

## **REGULATORY IMPACT ASSESSMENT**

### **TITLE OF PROVISION**

#### **DOMESTIC VIOLENCE, CRIME AND VICTIMS BILL**

**Consolidated regulatory impact assessment for all measures.**

### **ISSUE**

1. The Government is committed to meeting the needs of victims and witnesses, by both tackling crime, especially violent crime, and ensuring that victims and witnesses are at the heart of the criminal justice system. The measures within this Bill both: tackle domestic violence, building on the proposals outlined in the consultation paper “Safety and Justice”; and improve victims’ and witnesses’ rights and support within the CJS and across Government. In addition, the measures bring forward changes in two specific areas of the law so offenders are brought to justice for the crimes they have committed.

### **OBJECTIVE**

2. The victims’ measures in the Bill will improve the criminal justice process for victims by:
- 1) Improving victims’ rights to ensure they are provided with information, advice, support and protection.
  - 2) Ensuring victims’ and witnesses’ views are represented across Government, and that positive action is taken as a result.
  - 3) Ensuring that victims’ and witnesses’ needs are considered in a more holistic way rather than in departmental silos.
3. To complete this overall approach to ensure victims receive the information, protection and support they need, there is a focused Government strategy to tackle domestic violence, which accounts for nearly one quarter of all violent crime. This strategy is based on a three-strand approach:
- prevention – preventing violence happening in the first place, and preventing its recurrence;
  - protection and justice – ensuring that the justice system provides adequate protection for victims and brings more offenders to justice; and
  - support – providing adequate housing and financial support to help victims and their children rebuild their lives

The Bill measures constitute the core of the protection and justice strand.

4. A key way to ensure victims have confidence in the criminal justice system is for offenders to be brought to account for the crime they commit, and for victims and witnesses to see justice done. The measures will ensure that those offenders who currently commit so many crimes they cannot all be dealt with in one trial will no longer escape full punishment. The Bill will also ensure that those guilty of causing or allowing the death of child can no longer evade justice.

5. The provisions in this Bill apply to England and Wales. The Home Office is in discussion with the devolved administrations about the territorial scope of specific measures.

## BACKGROUND

6. The chance of becoming a victim is at its lowest for 20 years (in 1995 one in three of us became victims; in 2002 it was one in four<sup>1</sup>), but public confidence and satisfaction in the criminal justice system is at a low. Key facts include;

- Only 59% of victims were satisfied with the police<sup>2</sup>
- Fewer than a third of all victims felt they had been kept well informed by the police<sup>3</sup>
- Only 67% of witnesses said they would be happy to be a witness again<sup>4</sup>
- Less than half of all crime is reported<sup>5</sup>
- Where witnesses do report a crime, many are unwilling to attend court. Reasons include being fearful that it will be an ordeal, that they may be intimidated by the defendant or others, or feeling that attending court is not a good use of their time. Witness problems are responsible for 60% of Crown Court cases which do not result in conviction<sup>6</sup>
- Less than 10% of victims ever see an offender brought to justice

7. This dissatisfaction with and unwillingness to contribute to the process is caused by the fact that victims and witnesses are often treated without due consideration. They are not kept properly informed, or provided with a sense of security. Too often they are expected to turn up at court for cases that are then adjourned, or are subjected to unnecessarily stressful courtroom experiences. Too often they are not even thanked and too often those most seriously affected are not given the long-term support they need.

8. A specific focus on domestic violence is critical if we are to tackle this unacceptable and often hidden crime. It claims the lives of two women every week and accounts for nearly a quarter of all violent crime; one incident is reported to the police every minute. Figures from the 1996 British Crime Survey domestic violence self-completion questionnaire, which provides the most robust data for domestic violence, suggest that one in four women and one in six men will suffer domestic violence at some point in their lives. The

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<sup>1</sup> Crime in England and Wales 2001/2002: Jon Simmons and Colleagues (London Home Office) July 2002

<sup>2</sup> Crime in England and Wales 2002/2003

<sup>3</sup> Crime in England and Wales 2001/2002 Claire Flood-Page and Joanna Taylor (eds) Supplementary Volume (London: Home Office 2003).

