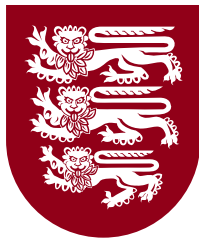


STATES OF JERSEY



Jersey

DRAFT DOMESTIC ABUSE (JERSEY) AMENDMENT LAW 202-

**Lodged au Greffe on 13th January 2026
by the Minister for Justice and Home Affairs
Earliest date for debate: 24th February 2026**

STATES GREFFE



Jersey

DRAFT DOMESTIC ABUSE (JERSEY) AMENDMENT LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Justice and Home Affairs has made the following statement –

In the view of the Minister for Justice and Home Affairs, the provisions of the Draft Domestic Abuse (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy M.R. Le Hegarat of St. Helier North**
Minister for Justice and Home Affairs

Dated: 9th January 2026

REPORT

Background

The primary aim of the Draft Domestic Abuse (Jersey) Amendment Law 202- is to improve the protections available for victims of domestic abuse that do not require a conviction.

To that end, the Draft Domestic Abuse (Jersey) Amendment Law 202- introduces additional measures to strengthen protections for victims of domestic abuse, regardless of whether the perpetrator has been convicted.

In November 2023, the Violence Against Women and Girls (VAWG) Taskforce published a report entitled “*It’s a Hidden Problem*” *The Issue of Violence Against Women and Girls in Jersey*. The report detailed the findings of the research the Taskforce had undertaken relating to women’s experiences of violence and abuse on the Island, alongside 77 recommendations for action to address this issue.

The Chief Minister and the Minister for Home Affairs have both committed to strengthening the legal framework to better protect Islanders from domestic abuse as part of the Government’s wider commitment to implement all of the VAWG Taskforce report recommendations directed at the Government of Jersey.

The relevant recommendations are:

Recommendation 24.1: Emergency barring orders should be re-introduced into the Domestic Abuse (Jersey) Law 2022.

Recommendation 24.2: An accountability mechanism for the use of emergency barring orders by the police service should be established in their design.

The Minister for Justice and Home Affairs issued the following response to these recommendations:

I will amend the Domestic Abuse (Jersey) Law 2022 to introduce preconviction emergency barring orders into this piece of legislation, which is also a requirement of recommendation 1, to fulfil the requirements of the Istanbul Convention. I will work with the Law Officers’ Department and the Courts to understand previous concerns regarding the introduction of emergency barring orders within this piece of legislation and work to ensure these concerns are mitigated.

Both the Chief Minister and the Minister for Justice and Home Affairs have expressed a desire to enact legislation to improve protections for victims of domestic abuse by the end of this term of Government (June 2026).

The draft Domestic Abuse (Jersey) Amendment Law 202- forms part of a wider package of legislation related to implementing the recommendations of the VAWG Taskforce and to strengthening the ability of the criminal justice system in Jersey to address crimes associated with violence against women and girls, namely:

- The Draft Crime (Strangulation) (Jersey) Law 202-;
- The Draft Harassment and Stalking (Jersey) Law 202-;
- The Draft Sexual Offences (Jersey) Amendment Law 202-; and
- The Draft Crime (Public Order) (Jersey) Amendment Law 202-

A lack of protection for victims of domestic abuse in Jersey

There are a number of points in which the risk to a victim of domestic abuse is significantly increased. In cases where a victim has recently left their partner, it is widely recognised that the risk of violence escalates significantly. The UK Femicide Census reported that, in 2018, 37 of the 91 women killed by a male partner had either separated or were taking steps to separate from their partner. 11 of those 37 women were killed in the first month of separation.

In the context of immediate danger, the most effective way to protect a victim of domestic abuse from further harm is by creating physical distance between them and the perpetrator. Emergency barring orders are an important measure for victims of domestic abuse in such situations, because they equip authorities with the power to order the perpetrator to leave the residence of the victim and prevent them from returning or contacting the victim.

Without the existence of pre-conviction emergency barring orders in Jersey law, the States of Jersey Police do not have the power to remove a suspected perpetrator of domestic abuse from the residence of a victim, or prevent them from contacting them, whilst they investigate the issue further. Instead, in cases where a perpetrator has not yet been convicted of a relevant offence, police have very limited tools available to protect victims. This is unlike the United Kingdom, where the police are able to provide immediate protection for victims via a Domestic Abuse Protection Notice, and the Courts are able to provide longer-term protection through the issuing of a Domestic Abuse Protection Order. These provisions have provided meaningful protection for victims in the UK through the imposition of restrictions and conditions on perpetrators of domestic abuse. Up until this point, the police and the Courts in Jersey have not been granted equivalent powers.

The absence of equivalent legislation in Jersey means that crucial opportunities for early police intervention to protect victims and prevent domestic abuse situations from escalating are being missed.

The issue with existing legislation

Under Article 5 of the current [Domestic Abuse \(Jersey\) Law 2022](#), perpetrators of domestic abuse that have been convicted of a relevant offence can be subject to Domestic Abuse Protection Orders (hereafter “DAPOs”). The purpose of a DAPO is to protect victims of domestic abuse from the risk of further domestic abuse from the relevant offender. When the Court issues a DAPO, they are able to impose a number of prohibitions and positive requirements onto the subject of the order. This can include prohibiting the offender from contacting or coming within a specified distance of the victim. In cases where the perpetrator shares a residence with the victim, they can be prohibited from entering the residence or evicting the victim from the residence. The provision of such protections is particularly important in instances where an offender has recently been released from prison.

The issue with this existing arrangement is that the option to issue a DAPO is only available to the Court when a perpetrator of domestic abuse has been convicted of a relevant offence. This means that, in cases where a perpetrator has not yet been convicted, the ability of the Court to grant protections to the victim are significantly limited.

Under existing arrangements, the States of Jersey Police also have much more limited powers to protect victims of domestic than that which was made available to their UK counterparts under the Domestic Abuse Act 2021. In the UK, police officers can issue a Domestic Abuse Protection Notice (or “DAPN”) in cases where they have reasonable grounds to believe a person who perpetrated domestic abuse and a DAPN is considered necessary for the protection of the victim. A DAPN can subject a perpetrator to a number of conditions, such as staying away from the victim’s home.

In the absence of DAPNs, police officers in Jersey are able to arrest suspected perpetrators of domestic abuse, but making such an arrest requires the satisfaction of a higher evidential test than that which is required for the issuing of a DAPN in the UK. Without the power to issue a DAPN, the police in Jersey face significant challenges in trying to protect a victim in cases where a perpetrator represents an immediate risk to their safety, but there is not yet enough evidence to make an arrest.

In instances where there is enough evidence to arrest a suspected perpetrator, no contact between the perpetrator and the victim can be made a condition of the perpetrator's pre- or post-charge bail. However, it is not a criminal offence to breach police bail conditions, so the perpetrators who choose to breach these conditions may not face any criminal justice repercussions as a result. For these reasons, the absence of emergency barring orders for suspected domestic abuse perpetrators represents a significant gap in our current legislation. This is leaving victims of domestic abuse without protection in cases of immediate danger. Emergency barring orders provide a form of protection for victim following domestic abuse incidents that is more immediate than existing remedies. Without them, the threshold at which protections are afforded to victims is too high.

Article 52 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (hereafter the Istanbul Convention) creates an obligation for states parties to ensure the protection of victims of domestic abuse by subjecting perpetrators to a range of restrictions on the basis of an emergency barring order. The Government has made a commitment to pursue the extension of the Istanbul Convention from the UK to Jersey, as part of its broader commitment to implement the VAWG Taskforce recommendations. As a result, emergency barring orders will need to be introduced to support compliance with, and therefore extension of, the Convention.

Process of legislative development

As part of their work to develop their report, the VAWG Taskforce commissioned the Law Officers' Department to conduct a high-level mapping of the existing legal framework in Jersey as it relates to a range of VAWG behaviours, alongside a comparison to equivalent legislation in England, Wales, Scotland and Northern Ireland. The findings of this legislative mapping exercise were used to inform the content of the VAWG Taskforce recommendations that relate to legislative development, including the recommendation to introduce emergency barring orders into the Domestic Abuse (Jersey) Law 2022. As discussed previously, the UK took measures to strengthen protective measures for victims of domestic abuse in the Domestic Abuse Act 2021. As a result, the development of the Draft Domestic Abuse (Jersey) Amendment Law 202- has been informed by relevant provisions in the Domestic Abuse Act 2021. That said, the law has been drafted in such a way as to take proper account of the unique features of the legal system in Jersey, rather than with the aim of wholly replicating UK legislation. Guidance published by the Council of Europe for the purpose of supporting the compliance of States Parties with "Article 52 – Emergency Barring Orders" of the Istanbul Convention has also proved instructive to the development of this draft Law.

During this process of legislative development, officers worked closely with the key stakeholders across the criminal justice system that would be involved in the operationalisation of this legislation, should it be accepted by the Assembly. In particular, the following stakeholders were actively consulted:

- States of Jersey Police
- The Criminal Division of the Law Officers' Department
- Judicial Greffe
- The Judiciary

Officers also provided the VAWG Taskforce with regular updates on the direction of legislative development throughout this process, in order to ensure that the proposed legislation suitably accomplished the functions that Taskforce members had in mind when the recommendations were made.

Purpose and function of legislative provisions

The Draft Domestic Abuse (Jersey) Amendment Law 202- performs the following function of:

- Introducing new mechanisms for the management of perpetrators and protection of victims, without the requirement for a prior conviction.

The purpose and function of each legislative provisions are discussed in detail below.

Part 2A of the draft Law is concerned with outlining arrangements for the introduction of emergency barring notices and emergency barring orders. The purpose of creating these new notices and orders is to introduce new mechanisms whereby the police and the Courts have additional powers to respond to perpetrators of domestic abuse and create meaningful protection for victims, without the requirement for a prior conviction.

