necessary for the protection of the applicant or any child of the family from any conduct or threatened or reasonably apprehended conduct of the other party which is or would be injurious to the physical or mental health of the applicant or child.
- A person at risk of domestic abuse to apply to the civil courts for an interdict or for a non-harassment order (NHO). An interdict or NHO can include conditions such as prohibiting the subject of the order from phoning, texting or otherwise attempting to contact the person who has taken out the

	<p>order, approaching or following them, or loitering outside their home or place of work.</p> <p>Accordingly, there are existing examples of civil courts processing the type of personal data that is gathered and processed for the protective measures under the Bill when in a domestic context..</p> <p>Under the Bill, breach of a police notice or court issued order is a criminal offence and therefore normal criminal channels are used which does not involve the processing of data that is not already routinely carried out.</p>
<p>What stage is your legislation or statutory measure at and what are your timelines?</p>	<p>The Bill is currently being drafted with a view to introduction in Parliament in Autumn 2020.</p> <p>While a matter for Parliament to determine, we anticipate the following timeline:</p> <p>Stage 1 debate: early January 2021</p> <p>Stage 2 debate: early February 2021</p> <p>Stage 3 debate: late February 2021</p> <p>Royal Assent: April 2021</p>

Question	Comments
<p>What issue/public need is the proposal seeking to address?</p>	<p>As above, the powers in the Bill are intended to fill a “gap” in that where someone is in a controlling relationship and experiencing domestic abuse, they are likely to lack the freedom of action to pursue, for example, a court process to remove a suspected perpetrator from a shared home.</p> <p>The measures in the Bill are intended to protect victims of domestic abuse from having no choice but to render themselves homeless in order to escape an immediate risk of abuse from someone living with them and to give them a safe space to begin to seek further, longer term interventions if desired</p>

<p>Does your proposal create a new power or obligation for the processing of personal data?</p>	<p>As above, the measures in the Bill provide the police and courts with a new power to issue protective notices/orders for persons at risk of domestic abuse. However, it is the same data that would be processed during the course of a criminal investigation of suspected domestic abuse or criminal proceedings. It is just being used for a different purpose i.e. for processing by a civil court to impose a civil order.</p>
<p>Does your proposal relate to the collection of personal data?</p>	<p>Yes – personal data of suspected perpetrator (or “Person A”) of domestic abuse and personal data of the person at risk (or “Person B”) and potentially any children living in the shared home.</p>
<p>If you’ve answered yes to the above question, what data items might this include?</p>	<p>(a) the name and address of the suspected perpetrator (“Person A”);</p> <p>(b) the name and address of person at risk (“Person B”);</p> <p>(c) the name and age of any children living in the shared home;</p> <p>(d) welfare concerns in relation to a child living with Person A</p> <p>(e) representations made by Person A or Person B</p> <p>(f) the grounds on which the police notice or court order has been issued i.e. details of the abusive behaviour by Person A towards Person B and necessity of a protective police notice or court order.</p>
<p>And is this information collected directly from the data subject or from elsewhere? Please provide further details.</p>	<p>Directly from data subject(s) or from other information obtained by the police in the course of investigating alleged domestic abuse which could come from third parties.</p>
<p>Would your proposal affect a specific group? E.g. children, vulnerable individuals, elderly?</p>	<p>Persons at risk of domestic abuse and suspected perpetrators of domestic abuse</p>
<p>Does your proposal relate to the processing 'special categories' of personal data, or 'criminal convictions or</p>	<p>No</p>

offences data'? ³	
Does your proposal involve the sharing of personal data with another government department or 3rd party that you were not previously sharing with?	The proposals involve the police making an application to a civil court for a civil court order – and therefore the sharing of personal data with the court.
Is there anything potentially controversial or of significant public interest in your policy proposal?	Significant public interest – to ensure there is no gap in the protections available for victims of domestic abuse
Have you conducted a data protection impact assessment on your proposed legislation?	A data protection impact assessment will be completed as part of the accompanying documents for the Bill.

NEXT STEPS

This form should be reviewed by your Data Protection Officer before being submitted to the ICO.

To submit the form, email a copy to the ICO inbox at legcon@ico.org.uk.

You should copy and paste the below text into the subject line of your email to ensure your request is dealt with promptly.

Email subject line: Art 36(4) - Consultation request - [\[insert your department\]](#) - [\[insert title of proposal\]](#)

³To note: By 'special categories' we mean personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data about a person's sex life or sexual orientation.

ANNEX B

From: Elaine Stewart <Elaine.Stewart@ico.org.uk>
Sent: 02 August 2020 13:51
To: Mackay L (Linsay) <Linsay.Mackay@gov.scot>; ICO Consultation <legcon@ico.org.uk>
Cc: Down P (Patrick) <Patrick.Down@gov.scot>; Lamont P (Philip) <Philip.Lamont@gov.scot>
Subject: RE: Art 36(4) - Consultation request - Scottish Government - Criminal Justice Division - Domestic Abuse (Protective Orders) (Scotland) Bill

Dear Linsay

Thank you for your recent submission under Article 36(4) re the Domestic Abuse (Protective Orders) (Scotland) Bill.

I can confirm that, having considered your submission, we would like to engage with you further on this. To this end, a colleague from our Scotland Office will make contact with you shortly to arrange a meeting.

Kind regards,

Elaine Stewart



Data Protection Impact Assessment Team Technology & Innovation Service

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

ico.org.uk twitter.com/iconews

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For information about what we do with personal data see our [privacy notice](#)

ANNEX C - DATA FLOW



Authorisation and publication

The DPIA report should be signed by your Information Asset Owner (IAO). The IAO will be the Deputy Director or Head of Division.

Before signing the DPIA report, an IAO should ensure that she/he is satisfied that the impact assessment is robust, has addressed all the relevant issues and that appropriate actions have been taken.

By signing the DPIA report, the IAO is confirming that the impact of applying the policy has been sufficiently assessed against the individuals' right to privacy.

The results of the impact assessment must be published in the eRDM with the phrase "DPIA report" and the name of the project or initiative in the title.

Details of any relevant information asset must be added to the Information Asset Register, with a note that a DPIA has been conducted.

I confirm that the impact of the Domestic Abuse (Protection) (Scotland) Bill has been sufficiently assessed against the needs of the privacy duty:

Name and job title of a IAO or equivalent	Date authorised
Willie Cowan Deputy Director Criminal Justice Division	8 October 2020



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