<sup>4</sup> Key Findings from the Witness Satisfaction Survey 2002 Helen Angle, Sally Malam and Christine Carey, HO research, Development and Statistics Directorate Findings No 189: London Home Office ISSN 1473-8406

<sup>5</sup> Crime in England and Wales 2001/2002: Jon Simmons and Colleagues (London Home Office) July 2002

<sup>6</sup> Narrowing the Justice Gap: Guidance on Tackling Weaknesses in the Criminal Justice System. Produced by PA Consulting and the Justice Gap Task Force, November 2002

survey estimated a total of 6.6 million incidents of domestic violence in 1996, of which 2.9 million resulted in injury.<sup>7</sup>

9. Most definitions of domestic violence acknowledge that, in addition to actual physical violence, it involves a wide range of abusive and controlling behaviour, including threats, harassment, criminal damage, financial control, and emotional abuse. Domestic violence occurs across all groups in society.

10. The immediate and long-term human costs of domestic violence are profound; the financial costs to the public purse and society in general are immense. Domestic violence damages victims' self-confidence and mental health, traumatises and endangers children, and accounts for sixteen per cent of homelessness acceptances every year.<sup>8</sup>

## **RISK ASSESSMENT**

11. The Government is committed to ensuring that victims and witnesses are treated with due respect and receive support throughout the criminal justice process. The legislation, in conjunction with additional measures outlined in the National Victims' and Witnesses' Strategy, will help improve the often unacceptable experience endured by victims and witnesses. It will tackle the problems of varying levels of service from criminal justice agencies and the lack of coherent support across a range of public services. It will promote more victim involvement in the criminal justice system, and in turn will ensure the system runs more efficiently with more of the guilty being brought to justice.

- **Inconsistent Victim Care from the Criminal Justice System**

12. Currently, treatment of victims by criminal justice agencies varies by area and individual case. The Victims' Charter, produced in 1996, outlines basic standards of service a victim should be entitled to receive. These are general requirements, for example – "The police will do their best to catch the person responsible for your crime and to keep you informed of significant developments in your case". They go into little detail on acceptable timing and standards which goes some way to explain why than a third of victims felt they had been kept well informed by the police.<sup>9</sup> The charter needs to be strengthened to reflect current practice and to establish tangible 'customer' rights rather than vague 'aspirations'. This would be best achieved by improving and expanding the charter and giving it a statutory base, so that the criminal justice agencies are bound by it.

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<sup>7</sup> Catriona Mirrlees-Black, *Findings from a new British Crime Survey self-completion questionnaire*, Home Office Research Study 191 (London: Home Office, 1999), pp. vii-viii, 18, 23; Figure of one incident per minute taken from Elizabeth Stanko, 'The Day to Count: A Snapshot of the Impact of Domestic Violence in the UK', *Criminal Justice* 1:2 (2000), available at: [http://www.domesticviolencedata.org/5\\_research/count/count.htm#police](http://www.domesticviolencedata.org/5_research/count/count.htm#police).

<sup>8</sup> Office of the Deputy Prime Minister, *Homelessness and Domestic Violence – September 2002 Policy Briefing*, p. 1, available from: <http://www.homelessness.odpm.gov.uk/policybriefing/index.htm>.

<sup>9</sup> Crime in England and Wales 2001/2002 Claire Flood-Page and Joanna Taylor (eds) *Supplementary Volume* (London: Home Office 2003)

13. Because of the lack of detailed responsibilities for CJS agencies, there is uncertainty regarding the provision of victim care both within the CJS and amongst the public. Whilst some areas have devised systems to ensure victims are kept well informed throughout the process, the standard of service is variable across the country. It is a classic case of a postcode lottery. Victims need key contacts and a clearer understanding of how the system works.

14. Currently, where victims are poorly treated they may be uncertain where to address their complaint, and have limited rights of redress. These factors contribute to poor victim and public satisfaction with the police and CJS. While three quarters of the public are confident that the criminal justice system respects the rights of people accused of crimes and treats them fairly, only a third are confident that it meets the needs of victims.<sup>10</sup>

15. We need to legislate to allow for the development of specific binding requirements on agencies that will ensure consistent and effective minimum standards of victim care across England and Wales, with tangible rights of redress for victims who are poorly treated.