Division 1 of Part 2A is concerned with the introduction of emergency barring notices. Under these new arrangements, a police officer can issue an emergency barring notice if there are reasonable grounds to suspect that a person has engaged in behaviour that is domestic abuse towards another person, and it is necessary to issue the notice to protect that other person from the risk of further domestic abuse. There is no requirement for the suspect to have been convicted of a relevant offence in order for the notice to be issued. Importantly, this notice can be issued regardless of the wishes of the person for whose protection it is necessary. This is important in the context of domestic abuse because it does not place a victim in the position of having to “sign off” on the order before it can be issued against a perpetrator.

To ensure that the perspectives of relevant parties are considered, the law provides that the relevant police officer must consider any statements made by the subject of the notice and the person for whose protection the notice is being considered. Measures have also been included to ensure that the welfare of any dependants is appropriately considered before the notice is issued. In particular, the law has been designed so as to ensure that, in cases where the notice creates limitations or prohibitions related to the suspect’s entry to the premises where the victim lives, the officer is required to consider the opinion of any other individual that lives at the premises and is personally connected to either party. In order to guarantee that the authorisation of a notice is necessary and proportionate, the officer is also required to consider whether the effect of the notice could be obtained by other means.

To ensure that the subject of an emergency barring notice is suitably aware of the purpose, conditions and process related to the notice, alongside the potential consequences of breaching the notice, a requirement for the notice to be given in writing has been included.

If a police officer decides to issue an emergency barring notice against a person, the notice can be used to impose a variety of restrictions and requirements on that person, the purpose of which is to protect the victim from the risk of further domestic abuse. In particular, the notice is able to prohibit the suspect from contacting or coming within a specified distance of the person they are suspected of having perpetrated domestic abuse against. In cases where the suspect and the victim live together at the same premises, the notice may:

- Require the subject to leave the premises;
- Prohibit them from entering the premises; and

- Prohibit them from evicting or excluding the victim from the premises.

Any other conditions that are considered reasonably necessary for the protection of the victim from further abuse may also be imposed. The police officer must personally serve the notice to the subject of the notice.

Whilst the notice is in force, the Attorney General may apply to Court for an emergency barring order (discussed below) against the suspect. In such cases, it is clarified that the notice continues to remain in force until the relevant application for an emergency barring orders has been determined. Otherwise, it is provided that the notice expires 72 hours after it comes into force. The typical provisions relating to weekends and bank holidays apply here. This 72-hour period is intended to provide a “cooling-off” period between the suspect and the victim, in addition to an appropriate amount of time for the necessary evidence to be collected to support an emergency barring order application, in cases where such an order is being pursued. Provisions have also been included so that an authorised officer may withdraw the notice, and so that the Court may extend the duration of the notice where necessary.

Article 4C sets out notification requirements for any person who is subject to an emergency barring notice. In particular, the subject of a notice is required to tell the police their full name, their contact details and the address at which they will be residing while the notice is in force. It is provided that, if a person fails to comply with these notification requirements without reasonable excuse, then that person commits an offence and is liable to imprisonment for a term of six months and to a fine.

Article 4D outlines provisions that grant the police power to arrest a person in cases where they have reasonable grounds to believe that person has failed to comply with the conditions of an emergency barring notice. If a person is arrested under this Article, it is set out that the Attorney General must, as soon as is possible, apply to the Magistrate’s Court for an emergency barring order against the person. In such cases, the person must be brought before the Court for consideration of the application within 48 hours of the arrest. The typical provisions relating to weekends and bank holidays apply here.

Restrictions on the issuing of subsequent emergency barring notices have been set out in 4E in order to protect against the misuse of such powers, including the issuing of subsequent notices on the same basis.

Division 2 of Part 2A is concerned with the introduction of emergency barring orders. Under these new arrangements, the Magistrate’s Court can issue an emergency barring order against a person if they receive an application by the Attorney General and they are satisfied that, on the balance of probabilities, the subject of the application has engaged in behaviour that is domestic abuse towards another person. The Court must also be satisfied that it is necessary and proportionate to issue the order to protect the victim from the risk of further domestic abuse. There is no requirement for the suspect to have been convicted of a relevant offence in order for the order to be issued.

To ensure that the perspectives of relevant parties are considered, the law provides that the Court must consider any statements made by the subject of the application and the person for whose protection the application is being considered. Measures have also been included to ensure that the welfare of any dependants is appropriately considered before the order is issued. In particular, the law has been designed so as to ensure that, in cases where the order creates limitations or prohibitions related to the suspect’s entry to the premises where the victim lives, the officer is required to consider the opinion of any other individual that lives at the premises and is personally connected to either party.

Article 4G outlines a requirement that, once a hearing is set to hear an application for an emergency barring order, the police must summon the subject of the application to appear before the Magistrate’s Court at the relevant time and date. This summons to attend the hearing is

required because in the case that the emergency barring order application is approved by the Court, a breach of the conditions of the order would constitute an offence, and it is therefore crucial that the subject of the order is aware of the content and conditions of the order. It is also set out that, in the case that a person fails, without reasonable excuse, to comply with the summons issued under this Article, then the Court may order that person's arrest. If a person is arrested under such circumstances, it is provided that they must be brought before the Court for consideration of the application for the emergency barring order within 48 hours of the arrest. The typical provisions relating to weekends and bank holidays apply here.

If the Court decides to issue an emergency barring order against a person, a variety of conditions can be imposed via the order for the purposes of protecting a victim from the risk of further domestic abuse. In particular, the order can prohibit the suspect from contacting the victim or coming within a specified distance of the victim or a specified premises. In cases where the suspect and the victim live together at the same premises, the order may:

- Require the subject to leave the premises;
- Prohibit them from entering the premises; and
- Prohibit them from evicting or excluding the victim from the premises.

The order can also impose positive requirements around attending specified counselling or education. The Court is also able to impose any other conditions that are considered reasonably necessary for the protection of the victim from further abuse.

The usual limitation provisions have been included to ensure that the Court avoids, as far as practicable, imposing conditions via the order that conflict with the suspect's religious beliefs or any other court order to which they are subject, or that interferes with their work or education.

It is provided that an order may remain in force for up to three months.

Provisions have also been included to allow for the Magistrate's Court to renew an emergency barring order provided that, the Court receives an application for such a renewal from the Attorney General during the period in which the order is in force, and the Court is satisfied that the grounds for issuing the order continue to be met. The order can only be renewed for up to three months. Importantly, there is no limit on how many times the Court may renew an order.

Article 4K sets out the same notification requirements for a person issued an emergency barring order as are outlined in Article 4C for a person who is issued an emergency barring notice. The only difference here is that failure to comply with the notification requirements imposed by the order is considered to be a more serious offence which is liable to imprisonment for a term of 12 months and to a fine.

Article 4L provides that the Attorney General, the person who is the subject of the emergency barring order, and the person for whose protection the order was originally made, are all able to apply for the order to be varied or revoked. These same individuals and the Chief Officer of the States of Jersey Police Force all have the right to be heard on such an application.

Article 4M sets out the process for appealing against an emergency barring order. In particular, this article applies to the decision of a court to issue, renew, revoke or vary an order, refuse an application relating to an emergency barring order, or to impose certain conditions in an order. It is provided that the subject of the order, the person for whose protection the order has been considered, and the Attorney General may all appeal against a decision on the grounds that the decision is based on an error of law or fact. These arrangements align with typical provisions in legislation that allow for appeals to be made in respect of a Court order or other court-imposed restriction.

Article 4N sets out that if a person who is subject to an emergency barring order fails to comply with the conditions of the order without a reasonable excuse, then that person has committed an

offence. It is clarified that this provision extends to cases where the person fails to comply with the conditions of the order when they are outside the jurisdiction of Jersey.

Article 4 amends Article 12 of the current Domestic Abuse (Jersey) Law 2022 to ensure that notification requirements under this Article are aligned with the new notification requirements that are set out in the draft Law.

Article 5 amends Article 26 of the Youth Offenders (Jersey) Law 2014 to allow for the Youth Court to exercise the powers given to the Magistrate's Court under Part 2A of the Domestic Abuse (Jersey) Law 2022 in respect of an application relating to an emergency barring order against a person who is 16 or 17 years of age, and under Part 3 of the Harassment and Stalking (Jersey) Law 202- in respect of an application relating to a stalking protection order or interim stalking protection order against a person who is 16 or 17 years of age.

Timescales

The Draft Domestic Abuse (Jersey) Amendment Law 202- will come into force by Commencement Order once the necessary operational preparations are complete.

Financial and staffing implications

The proposed introduction of this new law, which forms one component of a wider package of five pieces of legislation related to addressing crimes associated with violence against women and girls, comes at a time when the criminal justice system is already under significant pressure. Following the publication of the VAWG Taskforce report, and the subsequent inclusion of the implementation of the VAWG Taskforce's recommendations as a CSP priority, there has been a significant uptick in the reporting of VAWG-related crimes in Jersey. According to data collected by the States of Jersey Police, the number of VAWG-related reported crimes has increased by 27% in the last three years. This reporting increase is thought to be largely attributable to the high-profile nature of VAWG resulting in an increase in general awareness and public confidence.

This increase in reporting has already placed criminal justice agencies and victim support services under significant strain.

- Victim support services have expressed a need for new dedicated clinical leadership so that their service is appropriately resourced to cope with demand. This new post will be crucial to ensuring that the Sexual Assault Referral Centre in Jersey is able to operate safely and in line with national standards.
- La Moye Prison is currently experiencing intense population pressures, noted as an extreme risk on the States of Jersey Prison Service risk register. At time of reporting, the prison is at 92% overall occupancy. The Vulnerable Prisoner Unit, which accommodates most prisoners convicted of sexual offences, reached full capacity in February 2025 and a temporary expansion was put in place to increase capacity from 59 to 63. Despite increased capacity, the Unit has maintained an average occupancy rate of 95% from 1 February 2025, with just one bed available at the time of reporting.

It is important to recognise that demands on the system will only continue to rise as new legislation is brought forward.

Detailed analysis has been undertaken by the States of Jersey Police, other criminal justice partners and Treasury and Exchequer to assess the cost of increased demand further to the implementation of these laws.

This analysis, which is based on assumptions, indicates a high level range of 199-369 new crimes per year (by second year of implementation) resulting in a total revenue cost of £3 million - £7 million.

(NB this is revised from 275-300 new crimes per year included in Financial Assessment on lodging the Laws, following further analytical work).

The estimated revenue impact, for low, medium and high impact scenarios, is included below:

	2027	2028	2029	2030
Low Range	1,701	3,039	3,193	3,327
Central	2,598	5,209	5,545	5,937
Higher Range	3,495	7,255	7,855	8,426

The level of resourcing ultimately required will depend on the incidence and severity of offending that is reported, though it is expected to fall within the range identified. Ministers have agreed that funding should be linked to actual demand once the legislation is in force, with resources phased in as necessary to maintain effective service delivery across the criminal justice system.

A demand-led funding model is being developed, which will be recommended for incorporation into Budget 2027–30. This is likely to involve some funding being held in the Central Reserve and released as required to match resources to workload.

In respect of the specific implications of the Draft Domestic Abuse (Jersey) Amendment Law 202-, initial analysis by the States of Jersey Police indicates that approximately 20 emergency barring orders could be issued per year, with 90% of barring notices resulting in subsequent orders. It is reported that the completion of each relevant order application is both time consuming and complex. These new demands on the States of Jersey Police Force may require the allocation of additional resources in the future.

The key amendment within this law that could pose an impact on the prison is the offence of failure to comply with an emergency barring order. Initial analysis undertaken to predict the impact on the States of Jersey Prison Service indicates that, based on current conviction rates and sentencing lengths, no significant cost impact for the prison is predicted from this offence within the first three years post-enactment of the law.

Data protection implications

An initial Data Protection Impact Assessment was undertaken. This was reviewed by the Information and Data Security Team. It concluded that the amendments do not have a high impact on the rights and freedoms of the individuals affected and a full DPIA is not required.

Children’s Rights Impact Assessment

A Children’s Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

Human Rights

The notes on the human rights aspects of the Draft Law in the **Appendix** have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not, be taken as legal advice.

Re-issue Note

This proposition has been re-issued to add an additional financial assessment on pages 9 and 10.

APPENDIX TO REPORT**Human Rights Notes on the Draft Domestic Abuse (Jersey) Amendment Law 202-**

These notes have been prepared in respect of the Draft Domestic Abuse (Jersey) Amendment Law 202- (the “draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law, in the form reviewed by them, is compatible with the European Convention on Human Rights (“ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law would, if adopted, amend the Domestic Abuse (Jersey) Law 2022 (the “2022 Law”) to, inter alia, insert a new Part 2A to the 2022 Law. New Part 2A includes several provisions relating to emergency barring notices and emergency barring orders.

Emergency barring notices

New Part 2A to the 2022 Law would include several provisions relating to emergency barring notices (“EBN”). An EBN is a notice issued by a police officer of the rank of chief inspector or above (a “senior officer”) or by a lower ranking officer where authorised by a senior officer. An EBN may prohibit a person (“A”) from contacting a person (“B”) towards whom A has engaged in domestic abuse behaviour (i.e., per Article 1(1) of the 2022 Law, behaviour that constitutes an offence under Article 3 of the 2022 Law); prohibit A from coming within a specified distance of B; and if A and B live together at the same premises require A to leave the premises, prohibit A from entering the premises, and prohibit A from evicting or excluding B from the premises; impose any other condition on A that the senior officer considers reasonably necessary to protect B from further abuse from A (new Article 4A(5)). A person issued with an EBN would be required tell the police officer who serves the EBN the person’s name; the person’s contact details (such as phone number or email address); and if known at the time of service, the address at which the person will be residing while the EBN is in force, and make notifications of changes in residential address (new Article 4C). It is a criminal offence to fail to provide this required information or to provide false information, penalised by imprisonment for a term of 12 months and a fine (new Article 4C(4)).

The draft Law would permit an EBN to be issued to A where a senior officer has reasonable grounds to suspect that A has engaged in behaviour that is domestic abuse towards B and it is necessary to issue the notice to protect B from the risk of further domestic abuse carried out by A (new Article 4A(1)). Before issuing or authorising the issue of an EBN, the senior officer must consider any statements made by A or B on the matter; consider the welfare of any person under the age of 18 (other than A or B) whose interests the officer considers relevant to the giving of the notice (whether or not that person and A are personally connected); if the notice will limit or prevent A from entering the premises where B lives, take reasonable steps to discover and consider the opinion of any other person who lives at the premises and is personally connected to A or B; and consider whether the effect of the notice (to protect B from further abuse from A) could be achieved by other means. The draft Law would restrict the issuing of subsequent EBNS to the same person unless a police officer has reasonable grounds to suspect that A has engaged in behaviour that is domestic abuse and that behaviour was not the basis for the prior notice being issued (new Article 4E).

An EBN would come into force at the time it is served on the person to whom it is issued (new Article 4B(1)). The duration of an EBN would, unless the Attorney General applies for an emergency barring order (“EBO”) against the person and the application is determined, expire 72 hours after it comes into force; at the time, before that expiry, an authorised officer withdraws the EBN; or at the time specified by the Magistrate’s Court (the “Court”) for the EBN’s expiry if the EBN’s duration is extended by the Court (new Article 4B(3)). The Court may extend the duration of an EBN if despite making reasonable efforts, circumstances have prevented, or will prevent, the Attorney General from applying for the EBO before the notice’s expiry; or it is necessary to do so in the interests of justice or for the protection of any person (new Article 4B(4)).

The draft Law would permit a police officer, where there are reasonable grounds to believe that the person has failed to comply with the EBN, to arrest the person; and exercise the power in Article 19(1)(a) of the Police Procedures and Criminal Evidence (Jersey) Law 2003 to enter and search any premises for the purpose of arresting the person as if the breach of the notice were an offence (new Article 4D). The person would then be brought before the Court, within 48 hours of the arrest, for the consideration of the issuing against that person of an EBO, on application by the Attorney General (new Article 4D).

Article 3 ECHR – freedom from inhumane and degrading treatment

The draft Law would permit an EBN to require A to leave premises shared with B, and prohibit A from entering those premises (new Article 4A(5)). These measures have the potential to engage the right to freedom from inhumane and degrading treatment in Article 3 ECHR. It is not inconceivable that preventing A from returning to their home could result in them being in a state of inhumane or degrading treatment (i.e. not having adequate shelter from the elements, food/water, basic hygiene facilities etc.). This might be particularly applicable if A is mentally ill, has a learning disability or suffers a medical condition that requires regular treatment.

In practice it may, therefore, be necessary for an officer considering the issue of an EBN to consider other steps to ensure A does not suffer interference with the Article 3 ECHR right, which is an absolute right, such as seeking alternative accommodation. The draft Law would require an officer to consider whether the effect of the notice (to protect B from further abuse from A) could be achieved by other means (new Article 4A(3)(d)). Officers are also a public authority for the purposes of the Human Rights (Jersey) Law 2000 (the “2000 Law”) and are required to act compatibly with the ECHR in discharging their functions (Article 7 of the 2000 Law). Whether or not the imposition of an EBN would amount to an interference with the Article 3 ECHR right will depend on the facts of each case, but in principle the draft Law should enable EBNs to issued in a way that is compatible with Article 3 ECHR.

Article 5 ECHR – right to liberty and security

A person who fails to comply with an EBN may be arrested (new Article 4D(1)(a)), and if arrested, that person must be brought before the Court for consideration of the application in respect of that person for an EBO (new Article 4D(2)(b)). A person who fails to comply with the information requirements in new Article 4C following the imposition of an EBN would be guilty of an offence and liable to imprisonment for a term of 12 months and a fine.

These provisions will engage the right to liberty and security in Article 5 ECHR as they provide for the arrest and/or imprisonment of the person and therefore deprivation of their liberty. Article 5 ECHR provides that no one shall be deprived of his liberty save in one of a number of specified cases and in accordance with a procedure prescribed by law. Article 5(1)(a) ECHR provides for the deprivation of a person’s liberty resulting from their lawful detention after conviction by a competent court. Article 5(1)(b) ECHR provides for the deprivation of a person’s liberty resulting from their lawful arrest and detention in order to secure the fulfilment of any obligation prescribed by law. Article 5(1)(c) ECHR provides for the deprivation of a person’s

liberty resulting from their lawful arrest and detention for the purpose of bringing him before a competent legal authority on reasonable suspicion of having committed an offence.

The arrest and detention of a person who fails to comply with an EBN is compatible with Article 5(1)(b) ECHR, and would be in accordance with a procedure prescribed by law, because the arrest and detention of the person is necessary to facilitate the presentation of that person before the Court for consideration of the issue of an EBO (new Article 4D(2)). The arrest and detention after conviction of a person who is guilty of the offence of non-compliance with the information requirements in new Article 4C is compatible with Article 5(1)(a) and (c) ECHR, and would be in accordance with a procedure prescribed by law, because the initial arrest would be made on suspicion of the commission of the new Article 4C offence, and imprisonment would follow the person's conviction by the Court.

It is considered that the penalty for the offence in new Article 4C is proportionate to the nature and severity of the offending involved, i.e. failing to comply with information requirements. The procedural safeguards required by Article 5(2) to (4) ECHR will be assured through the ordinary procedures of the criminal justice system in Jersey law. As such, it is considered that new Article 4C and 4D and associated criminal justice measures are compatible with Article 5 ECHR.