- **Limited Victim and Witness involvement in the CJS**

16. A large number of victims of crime will be called as witnesses, and without their cooperation offenders can often not be brought to justice. It is thought witness problems are responsible for 60% of Crown Court cases that do not result in conviction<sup>11</sup>. Crown Court data suggests witness failure to appear in court caused 1161 ineffective trials between April and August 2003. The cost of an ineffective/cracked trial is £1,372 in the magistrates court and £4,860 in the Crown Court.<sup>12</sup> The costs for the CJS are severe both financially and in terms of reducing confidence in the system and allowing offenders to walk free.

17. The reasons that witnesses fail to attend court vary, but if we improve the information we give them, identify those who are vulnerable at an early stage, and take account of their needs, we can help prevent the costs of ineffective trials.

- **Altering the silo/segregated approach to victim and witness care**

18. Becoming a victim or witness of crime can have a substantial impact on people's lives well beyond their involvement with the CJS, creating specific needs in terms of health, housing, employment and education. And yet there is nobody to consult with victims and witnesses and act as their voice, or to represent them in cross-Governmental policy development.

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<sup>10</sup> Crime in England and Wales 2001/2002 Claire Flood-Page and Joanna Taylor (eds) Supplementary Volume (London: Home Office 2003)

<sup>11</sup> Narrowing the Justice Gap: Guidance on tackling weaknesses in the criminal justice Process, PA Consulting and the Justice Gap Task Force, November 2002

<sup>12</sup> Invest to Save Round 6 Formal Bid CPS/ACPO/HO/OSPR, Oct 03

19. It is for this reason that we want to establish a Commissioner for victims and witnesses. It is also why we set up a Victims' Advisory Panel consisting of lay members who have been victims of crime, and co-opted representative groups who could provide a voice for victims in informing policy. The fact that this group can be disbanded at any time takes away its influence in ensuring Ministers take victims' views into account.

- **Tackling domestic violence**

20. The Government is also committed to tackling domestic violence. The proposed measures, in conjunction with other policies, will play an important part in reducing the incidence of domestic violence, increasing support and protection for its victims, and bringing greater numbers of offenders to justice.

21. Domestic violence imposes significant costs on society. These costs fall under various headings: there are direct financial costs to public agencies (health, social services, housing, and criminal justice) and voluntary organisations; emotional costs to victims and those close to them; and indirect financial costs to the economy from lost output.

22. The cost of the one hundred and fifty or so domestic violence murders each year of adult men and women is approximately £60 million in lost output and expense to public services, to which should be added a further £105 million in emotional impact.<sup>13</sup>

23. Research in the London Borough of Hackney put the annual cost of domestic violence to public services at £5,130,000 (*excluding* such substantial items as the costs of hospitalisation, investigations, and prosecutions), and estimated the full costs at closer to £7.5 million,<sup>14</sup> equivalent to £37.50 per resident. Applied to the national population of approximately sixty million people, this suggests that domestic violence gives rise to annual costs to the public purse of £2.25 *billion* for the United Kingdom. Adding in the costs of emotional trauma and lost productivity would probably double that figure, giving a cost to society of at least £4.5 billion, or roughly 0.5% of GDP.

24. More recent research by the Home Office on the economic costs of crime gave a total of £21 billion for recorded violent crime.<sup>15</sup> Given that domestic violence constitutes nearly a quarter of all violent crime, its annual cost should be equivalent to £5.25 billion. Additional account would need to be taken of incidents of domestic violence that are counted separately to physical violence, such as criminal damage.

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<sup>13</sup> Sam Brand & Richard Price, *The Economic and Social Costs of Crime*, Home Office Research Study 217 (London: Home Office, 2000), p. 32.

<sup>14</sup> Elizabeth Stanko et al, *Counting the Costs: Estimating the Impact of Domestic Violence in the London Borough of Hackney* (London: Crime Concern, 1998), p. 7.

<sup>15</sup> Sam Brand & Richard Price, *The Economic and Social Costs of Crime*, Home Office Research Study 217 (London: Home Office, 2000), p. 55.