Article 6 ECHR – right to a fair trial

Article 6 ECHR guarantees the right to a fair trial and procedural rights of the parties in civil proceedings. The protection of Article 6 ECHR extends to disputes that concern and determine a “civil right”. The issue of a EBN would engage Article 6 ECHR because the measures that an EBN could impose include restrictions or prohibitions on contacting persons or accessing property, which may impact on the subject's personal or family relationships and property rights. The ‘right’ of access to one's child has been held to constitute a ‘civil right’ for the purposes of Article 6 ECHR¹, as has a person's right to enjoy their property.²

An EBN may be issued summarily by a police officer (new Article 4A(1)) to a person in the circumstances described further above, and typically would remain in effect for at least 72 hours, until it is withdrawn or until a subsequent application for an EBO is determined (new Article 4B). Interim measures which effectively determine a civil right, such as an EBN, fall within the scope of Article 6 ECHR; however, Article 6 ECHR will not be breached to the extent that the safeguards guaranteed by the Article could not be applied without unduly prejudicing the legitimate objectives of the measure in question (i.e. the EBN)³. The objective of an EBN is to provide the victim of domestic abuse with enforceable protection from the perpetrator in the immediate aftermath of an incident. If there were a requirement for a court hearing to take place until action against the perpetrator could be taken, that requirement would be prejudicial to the objective of providing immediate protection to a victim. Any delay in securing that protection could expose the victim to risk of further abuse and/or significant harm. Though there is an absence of a hearing for the imposition of an EBN, the draft Law requires that the perpetrator is permitted to make statements to the officer which the officer must consider before issuing or authorised the issue of an EBN (see new Article 4A(3)).

Further, although there is no right of appeal against the giving of an EBN, where there is a subsequent application for an EBO, that application would typically be made within 72 hours of the EBN being issued, and at the hearing for the EBO application before the Court, the perpetrator would have the opportunity to make further representations and challenge the making of an EBO (see new Article 4F(2)). Any interference with Article 6 ECHR, by virtue of the summary issuance of an EBN, is considered to be proportionate and justified. The EBN continues in effect for a

¹ *R v United Kingdom* (1987) 10 EHRR 74.

² *Marckx v Belgium* (1980) 2 EHRR 330.

³ *Micallef v Malta* (2010) 50 EHRR 37.

limited period of time (unless extended under new Article 4B(3), and new Article 4E would place a restriction on issuing further EBNs).

Article 7 ECHR – No punishment without law

New Article 4C(4) would make it an offence to fail to comply with a notification requirement imposed under that provision. Article 7 ECHR provides that a punishment cannot be imposed other than where it is prescribed by law. The elements of the offence at new Article 4C(4) and its penalty are clearly set out in a way that a member of the public can understand (for instance, the public would understand when false information is knowingly provided and how a person would fail to comply with the information requirements, and therefore be liable to the offence). The offence will also not have any retrospective effect. The proposed penalty is not thought to be arbitrary as it is proportionate to the nature of the criminal conduct involved. For these reasons, the offence provision at new Article 4C(4) is considered to be compatible with Article 7 ECHR.

Article 8 ECHR – right to private life

An EBN may inter alia prohibit A from contacting B and from coming within a specified distance of B, may prevent A from accessing premises where B is and require A to leave premises if A and B live together at those premises. These measures will engage the right to private life under Article 8(1) ECHR because they could interfere with the family or personal relationships of A. The right and ability to maintain family relationships falls within the scope of Article 8; the notion of “family” is not confined solely to marriage and is a question of fact depending on the existence of close personal ties⁴. The notion of “home” is likewise an autonomous concept and does not depend on the classification under domestic law. Whether a habitation constitutes an individual’s “home” depends on the existence of sufficient and continuous links with a specific place⁵ and is therefore fact-specific in each case.

An EBN may be made regardless of whether B wishes the notice to be issued (new Article 4A(2)), although the issuing officer is required to consider statements made by B on the matter (new Article 4A(3)(a)). The issuing officer will need to assess these views when considering the nature and scope of the EBN to be issued, however the ability of the issuing officer to make an EBN where the victim is not supportive is to safeguard against the risk that a victim may be subject to coercion from or pressure by the perpetrator into withdrawing or withholding their consent. Making an order against the victim’s wishes is likely to interfere with their Article 8 ECHR right for as long as the EBN remains effective, which is a limited duration (typically no more than 72 hours – see new Article 4B).

An interference with Article 8(1) ECHR is lawful under Article 8(2) ECHR if the interference is in accordance with the law and is necessary in, and proportionate to, the interests of a legitimate aim identified in Article 8(2) ECHR. The interference with the Article 8 ECHR right arising from the issuance of an EBN will be in accordance with the law, namely the provisions of the draft Law which state the grounds on which an EBN can be issued (new Article 4A), the duration of the EBN (new Article 4B) and the effect an EBN will have (new Article 4A(5)). The purpose for issuing an EBN is the protection of persons from the risk of further domestic abuse, which aligns with the legitimate aims in Article 8(2) ECHR of public safety, the protection from crime and the protection of the rights and freedoms of others.

Any potential interference with the Article 8 ECHR rights of the perpetrator or victim is justified in accordance with Article 8(2) ECHR. The interferences in question would be in accordance with law, i.e. the draft Law, and will be in pursuit of a legitimate aim of preventing crime and disorder or the protection from abuse or risk of abuse. Whether or not the imposition of an EBN will

⁴ *Kroon v Netherlands* (1995) 19 EHRR 263.

⁵ *Buckley v UK* (1996) 23 EHRR 101.

operate in a proportionate way will depend significantly on the facts of each case and how the provisions of the draft Law would be applied in practice. In each case, the degree of risk faced by B, the evidence to support that risk and the impact on A will vary.

There are, however, a number of provisions in the draft Law which should operate to increase the likelihood that an EBN will be applied in a proportionate way: only a senior officer or a police officer authorised by a senior officer may issue an EBN (new Article 4A(1)); the issuing officer must have reasonable grounds to suspect that A has engaged in behaviour that is domestic abuse towards B (new Article 4A(1)(a)); an EBN can only be issued if there are reasonable grounds to suspect that the EBN is necessary to protect B from the risk of further domestic abuse carried out by A (new Article 4A(1)(b)); before issuing the EBN the issuing officer must consider relevant representations, including from A (new Article 4A(3)(a)); and the EBN would last for a limited period of time, typically 72 hours at most, or potentially a shorter period of time if an application is made for an EBO. It is relevant too that the issuing officers are a public authority for the purposes of Article 7 of the 2000 Law so must act compatibly with the ECHR. For these reasons the interferences are considered to be proportionate to the stated legitimate aims.

It can be noted too that Article 8 ECHR also imposes positive requirements on the state to ensure an individual's private and family life, home and correspondence are respected. This obligation extends to protecting individuals from each other⁶. Any interferences with the perpetrator's rights stemming from an EBN are considered to be outweighed by the state's positive obligation to protect the Article 8 ECHR rights of the victim. The interference with the victim's rights by an EBN will typically last for a limited period of time, and the victim has the opportunity to explain their views to the issuing officer. It is considered, therefore, that the Article 8 ECHR right of the victim, in cases where they do not wish the EBN to be issued to the perpetrator, is adequately protected.

The requirement in the draft Law for A to tell the police his or her name, contact details and address, and notify a change in address (new Article 4C) will also engage Article 8 ECHR given the connection of that information to a person's personal data and private life. The interference with the right to private life would be imposed in accordance with the law, i.e. in accordance with new Article 4C of the draft Law, and would apply where an EBN has been issued, i.e. in a case where an officer has reasonable grounds to believe that there is a necessity to protect B from the risk of further domestic abuse carried out by A. As such, the information requirements would apply in cases which align with the legitimate aim of preventing crime and protecting public safety and the rights and freedoms of others in Article 8(2) ECHR. Further, because the information requirements would apply in a case in which an EBN has been issued, there is a clear and rational connection between the civil measure and the objectives of the information requirements, so that the imposition of information requirements in these circumstances would be a proportionate means of achieving a legitimate aim, i.e. the necessity to protect B from further domestic abuse.

It is relevant also in this regard that the scope of the information requirements does not go beyond limited personal data – name, contact details and address – which is proportionate to the purpose of the information requirements and EBNs, i.e. protecting others from domestic abuse behaviour. Moreover, the information requirement would apply on limited occasions, namely on the issuance of an EBN, and on any change to the details provided by A before the expiry of the EBN, which would, typically, be at most 72 hours after the EBN is issued (or earlier, if an EBO is applied for). For these reasons, the information requirements in new Article 4C of the draft Law are considered to be compatible with Article 8 ECHR.

Article 10 – freedom of expression

Article 10 ECHR may be engaged if provisions in the EBN restrict the perpetrator's ability to express opinions, including on social media to the extent that such expressions would amount to

⁶ *X and Y v Netherlands* [1985] ECHR 4.

abusive behaviour within the meaning of Article 1(1) of the 2022 Law. Whether Article 10 ECHR is in fact engaged will always depend on the individual circumstances of each case.

Any interference with Article 10 ECHR is justified in principle. The provisions restricting the perpetrator's ability to hold or express opinion are prescribed by law, i.e. the draft Law. The legitimate aims in restricting freedom of expression are to prevent crime and disorder and to protect the reputation (in appropriate cases and including where the victim is abused via social media) or rights and safety of the person to be protected by the notice or order. In certain cases, preventing the perpetrator from perpetuating the abuse via social media will be necessary to achieve that aim and to protect the victim, and such restriction is very unlikely to be imposed as a matter of course in cases where it is not necessary. Any restriction will be limited in duration to no more than 72 hours (unless, inter alia, extended by the Court under new Article 4B).

Article 11 ECHR – freedom of association

The right to freedom of assembly and association may be engaged insofar as an EBN restricts the movements of the person against whom it is made. Provision may, for example, prohibit that person from attending an event or building at which the person protected by the notice/order may be present.

An interference with Article 11 ECHR is lawful if prescribed by law and if necessary in a democratic society in the interests of a legitimate aim identified in Article 11(2) ECHR. The restrictions on this right are prescribed by law, i.e. the draft Law, to the extent that they fall within the criteria for an EBN. Any restrictions on the perpetrator's freedom to assemble and associate with others are in pursuit of the legitimate aim of preventing crime and disorder. Any provision in an EBN will only be imposed where it is necessary to protect the other person from abuse or the risk of abuse. Whether such provision is necessary will be a matter of fact to be determined by a police officer, who are public authorities required to act compatibly with the ECHR by Article 7 of the 2000 Law. Conditions of an EBN that would prohibit the perpetrator from attending an event or building (that would otherwise be protected by Article 11 ECHR) is proportionate to the wider aim of protecting the victim from further acts of domestic abuse, and generally preventing crime and disorder, and would last for a limited period of time (see new Article 4B).

Article 1 of Protocol 1 ECHR – right to property

The right to property protected by A1P1 may be engaged to the extent that provision in a EBN prohibits the perpetrator from entering his or her home. It is considered that irrespective of whether the perpetrator is the legal owner of the property, an inability to gain access to property which he or she occupies with legal title may amount to an interference with his or her peaceful enjoyment of that property², but to the extent there is an interference, this would likely be considered a lawful control of use rather than deprivation of property).

Any interference with the right to property may be justified if in accordance with the law, if it serves a legitimate objective in the public or general interest and is proportionate. Interference with the A1P1 right by an access restriction condition in an EBN would be in accordance with the law, i.e. the draft Law. In the context of A1P1 public authorities enjoy a wide margin of appreciation in determining what is in the general interest, but it is considered that preventing domestic abuse generally is clearly a matter within the general interest of the community. In terms of proportionality, an EBN would only be imposed where necessary to protect a person from domestic abuse or the risk of domestic abuse (see new Article 4A(1)). An access restriction in a EBN, together with other safeguards contained in the draft Law as regards necessity of the provision, the limited duration of the interference and the exercise of the power to impose an EBN

² *Loizidou v Turkey* (1996) 23 EHRR 513.

by a public authority (i.e. police officers) required to act compatibly with the ECHR, will strike a fair balance between the rights of the person against whom the restriction is placed and the protection of the victim.

Emergency barring orders

Article 5 ECHR – right to liberty and security

A breach of an EBO is a criminal offence (new Article 4N) and could result in the arrest and detention of an individual, which will engage Article 5 ECHR. Article 5(1)(a) ECHR provides for the deprivation of a person's liberty resulting from their lawful detention after conviction by a competent court. Article 5(1)(b) ECHR provides that interference with the right to liberty is permitted for non-compliance with a lawful court order and Article (5)(1)(c) provides that interference with the right to liberty is permitted for the purpose of bringing an individual before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent the person committing an offence.

The arrest and detention of a person accused or convicted of breaching an EBO is compatible with Article 5(1)(a), (b) and (c) ECHR, and would be in accordance with a procedure prescribed by law. It is considered that the penalty for the offence of breaching an EBO is proportionate to the nature and severity of the offending involved. The procedural safeguards required by Article 5(2) to (4) ECHR will be assured through the ordinary procedures of the criminal justice system in Jersey law. As such, it is considered that the offence at new Article 4N and associated criminal justice measures are compatible with Article 5 ECHR.

Article 6 ECHR – the right to a fair trial

Article 6 ECHR guarantees the right to a fair trial and procedural rights of the parties in civil proceedings. The protection of Article 6 ECHR extends to disputes that concern and determine a "civil right". As is the case with EBNs, the issue of an EBO will involve the determination of a 'civil right' because of its potential impact on the right of access to family members and enjoyment of property.

An EBO would be issued following a hearing in the Court – an independent and impartial tribunal for the purposes of Article 6 ECHR – to which A would be summonsed (new Article 4F and 4G). Renewals of an EBO would also be subject to a court hearing (new Article 4J). The Court must consider statements made by A on the matter before issuing the initial EBO (new Article 4F(2)(a)) and in the case of each order A is provided with notice of the hearing, enabling that person to attend the hearing to make representations. At a hearing for the renewal of an EBO, the Court will not renew the order unless it is satisfied that the grounds for the issuing the EBO continue to be met (new Article 4J(1)(b)). A may also appeal against the issue of an EBO, including a renewed EBO to the Royal Court (new Article 4M). It is considered therefore that the right to a fair trial under Article 6 ECHR is adequately protected by the draft Law.

Article 6 ECHR also guarantees procedural fairness in the determination of criminal charges, and it is necessary to consider whether an EBO could be treated as being essentially a punitive measure by its nature, and therefore should attract procedural guarantees specific to criminal matters, or whether an EBO is purely civil in nature. Article 6 ECHR has the potential to be engaged here if it could be argued that procedural unfairness arises from an EBO being imposed without the Court having to be satisfied to a criminal standard of proof of the alleged acts before making an order which could involve the imposition of positive requirements. An EBO could also be issued regardless of whether A has been convicted of a criminal offence (new Article 4F(3)(b)), so could involve the situation where the Court is not satisfied of a particular set of facts to the criminal standard, and thus unable to convict for an offence, but is satisfied to the civil standard such that they feel able to impose an EBO.

It is considered, on balance, that the issue of an EBO does not involve a determination of a criminal charge for the purpose of Article 6 ECHR. The standard of proof for the making of an EBO is the civil standard (on the balance of probabilities) (new Article 4F(1)(b)(i)). The criteria for determining whether a case involves the determination of a criminal charge and therefore the application of the criminal standard of proof are: (i) domestic classification of proceedings (not determinative); (ii) nature of the offence; and (iii) degree of severity of the penalty⁸. English law authority⁹ involving consideration of a civil order which allowed the imposition of positive requirements without the pre-requisite of a conviction has held that the proceedings were not criminal in nature and did not attract a criminal burden of proof applying the three criteria in Engel. The reasoning applied was that although the conduct alleged may be criminal it is not necessarily so and the purpose of the order is not punitive.

This reasoning can be applied to EBOs. An EBO is not a penalty, rather the policy aim underpinning EBOs is the prevention of domestic abuse, not the punishment of the perpetrator. The grounds for making an EBO (see new Article 4F(1)(b)) are confined to circumstances where an order is “necessary and proportionate” for protective purposes, which would operate against an EBO being imposed for punitive purposes. The criminal sanction for breach of an EBO (new Article 4N) is intended to persuade the perpetrator of domestic abuse to comply with the order. It is considered in relation to Article 6 ECHR that the civil proceedings relating to the issue of an EBO satisfy any fair trial requirements arising under the civil limb of Article 6(1) ECHR. The procedure which governs the applications for orders ensures participation of the person concerned in the court process, and the existence of a right of appeal (new Article 4M) and ability to apply to the court to vary or discharge the order (new Article 4L) affords the further safeguards envisaged by Article 6 ECHR.

For context, it should be noted that the Domestic Abuse Act 2021 (the “2021 Act”) provides for the issue of pre-conviction domestic abuse protection orders (“DAPO”) (see sections 27 to 49). A condition for the making of a DAPO is that the issuing court is satisfied on the balance of probabilities that the perpetrator has been abusive towards a person. The 2021 Act and its provisions relating to DAPOs were considered by the UK Government to be compatible with Article 6 ECHR¹⁰, and there appears to have been no overt human right challenge to the process by which DAPOs are issued (including in particular the standard of proof for imposing the order) since the 2021 Act’s commencement¹¹.

Article 7 ECHR – no punishment without law

Article 7 ECHR is relevant in the context of DAPOs in several respects. Firstly, as to the potential for an EBO to take into account domestic abuse behaviour which occurred before the commencement of the draft Law, and secondly in respect of the offences and penalties for a breach of an EBO and failure to comply with an EBO notification requirement.

The grounds for issuing an EBO include that the Court is satisfied on the balance of probabilities that A has engaged in behaviour that is domestic abuse towards B (see new Article 4F(1)(b)(i)). The draft Law does not limit the Court’s consideration for the purposes of issuing an EBO to acts occurring post-commencement of new Article 4F, which suggests that the Court could, when considering whether to issue an EBO, take into account acts arising before this date. If it were the case that an EBO would constitute a criminal charge, and the making of an EBO would amount to the determination of a criminal charge for the purposes of Article 7 ECHR, the consideration of acts arising before the commencement of Article 4F would likely be incompatible with

⁸ *Engels v Netherlands* [1976] 1 EHRR 647.

⁹ *Chief Constable of Lancashire v Wilson and others* [2015] EWHC 2763 (QB).

¹⁰ Domestic Abuse Bill, Human Rights Memorandum – Home Office, Ministry of Justice, March 2020.

¹¹ DAPOs, and domestic abuse protection notices, are currently subject to a 2-year pilot exercise, and are therefore only partially in force (in certain areas) in England and Wales.

Article 7 ECHR. This is because Article 7 ECHR requires that the criminal law must be certain and foreseeable, and the application of a criminal measure to acts which occurred before that measure formed part of the domestic criminal law would breach Article 7 ECHR.

As discussed above in relation to Article 6 ECHR, the case of *Engels* established the criteria for determining whether a measure involves the determination of a criminal charge. In the case of EBOs, the application for the EBO is a civil matter; the orders are aimed at protecting people from future abusive behaviour; and the severity of the “penalty” (i.e. the terms of an order) depends entirely on what is necessary and proportionate to protect a person from the risk. There is no punishment unless the EBO is breached which will be punishable as a criminal offence (see new Article 4N). As noted above, there is English authority¹² holding that proceedings for gang-related injunctions did not amount to a criminal charge for the purposes of Article 6 ECHR, because the purpose of the injunctions was not punitive but preventative. For these reasons, it is considered that an EBO would not be considered a criminal measure for the purposes of Article 7 ECHR. It follows that the consideration by the Court of acts occurring before the commencement of new Article 4F should not, therefore, raise any retrospectivity issues that would be incompatible with Article 7 ECHR.