- **Difficulties in prosecuting familial homicide**

25. Research estimates that 150 children a year are killed or suffer serious injury at hands of parents or carers. In 6 out of 10 cases there is no prosecution; only 27% of the prosecuted cases result in a conviction; and only a small percentage of these are convictions for homicide or GBH.

26. Each individual measure in the Bill is separately assessed below, under 'costs and benefits'. Overall, while several of the planned measures have implications for police resources, Legal Aid, the CPS and court time, as well as for charities and the voluntary sector, the expected benefits (both financial and intangible) substantially outweigh the projected costs.

## **OPTIONS**

27. Three options have been identified:

### **Option 1 – Do nothing.**

28. This would mean the treatment of victims and witnesses would continue to be at the discretion of CJ agencies and standards of care would be inconsistent. This would fail victims and witnesses and have a negative impact on public confidence in the CJS. It would mean that millions of current and future victims would continue to suffer the consequences of domestic violence. It would also mean that people would continue to evade justice by blaming each other, and those guilty of high volume crimes would go unpunished. This is not an acceptable option.

### **Option 2 - Non-Legislative measures**

29. The Government is already undertaking a range of non-legislative measures both to improve the CJS for victims and witnesses and tackle domestic violence. Details of the domestic violence strategy will be published separately. The National Strategy – A new deal for Victims and Witnesses outlines the diverse range of actions underway to help victims of crime both at national and local levels. This can be read in full [www.cjsonline.gov.uk](http://www.cjsonline.gov.uk)

### **Option 3 – Legislative measures**

30. After careful consideration, the Government has concluded that to place victims and witnesses at the heart of the CJS, tackle domestic violence and ensure that those responsible for causing the death of a child or vulnerable adult are brought to justice, legislation is the most suitable and effective route.

We propose the following legislative measures:

- Creation of a Commissioner for Victims and Witnesses to champion their rights across government;

- Establishment of a Statutory Code of Practice to ensure criminal justice agencies adhere to minimum standards of care when dealing with victims of crime;
- Establishing a formal complaint mechanism to the Parliamentary Commissioner for Administration for victims where the code is breached;
- Putting the Victims' Advisory Panel onto a statutory footing to require the Government to take account of victims' views when developing policy;
- Establish Information Sharing gateways to facilitate agencies in assisting victims;
- Multi-Agency Reviews of Domestic Violence Homicides to allow lessons to be learnt;
- Criminalise breach of non-molestation orders;
- Extend availability of non-molestation and occupation orders to same-sex couples and those that have never co-habited or been married;
- Extend the availability of restraining orders to protect victims from more serious incidents;
- Give anyone mentioned in a Restraining Order, the right to make representations in court if an application is made to vary/terminate the order;
- Make common assault an arrestable offence to afford greater protection for victims;
- Create a new offence of causing or allowing the death of child or vulnerable adult, and procedural changes to apply in cases of murder and manslaughter where these are charged alongside the new offence;
- Have a two-stage trial process in cases of repeat similar offending, where there are too many individual offences to be accommodated in a single jury trial.

## **COSTS AND BENEFITS**

### **Commissioner for Victims and Witnesses**

Costs to the public purse	Benefits																		
<p>Setting up the post and running costs of a small office will cost £2m for the first year with approximately £1m running costs in years 2 and 3. This has been established on the following basis:</p> <table data-bbox="351 1691 925 2016"> <tr> <td>Start up costs</td> <td>£ 500,000</td> </tr> <tr> <td>Staff costs</td> <td>750,000</td> </tr> <tr> <td>Accommodation</td> <td>250,000</td> </tr> <tr> <td>Computers (start up)</td> <td>100,000</td> </tr> <tr> <td>Office equipment</td> <td>100,000</td> </tr> <tr> <td>Post and telephones</td> <td>50,000</td> </tr> <tr> <td>PR/Publications</td> <td>100,000</td> </tr> <tr> <td>Staff training</td> <td>30,000</td> </tr> <tr> <td>Audit fee</td> <td>20,000</td> </tr> </table>	Start up costs	£ 500,000	Staff costs	750,000	Accommodation	250,000	Computers (start up)	100,000	Office equipment	100,000	Post and telephones	50,000	PR/Publications	100,000	Staff training	30,000	Audit fee	20,000	<p>The commissioner will raise awareness of victim and witnesses issues not only across the criminal justice system but across Government as a whole. They will be independent and make recommendations to help Government tackle the real problems victims and witnesses face.</p>
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Travel & subsistence	50,000	
Contingencies	50,000	
<p>Minimal costs may be incurred by other Government departments and agencies asked to assist with the Commissioner's enquiries including Dept of Health, Education, DWP, Housing (ODPM) and CJS Depts. This is difficult to quantify. CPS estimate around £100,000/ year.</p> <p>Any costs in incorporating commissioner recommendations may be significant, but as implementation is not necessary, these would be subject to separate regulatory impact assessments.</p>		