Finally, new Article 4K(2) would make it an offence to fail to comply with an EBO notification requirement imposed under that provision, and new Article 4N(1) would make it an offence to fail to comply with an EBO. Article 7 ECHR provides that a punishment cannot be imposed other than where it is prescribed by law. The elements of the offence at new Article 4K and 4N(1) and their respective penalties are clearly set out in a way that a member of the public can understand, (for instance, the public would understand when false information is provided knowingly and how a person would fail to comply with the information requirements or fail to comply with an EBO, and therefore be liable to the offence). The offence will also not have any retrospective effect – in particular note that, though the issuing of an EBO might take into account pre-commencement acts by the perpetrator, the liability to the offence in new Article 4N could clearly only take into account acts occurring after new Article 4F is commenced (because they would be acts amounting to contravention of an EBO issued further to new Article 4F). These offences are not thought to raise any issues from an Article 7 ECHR perspective.

Article 8 ECHR – right to private life

As is the case with an EBN, an EBO may inter alia prohibit A from contacting B and from coming within a specified distance of B, may prevent A from accessing premises where B is and require A to leave premises if A and B live together at those premises. These measures will engage the right to private life under Article 8(1) ECHR.

An interference with Article 8(1) ECHR is lawful under Article 8(2) ECHR if the interference is in accordance with the law and is necessary in, and proportionate to, the interests of a legitimate aim identified in Article 8(2) ECHR. The interference with the Article 8 ECHR right arising from the issuance of an EBO will be in accordance with the law, namely the provisions of the draft Law which state the grounds on which an EBO can be issued (new Article 4F), the duration of the EBO (new Article 4I) and the effect an EBO will have (Article 4I(1)). The purpose for issuing an EBO is the protection of persons from the risk of further domestic abuse, which aligns with the legitimate aims in Article 8(2) ECHR of public safety, the protection from crime and the protection of the rights and freedoms of others.

Any potential interference with the Article 8 ECHR rights of the perpetrator or victim (for instance, where the perpetrator and victim are in a relationship) is justified in accordance with Article 8(2) ECHR. The interferences in question would be in accordance with law, i.e. the draft Law, and will be in pursuit of a legitimate aim of preventing crime and disorder or the protection from abuse or risk of abuse. Whether or not the imposition of an EBO will operate in a

¹² *Chief Constable of Lancashire v Wilson*.

proportionate way will depend significantly on the facts of each case and how the provisions of the draft Law would be applied in practice. In each case, the degree of risk faced by B, the evidence to support that risk and the impact on A will vary.

A number of provisions in the draft Law should operate to increase the likelihood that an EBO will be applied in a proportionate way. The order will be issued by the Court (new Article 4F(1)) which, as a public authority, is required by the 2000 Law to act compatibly with the ECHR. The Court must be satisfied to the civil standard of proof (on the balance of probabilities) that A has engaged in domestic abuse toward B (new Article 4F(1)(b)), and be satisfied that issuing an order is necessary and proportionate to protect B from the risk of further domestic abuse carried out by A (new Article 4F(1)(b)). The Court must, among other things, consider statements made by A and B before issuing the EBO (new Article 4F(2)) and the EBO must avoid so far as possible imposing prohibitions or requirements that conflict with A's religious beliefs or interfere with A's work, among other things (new Article 4I(2)). An EBO would last for a specified period of time, no more than 3 months (new Article 4I(3)) and any renewal of an EBO will be subject to a fresh court hearing and associated process (see new Article 4J). The Court may also revoke or vary an EBO, whether as to the terms of the EBO or the duration of the EBO, once imposed if the court is satisfied that it is no longer required to meet the objectives of the EBO (see new Article 4L). For these reasons the interferences are considered to be proportionate to the stated legitimate aims.

Article 8 ECHR also imposes positive requirements on the state to ensure an individual's private and family life, home and correspondence are respected. Any interferences with the perpetrator's rights stemming from an EBO are considered to be outweighed by the state's positive obligation to protect the Article 8 ECHR rights of the victim. Based on the proportionality analysis in the paragraph above, which applies equally here, it is considered that the Article 8 ECHR right of the victim, in a case in which they would oppose the issue of an EBO, is adequately protected.

The requirement for a person subject to an EBO to notify an authorised officer of their name and address, including changes in address (new Article 4K) will also engage Article 8 ECHR given the connection of that information to a person's personal data and private life. The interference with the right to private life would be imposed in accordance with the law, i.e. in accordance with Article 4K of the draft Law, and would apply where an EBO has been issued, i.e. in a case where the Court is satisfied it is necessary and proportionate to protect B from the risk of further domestic abuse carried out by A. As such, the information requirements would apply in cases which align with the legitimate aim of preventing crime and protecting public safety and the rights and freedoms of others in Article 8(2) ECHR.

Further, because the information requirements would apply in a case in which an EBO has been issued, there is a clear and rational connection between the civil measure and the objectives of the information requirements, so that the imposition of information requirements in these circumstances would be a proportionate means of achieving a legitimate aim, i.e. the necessity to protect B from further domestic abuse. It is relevant also that the scope of the information requirements does not go beyond limited personal data – name and address – which is proportionate to the purpose of the information requirements and EBOs, i.e. protecting others from domestic abuse behaviour. Moreover, the information requirement would apply on limited occasions, namely on the issuance of an EBO, and on any change to the details provided by A before the expiry of the EBO, which would, typically, be at most 3 months after the EBO is issued (unless renewed under new Article 4J). For these reasons, the information requirements in new Article 4K of the draft Law are considered to be compatible with Article 8 ECHR.

Article 10 – freedom of expression

Article 10 ECHR may also be engaged by the issue of an EBO if provisions in the EBO restrict the perpetrator's ability to express opinions, including on social media to the extent that such

expressions would amount to abusive behaviour within the meaning of Article 1(1) of the 2022 Law.

Whether Article 10 ECHR is in fact engaged will always depend on the individual circumstances of each case. For the reasons stated in respect of EBNs above, it is considered also that interferences with the right to freedom of expression arising from the issue of an EBO will be compatible with Article 10 ECHR. In respect to EBOs specifically, it can be noted also that any interference with the Article 10 ECHR right will be limited to a specified duration lasting no more than 3 months (new Article 4I(3)) and any renewal of an EBO will be subject to a fresh court hearing and associated process (see new Article 4J). Moreover, the proportionality of an EBO is further ensured in principle by a requirement for the Court to avoid so far as possible imposing prohibitions or requirements that conflict with A's religious beliefs or interfere with A's work, among other things (new Article 4I(2)). The Court may revoke or vary an EBO, whether as to the terms of the EBO or the duration of the EBO, once imposed if the Court is satisfied that it is no longer required to meet the objectives of the EBO (see new Article 4L).

It is relevant too that an EBO will be issued by the Court which is a public authority for the purposes of the 2000 Law and must act compatibly with the ECHR. It is reasonable to anticipate, therefore, that the Court will only impose sensible and proportionate provisions in an EBO. A person issued with an EBO may also appeal against its imposition (new Article 4M) which could result in an EBO being revoked or varied. This is a further feature of the draft Law that should in principle ensure that interferences with the Article 10 ECHR right by an EBO remain necessary and proportionate in practice.

Article 11 ECHR – freedom of association

The right to freedom of assembly and association may be engaged insofar as an EBO restricts the movements of the person against whom it is made. Provision may, for example, prohibit that person from attending an event or building at which the person protected by the EBO may be present.

An interference with Article 11 ECHR is lawful if prescribed by law and if necessary in a democratic society in the interests of a legitimate aim identified in Article 11(2) ECHR. For the reasons stated in respect of Article 10 ECHR in the section above, it is considered also that interferences with the right to freedom of association arising from the issue of an EBO will be compatible with Article 11 ECHR.

Article 1 of Protocol 1 ECHR – right to property

The right to property protected by A1P1 may be engaged to the extent that provision in a EBO prohibits the perpetrator from entering his or her home, and the analysis as to the application of the A1P1 right in respect of EBNs provide above applies in relation to EBOs.

Any interference with the right to property may be justified if in accordance with the law, if it serves a legitimate objective in the public or general interest and is proportionate. Interference with the A1P1 right by an access restriction condition in an EBO would be in accordance with the law, i.e. the draft Law. In the context of A1P1 public authorities enjoy a wide margin of appreciation in determining what is in the general interest, but it is considered that preventing domestic abuse generally is clearly a matter within the general interest of the community.

In terms of proportionality, an EBO would only be imposed where necessary and proportionate to protect a person from domestic abuse or the risk of domestic abuse (see new Article 4F(1)(b)). An access restriction in a EBO, together with other safeguards contained in the draft Law as regards necessity of the provision, the exercise of the power to impose an EBO by a court required to act compatibly with the ECHR by the 2002 Law, will strike a fair balance between the rights of the person against whom the restriction is placed and the protection of the victim. A person

issued with an EBO may also appeal against its imposition (new Article 4M) which could result in an EBO being revoked or varied. This is a further feature of the draft Law that should in principle ensure that interferences with the A1P1 right by an EBO remain necessary and proportionate in practice.

EXPLANATORY NOTE

This Law, if adopted, would amend the Domestic Abuse (Jersey) Law 2022 (the “Domestic Abuse Law”) to –

- allow the police to issue emergency barring notices, which are notices that restrict the movements of a person suspected of domestic abuse until the Magistrate’s Court hears the matter;
- allow the Court to issue emergency barring orders, which are orders that restrict the movements of a person who the Court is satisfied, on the balance of probabilities, has committed domestic abuse (but has not been convicted of an offence).

Article 1 provides that this Law amends the Domestic Abuse Law.

Article 2 amends Article 1 of the Domestic Abuse Law to introduce definitions of “emergency barring notice” and “emergency barring order”.

Article 3 inserts new Part 2A into the Domestic Abuse Law. Part 2A contains new Articles 4A to 4N, which provide for emergency barring notices and emergency barring orders.

Article 4A allows a senior police officer to issue an emergency barring notice to a person (“A”) that the officer has reasonable grounds to suspect has engaged in behaviour that is domestic abuse towards another person (“B”). The notice may prohibit A from contacting B or coming within a specified distance of B and may impose any other condition on A that the officer considers reasonably necessary to protect B from further abuse from A (including requiring A to leave the premises where they live).

Article 4B provides that an emergency barring notice comes into force at the time it is served on A and expires 72 hours later (not counting time that falls on a weekend or bank holiday) unless extended by the Magistrate’s Court.

Article 4C requires a person who is issued an emergency barring notice to tell the police officer who gives them the notice the person’s name, contact details and, if known, address at which they will be residing while the notice is in force. Failure to provide the required information is an offence with a penalty of 12 months’ imprisonment and an unlimited fine.

Article 4D gives the police the power to arrest a person who the police have reasonable grounds to believe has failed to comply with an emergency barring notice. If the police arrest a person, the Attorney General must apply for an emergency barring order against the person, and the person must be brought before the court for consideration of the application within 48 hours after the arrest (not counting time that falls on a weekend or bank holiday).

Article 4E prohibits the police from issuing more than 1 emergency barring notice against a person for the same event.

Article 4F allows the Magistrate’s Court to issue an emergency barring order against a person on application by the Attorney General.

Article 4G requires the police to summon a person to attend an application for an emergency barring order against the person.

Article 4H gives the police the power to arrest a person who has failed to comply with a summons issued under Article 4G. If the police arrest a person, the person must be brought before the court for consideration of the application for the emergency barring order within 48 hours after the arrest (not counting time that falls on a weekend or bank holiday).

Article 4I provides for what an emergency barring order may do, and for how long it may be in force. An emergency barring order may contain a wide variety of prohibitions (such as prohibiting A from contacting or coming within a specified distance of B) or requirements (such as requiring A to attend counselling). An emergency barring order must state the period for which the order is in force, which cannot be longer than 3 months.

Article 4J allows the Magistrate's Court to renew an emergency barring order against a person on application by the Attorney General if the court is satisfied that the grounds for issuing the order continue to be met.

Article 4K requires a person who is issued an emergency barring order to tell the police the address at which the person is residing and to tell the police if that address changes. Failure to provide the required information, or providing false information, is an offence with a penalty of 12 months' imprisonment and an unlimited fine.

Article 4L allows the Magistrate's Court to revoke or vary an emergency barring order if the Court considers that the order is no longer sufficient, necessary or proportionate.

Article 4M provides a right of appeal to the Royal Court against a decision of the Magistrate's Court relating to an emergency barring order.

Article 4N provides that failure to comply with an emergency barring order is an offence with a penalty of 5 years' imprisonment and an unlimited fine. This offence extends to things that happen outside of Jersey.

Article 4 makes a minor change to Article 12 of the Domestic Abuse Law so that a person who is subject to notification requirements under that Article is required to notify the police as soon as practicable after the requirements are imposed, rather than on the day that the requirements are imposed.

Article 5 amends the Criminal Justice (Young Offenders) (Jersey) Law 2014 to ensure that the Youth Court has jurisdiction to hear matters relating to emergency barring orders or stalking protection orders (to be introduced under the Harassment and Stalking (Jersey) Law 202-) that are issued against people who are aged 16 or 17.

Article 6 gives the name of this Law and provides that it will come into force on a day to be specified by the Minister for Justice and Home Affairs by Order.



Jersey

DRAFT DOMESTIC ABUSE (JERSEY) AMENDMENT LAW 202-

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Jersey

DRAFT DOMESTIC ABUSE (JERSEY) AMENDMENT LAW 202-

A LAW to amend the [Domestic Abuse \(Jersey\) Law 2022](#) to provide for emergency barring notices and emergency barring orders.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

1 **[Domestic Abuse \(Jersey\) Law 2022](#) amended**

This Law amends the [Domestic Abuse \(Jersey\) Law 2022](#).

2 **Article 1 (interpretation) amended**

In Article 1(1), after the definition “domestic abuse protection order” there is inserted –

- “emergency barring notice” means a notice issued under Article 4A;
- “emergency barring order” means an order issued by a court under Article 4F;

3 **Part 2A (emergency barring notices and emergency barring orders) inserted**

After Article 4 there is inserted –

PART 2A**EMERGENCY BARRING NOTICES AND EMERGENCY BARRING ORDERS****DIVISION 1 – EMERGENCY BARRING NOTICES****4A Issuing emergency barring notices**

- (1) A police officer of the rank of chief inspector or above (a “senior officer”) may issue, or authorise an officer of a lower rank to issue, an emergency barring notice to a person (“A”) if the senior officer has reasonable grounds to suspect that –
 - (a) A has engaged in behaviour that is domestic abuse towards another person (“B”); and
 - (b) it is necessary to issue the notice to protect B from the risk of further domestic abuse carried out by A.
- (2) A senior officer may issue, or authorise the issue of, an emergency barring notice to A regardless of whether B wishes the notice to be issued.
- (3) Before issuing or authorising the issue of an emergency barring notice, the senior officer must –
 - (a) consider any statements made by A or B on the matter;
 - (b) consider the welfare of any person under the age of 18 (other than A or B) whose interests the officer considers relevant to the giving of the notice (whether or not that person and A are personally connected);
 - (c) if the notice will limit or prevent A from entering the premises where B lives, take reasonable steps to discover and consider the opinion of any other person who lives at the premises and is personally connected to A or B; and
 - (d) consider whether the effect of the notice (to protect B from further abuse from A) could be achieved by other means.
- (4) An emergency barring notice must be in writing and must state –
 - (a) the grounds on which the notice has been issued;
 - (b) the period for which the notice is in force;
 - (c) the potential consequences of breaching the order; and
 - (d) that the Attorney General may apply to the Magistrate’s Court for an emergency barring order.
- (5) An emergency barring notice may –
 - (a) prohibit A from contacting B;
 - (b) prohibit A from coming within a specified distance of B;
 - (c) if A and B live together at the same premises –
 - (i) require A to leave the premises;
 - (ii) prohibit A from entering the premises; and
 - (iii) prohibit A from evicting or excluding B from the premises; and

- (d) impose any other condition on A that the senior officer considers reasonably necessary to protect B from further abuse from A.
- (6) A police officer must serve the emergency barring notice on A by personal service.

4B Duration of emergency barring notice

- (1) An emergency barring notice comes into force at the time it is served on the person to whom it is issued.
- (2) If, before a notice expires, the Attorney General applies to the Magistrate's Court for an emergency barring order against the person, the notice continues in force until the Court has determined the application.
- (3) Otherwise, an emergency barring notice expires –
 - (a) 72 hours after it comes into force, not counting time that falls on a Saturday or a day that is not a business day (as defined in Article 1(1) of the [Public Holidays and Bank Holidays \(Jersey\) Law 1951](#));
 - (b) if, before that time, an authorised officer withdraws the notice, at the time it is withdrawn; or
 - (c) if the Magistrate's Court extends the duration of notice, at the time specified by the Court for the notice's expiry.
- (4) The Magistrate's Court may extend the duration of a notice if –
 - (a) despite making reasonable efforts, circumstances have prevented, or will prevent, the Attorney General from applying for an emergency barring order before the notice's expiry; or
 - (b) it is necessary to do so in the interests of justice or for the protection of any person.
- (5) If the Magistrate's Court extends the duration of a notice, a police officer must notify the person to whom the notice was issued.

4C Person issued emergency barring notice must give name and address

- (1) A person who is served with an emergency barring notice must tell the police officer who serves the notice –
 - (a) the person's name;
 - (b) the person's contact details (such as phone number or email address); and
 - (c) if known at the time of service, the address at which the person will be residing while the notice is in force.
- (2) If, at the time a notice is served, the person does not know the address at which they will be residing while the notice is in force, the person must notify an authorised officer of the address as soon as is practicable but, in any event, no later than 48 hours after the notice is served.
- (3) If, while the notice is in force, the person changes the address at which they are residing, the person must, as soon as practicable, notify an authorised officer of the new address.

- (4) A person who is required to provide information under this Article commits an offence and is liable to imprisonment for a term of 12 months and to a fine if the person –
 - (a) fails, without reasonable excuse, to provide the information within the required timeframe; or
 - (b) knowingly provides false information.

4D Power to arrest for breach of emergency barring notice

- (1) While an emergency barring notice issued to a person is in force, and a police officer has reasonable grounds to believe that the person has failed to comply with the notice, the police officer may –
 - (a) arrest the person; and
 - (b) exercise the power in Article 19(1)(a) of the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#) to enter and search any premises for the purpose of arresting the person as if the breach of the notice were an offence.
- (2) If a police officer arrests a person under this Article –
 - (a) the Attorney General must, as soon as practicable but in any case no later than the specified time, apply to the Magistrate’s Court for an emergency barring order against the person; and
 - (b) the person must, by the specified time, be brought before the Court for consideration of the application.
- (3) For the purposes of Article 28A of the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#) and Rule 3 of the [Prison \(Jersey\) Rules 2007](#), failure to comply with an emergency barring notice must be treated as if it were an offence.
- (4) In this Article, the “specified time” is 48 hours after the arrest, not counting time that falls on a Saturday or a day that is not a business day (as defined in Article 1(1) of the [Public Holidays and Bank Holidays \(Jersey\) Law 1951](#)).