### Code of Practice – costs in complying with code

Costs to the public purse	Benefits
<p>It is estimated the sum of £6,780,000 will be required to enable agencies to comply with the code and respond to complaints to PCA.</p> <ul style="list-style-type: none"> <li>• £6.5 million per year for the police to allow for an increase in CJU staff to deliver services and additional legal support to deal with complaints.</li> <li>• £250,000 per annum costs to the CPS based on increased admin required</li> <li>• Actions for the courts largely involve information sharing which should reflect current practice and therefore any costs are likely to be negligible, if not nil.</li> <li>• £30,000 per year for victim support to fund one co-ordinating post</li> <li>• Other agencies including CICA, Probation, Parole Board may incur additional costs, but if any, they will be minimal.</li> </ul> <p><b>Administering appeals will cost PCA £130,000 per year, based on an estimated 50-100 complaints.</b></p> <p>Estimates for dealing with PCA complaints are based on current numbers of complaints. They may increase or decrease with greater awareness/ improved service.</p>	<p>This measure will ensure consistent minimum standards of victim and witness care across the country and clarify responsibilities of criminal justice agencies. By ensuring victims and witnesses are supported and kept informed of the progress of their case throughout the process, they are more likely to attend court. This measure will therefore reduce ineffective trials and increase the number of offenders brought to justice. In addition, it will improve the victim or witnesses experience and bolster public confidence in the system.</p> <p>The Code of Practice will be most effective on a statutory basis. The non statutory victims' charter has been neglected and by formalising a code in legislation we will ensure that agencies are formally bound to appropriate standards of service, with victims afforded the greatest</p>

This measure will incur £6.91 million in public sector costs.	protection and a clear right of redress.
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### Putting Victims Advisory Panel on a statutory footing

Costs to the public purse	Benefits
The Victims' Advisory Panel currently costs approximately £2,000 in lay member expenses/year as well as the minimal costs incurred in producing an annual report. There will be no impact on costs in putting the panel on a statutory footing. The Panel's role is to make non binding recommendations, or to comment on developing policy.	This measure will ensure the advisory panel is respected as a permanent group and sends out a strong symbolic message about the importance the Government places on victims.

### Information sharing gateways

Costs to the public purse	Benefits
Allows the requirements of the Code to be discharged. Costs included therefore in Code estimates (above).	Allows agencies to share information so they can keep all victims better informed about case progress and better identify and support, in particular, vulnerable victims and witnesses.

### Multi-Agency Reviews of Domestic Violence Homicides

Costs to the public purse	Benefits
Figures from Part 8 reviews of suspicious child deaths suggest that each review is likely to cost in the region of £50,000 in terms of time and effort.  There are currently some 150 domestic murders every year, which suggests a total cost of <b>£7.5m</b> .	Each life saved through lessons learned saves £1,100,000 in public funds, lost earnings, and emotional trauma.

### Criminalising the Breach of Non-Molestation Orders

Costs to the public purse	Benefits
In 2002, there were applications for roughly 17,500 non-molestation and 11,000 occupation orders. Under the current proposals, the latter will either be issued alongside a non-molestation	Criminalising the breach of these orders would: improve protection for victims; simplify things for victims, courts, and

order, or will be issued alone and be irrelevant to this estimate, since their breach will not be criminalised. On this basis, only the 17,500 non-molestation orders need be considered. Current evidence suggests some 80% are granted, so approximately 14,000 such orders will be made.<sup>17</sup>

Criminalising breach of non-molestation orders will require small changes to the IT system in use by the civil courts. These have been estimated as costing no more than **£50,000**.