4E Restriction on issuing subsequent emergency barring notice

If a person (“A”) has been issued an emergency barring notice, a police officer must not issue another emergency barring notice to A unless the police officer has reasonable grounds to suspect that A has engaged in behaviour –

- (a) that is domestic abuse; and
- (b) that was not the basis for the prior notice being issued.

DIVISION 2 – EMERGENCY BARRING ORDERS

4F Issuing emergency barring order

- (1) The Magistrate’s Court may issue an emergency barring order against a person (“A”) if –
 - (a) the Court receives an application by the Attorney General; and

- (b) the Court is satisfied that –
 - (i) on the balance of probabilities, A has engaged in behaviour that is domestic abuse towards another person (“B”); and
 - (ii) it is necessary and proportionate to issue the order to protect B from the risk of further domestic abuse carried out by A.
- (2) Before issuing an emergency barring order, the Court must –
 - (a) consider any statements made by A or B on the matter;
 - (b) consider the welfare of any person under the age of 18 whose interests the Court considers relevant to the giving of the order (whether or not that person and A are personally connected); and
 - (c) if the order will limit or prevent A from entering the premises where B lives, take reasonable steps to discover and consider the opinion of any other person who lives at the premises and is personally connected to A or B.
- (3) For the purpose of assessing whether A has engaged in behaviour that is domestic abuse towards B, it is irrelevant –
 - (a) whether the behaviour alleged to be domestic abuse occurred –
 - (i) in Jersey or elsewhere; or
 - (ii) before or after the commencement of this Law; or
 - (b) whether A has been convicted of an offence in relation to the behaviour.

4G Summons to attend hearing for emergency barring order

- (1) Once a hearing is set to hear an application for an emergency barring order against a person (“A”), the police must summon the person to appear before the Magistrate’s Court at the time and on the date notified in the summons.
- (2) The summons must explain, in simple terms –
 - (a) that the hearing will determine whether an emergency barring order will be issued against A;
 - (b) the measures that the police are requesting to be included in the emergency barring order; and
 - (c) the consequences of failing to comply with the summons.
- (3) A police officer must serve the summons on A by personal service.

4H Failure to comply with summons

- (1) If a person fails, without reasonable excuse, to comply with a summons issued under Article 4G, the Magistrate’s Court may, upon proof of the service of the summons, order the person’s arrest.
- (2) If the Court orders the person’s arrest, a police officer may –
 - (a) arrest the person; and
 - (b) exercise the power in Article 19(1)(a) of the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#) to enter and search any premises for the purpose of arresting the person as if failure to comply with the summons were an offence.

- (3) If a police officer arrests a person under this Article, the person must, by the specified time, be brought before the Court for consideration of the application for the emergency barring order.
- (4) For the purposes of Article 28A of the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#) and Rule 3 of the [Prison \(Jersey\) Rules 2007](#), failure to comply with a summons must be treated as if it were an offence.
- (5) In this Article, the “specified time” is 48 hours after the arrest, not counting time that falls on a Saturday or a day that is not a business day (as defined in Article 1(1) of the [Public Holidays and Bank Holidays \(Jersey\) Law 1951](#)).

4I Content and duration of emergency barring order

- (1) An emergency barring order may –
 - (a) prohibit the person the order is issued against (“A”) from contacting the person for whose protection it is made (“B”);
 - (b) prohibit A from coming within a specified distance of B;
 - (c) prohibit A from coming within a specified distance of specified premises;
 - (d) if A and B live together at the same premises –
 - (i) require A to leave the premises;
 - (ii) prohibit A from entering the premises; and
 - (iii) prohibit A from evicting or excluding B from the premises;
 - (e) require A to attend specified counselling or education; and
 - (f) impose any other requirement on A that the court considers necessary to protect B from the risk of further domestic abuse carried out by A.
- (2) In imposing prohibitions or requirements on A in an emergency barring order, the court must, so far as practicable, avoid –
 - (a) conflict with A’s religious beliefs;
 - (b) interference with A’s work or with A’s attendance at an educational establishment; and
 - (c) conflict with the requirements of any other court order or injunction to which A is subject.
- (3) An emergency barring order must state the period for which the order is in force, which must not exceed 3 months.

4J Renewal of emergency barring order

- (1) The Magistrate’s Court may renew an emergency barring order against a person (“A”) if –
 - (a) the Court receives an application by the Attorney General during the period that an emergency barring order is in force against A; and
 - (b) the Court is satisfied that the grounds for issuing the order continue to be met.
- (2) Once a hearing is set to hear the application, the police must give A written notice of the hearing, and notice is deemed to have been given if notice of the hearing has been left at the address given by A under Article 4K.

- (3) An order to renew an emergency barring order must state the period for which the order is renewed, which must not exceed 3 months.
- (4) There is no limit on how many times the Court may renew an emergency barring order.
- (5) When renewing an order, the Court may vary the order if the Court is satisfied that –
 - (a) the terms of the order are no longer sufficient to protect the person for whose protection the order was issued from the risk of harm caused by domestic abuse by A; or
 - (b) the terms of the order are no longer necessary or proportionate to protect the person for whose protection the order was issued from the risk of harm caused by domestic abuse by A.

4K Person issued emergency barring order must give address

- (1) If a court issues an emergency barring order against a person, the person must –
 - (a) as soon as practicable after the order is issued, notify an authorised officer of the address at which the person is residing; and
 - (b) while the order is in force, notify an authorised officer if the address at which the person is residing changes –
 - (i) if the person has prior knowledge of the change, at least 24 hours before the change, if this is possible; or
 - (ii) in any other case, as soon as reasonably practicable but, in any event, within 24 hours after the change.
- (2) A person who is required to provide information under this Article commits an offence and is liable to imprisonment for a term of 12 months and to a fine if the person –
 - (a) fails, without reasonable excuse, to provide the information within the required timeframe; or
 - (b) knowingly provides false information.

4L Varying or revoking emergency barring order

- (1) This Article applies if –
 - (a) the Magistrate’s Court issues an emergency barring order against a person (“A”) for the protection of another person (“B”); and
 - (b) either –
 - (i) the terms of the order are no longer sufficient to protect B from the risk of harm caused by domestic abuse by A; or
 - (ii) the terms of the order are no longer necessary or proportionate to protect B from the risk of harm caused by domestic abuse by A.
- (2) The following people may apply to the Magistrate’s Court for the order to be varied or revoked –
 - (a) A;
 - (b) B;

- (c) the Attorney General.
- (3) The following people have a right to be heard on an application –
 - (a) A;
 - (b) B;
 - (c) the Attorney General; and
 - (d) the Chief Officer of the States of Jersey Police Force.
- (4) The Magistrate’s Court may vary or revoke the emergency barring order if the court is satisfied that it is appropriate to do so.
- (5) An emergency barring order that is the subject of an application –
 - (a) may be stayed (in part or in full) by the Magistrate’s Court until the application to vary, renew or revoke is determined; but
 - (b) otherwise continues to have effect until that application is determined.

4M Appeal against decision relating to emergency barring order

- (1) This Article applies in respect of a decision of the Magistrate’s Court to –
 - (a) issue, renew, revoke or vary an emergency barring order;
 - (b) refuse an application to issue, renew, revoke or vary an emergency barring order; or
 - (c) impose certain prohibitions or requirements in an emergency barring order.
- (2) The following people may appeal against the decision on the grounds that the decision is based on an error of law or fact –
 - (a) the person against whom the order is (or would be) issued;
 - (b) the person for whose protection the order is (or would be) issued;
 - (c) the Attorney General.
- (3) An appeal must be made to the Royal Court within 14 days after the decision is made.
- (4) The following people have the right to be heard on an appeal –
 - (a) the person against whom the order is (or would be) issued;
 - (b) the person for whose protection the order is (or would be) issued;
 - (c) the Chief Officer or a delegate;
 - (d) the Attorney General.
- (5) A court that hears an appeal under this Article may uphold, overturn or vary the decision as the court thinks appropriate.
- (6) A decision that is the subject of an appeal –
 - (a) may be stayed (in part or in full) by the Magistrate’s Court until the application to vary, renew or revoke is determined; but
 - (b) otherwise continues to have effect until that application is determined.

4N Failure to comply with emergency barring order

- (1) A person who, without reasonable excuse, fails to comply with an emergency barring order commits an offence and is liable to imprisonment for a term of 5 years and to a fine.
- (2) If a person who is habitually resident in Jersey fails, without reasonable excuse, to comply with an emergency barring order while in a jurisdiction outside of Jersey –
 - (a) the person commits an offence under paragraph (1); and
 - (b) the person may be proceeded against in Jersey in respect of the offence.

4 Article 12 (requirement to notify police of details) amended

In Article 12(2)(a), for “on the day” there is substituted “as soon as practicable after”.

5 [Criminal Justice \(Young Offenders\) \(Jersey\) Law 2014](#) amended

After Article 26(3) of the [Criminal Justice \(Young Offenders\) \(Jersey\) Law 2014](#) there is inserted –

- (4) The Youth Court –
 - (a) may exercise the powers given to the Magistrate’s Court under Part 2A of the [Domestic Abuse \(Jersey\) Law 2022](#) in respect of an application relating to an emergency barring order (as defined in Article 1(1) of that Law) against a person who is 16 or 17 years of age; and
 - (b) may exercise the powers given to the Magistrate’s Court under Part 3 of the Harassment and Stalking (Jersey) Law 202- in respect of an application relating to a stalking protection order or an interim stalking protection order (as defined in Article 1 of that Law) against a person who is 16 or 17 years of age.

6 Citation and commencement

This Law may be cited as the Domestic Abuse (Jersey) Amendment Law 202- and comes into force on a day to be specified by the Minister for Justice and Home Affairs by Order.