Extending the availability of orders and criminalising their breach may lead to a 10% rise in the number of orders made (in part because of an increase in applications, in part because judges will be obliged at least to consider making one when making an occupation order), so the courts may hear applications for 1750 additional orders. The costs of these measures are likely to be as follows:

Assuming 85% of the additional 1750 applicants receive Legal Aid, and at a cost per order of £1265, the extra applications will cost **£1,881,688**.

If all of the additional respondents applied for Legal Help, given that roughly 50% receive it at a cost of £100, the additional cost would be £87,500. If breach were criminalised, it is safe to assume more respondents who would not otherwise have considered it worthwhile will apply, so the likely cost might be closer to **£250,000**.

More respondents may also contest orders. If the proportion of those receiving Legal Aid to contest the order were to increase by 25% (i.e. from the current 13% rate to roughly 16%), then on the basis of a £1152 cost and a 10% increase in the number of applications, the increased costs would be **£927,360**.

A 10% increase in applications would also mean increased court time. At a cost of £391 for the average county court proceedings, the additional 1750 applications would cost roughly **£684,250**.

the police; and should deter offenders from breaching orders.

<sup>17</sup> Department for Constitutional Affairs, *Judicial Statistics Annual Reports for 2001* (London: Lord Chancellor's Department, 2002), Table 5.9, p. 60.

Arrests for breach would probably not have a significant impact on police time, as some 80% of current orders already have a power of arrest attached. There are no exact figures for the cost to police of the average incident of breach, but for the purposes of estimation, this calculation assumes that each incident entails six police man hours, at a cost of roughly £24 per hour (based on an annual cost per officer of just under £41k, with each officer working eight hours a day for 220 days per year). There are no reliable figures for breach rate, but assuming that the police currently arrest 10% of respondents (1400) for breach, and that criminalising breach will raise this to 20% (3080) of the new total, then the increased costs will be **£241,920**.

Anyone arrested and charged with breaching an order would be eligible for Legal Aid to cover the cost of the duty solicitor (about £150) and the costs of an appearance before a magistrate's court (£326). Once again assuming that 20% of respondents are arrested and prosecuted for breach, the additional costs would be  $3080 \times £476 = £1,466,080$ . However, recipients are already being arrested for breach and charged with contempt of court, which is more expensive than equivalent breach proceedings in magistrates' courts. Assuming that only 10% of the 14,000 recipients currently face contempt of court hearings at a cost of £1240 per case for the plaintiff and £417 for the defendant, the effect of criminalising breach and putting more breach cases through the magistrates' courts would be actually to *reduce* the Legal Aid bill from £2,319,800 to £1,466,080, or by £853,720.

It costs the CPS approximately £167 for the average case in a magistrate's court. 3080 additional cases would therefore cost **£514,360**.

There will be increased costs in terms of court time, stemming from proceedings against those accused of breaching orders. If there are currently 1400 breach hearings in civil courts (at a cost of roughly £391 per hearing), the effect of holding 3080 breach hearings in the magistrates' courts (at the lower cost of £198 per incident) would be an overall increase of just **£62,440**.

<p>In terms of the effect on the prison population, the closest comparison is with breach of restraining orders under the Protection from Harassment Act. A small proportion of those proceeded against for breach of a restraining order receive custodial sentences. Criminalising breach of non-molestation orders is therefore likely to lead to a small rise in the short-term prison population. However, this measure is also likely to prevent more serious offences, and therefore to reduce the long-term prison population. The overall effect should be neutral.</p> <p><b>Total cost: roughly £3.8m.</b></p>	
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**Extending the Availability of Non-Molestation and Occupation Orders**

Costs to the public purse	Benefits
<p>Equalising the position of same-sex couples will involve minimal costs. The same applies to extending orders to couples who have never cohabited or been married.</p> <p>It is difficult to quantify the costs of extending the availability of orders. For example, there is currently no evidence that ineligibility for orders is a serious problem for large numbers of non-cohabiting couples. Nevertheless, if significant numbers apply for orders, there will be implications for the Community Legal Service Fund. The cost increases involved are included in the estimates above, which assume a 10% increase in applications for orders under the Family Law Act.</p>	<p>This will increase protection for same-sex partners and for those who have never cohabited or been married.</p>

**Extending the Availability of Restraining Orders under the Protection From Harassment Act (PFHA)**

Costs to the public purse	Benefits
<p>There are few procedural implications for courts issuing such orders when they sentence</p>	<p>These measures may deter or prevent more serious</p>

defendants charged with other offences or issue such orders when acquitting a defendant. Because the purpose of the orders is to prevent actions amounting to harassment or that will put someone in fear of violence, the vast majority of orders are likely to be issued in cases where offenders have been found guilty or acquitted of violent offences or criminal damage.

In 2001, 2438 people were cautioned and 7129 proceeded against in magistrates' courts under the PFHA, of whom 3239 were found guilty.<sup>18</sup> Restraining orders are only made in about 56% of PFHA cases in which there is a conviction,<sup>19</sup> which would mean roughly 1814 orders. In 2001, 4 people were cautioned and 776 proceeded against in magistrates' courts for breach of a restraining order, suggesting an overall rate of about 43%.<sup>20</sup>

In 2000, 19,900 people were cautioned and 35,300 found guilty of offences of violence against the person. Assuming that restraining orders were handed out at the same 56% rate for the 35,300 found guilty of violence against the person, fewer than 20,000 additional orders would be made. In addition, in 2000 some 10,300 people were found guilty of criminal damage. At the 56% rate, that would mean a further 5768 orders, for an overall total of around 25,000.<sup>21</sup>

Issuing the orders would cost nothing, as this would be done within the context of existing proceedings. Moreover, many of those who might be made the subject of an order are likely already to be the subject of a non-molestation order; a restraining order would be unnecessary. It therefore seems more reasonable to assume that some 12,000 additional restraining orders would be made

incidents, thus sparing victims from trauma, and saving police and court resources.

<sup>18</sup> These data are a further breakdown of those published in *Criminal Statistics, England and Wales: Supplementary Tables 1999 to 2001* Volumes 1 & 2, produced by the Offending and Criminal Justice Group, RDS, Home Office.

<sup>19</sup> Jessica Harris, *An Evaluation of the Use and Effectiveness of the Protection from Harassment Act 1997*, Home Office Research Study 203 (London: Home Office, 2000), p. 37.

<sup>20</sup> These data are a further breakdown of those published in *Criminal Statistics, England and Wales: Supplementary Tables 1999 to 2001* Volumes 1 & 2, produced by the Offending and Criminal Justice Group, RDS, Home Office.

<sup>21</sup> Katie Johnson et al, *Cautions, Court Proceedings and Sentencing, England and Wales 2000* (London: Home Office, 2001), p. 18.

each year. Courts may also issue approximately 2000 additional orders when they convict for other offences, or when they acquit but nevertheless believe that a restraining order is necessary to protect the victim, making an overall total of 14 000 additional orders.

Assuming that roughly the same proportion (43%) of offenders were cautioned or proceeded against for breach of an order (and discounting any deterrent effects), about 6020 additional cases would appear before the courts each year.

Figures for the cost in terms of police time are not available, but assuming the average breach incident entailed six police man hours, the cost of 6020 breaches would, at a cost of roughly £24 per hour (based on an annual cost per officer of just under £41k, with each officer working eight hours a day for 220 days per year), be **£866,880**.

Average costs to the CPS for proceedings in magistrates' courts are in the region of £167, so the additional 6020 cases would cost **£1,005,340**.

Defendants would be eligible for legal aid to cover the cost of the duty solicitor (about £150) and the costs of an appearance before a magistrate's court (£326). Therefore, if 6020 additional cases of breach appeared before the magistrates' courts, the cost to the Legal Services Commission would be **£2,865,520**.

In terms of court time, at a cost of £198 for the average Indictable or Triable Either Way case in a magistrate's court, the additional cost would be **£1,191,960**.

A small proportion of those proceeded against for breach of a restraining order receive custodial sentences. But while an increase in the number of restraining orders issued might lead to a small rise in the short-term prison population, this measure is also likely to prevent more serious offences, and therefore to reduce the long-term prison population. The

overall effect should be neutral.	
The total cost of this measure would therefore be just over <b>£5.9m.</b>	

**Amending the Protection From Harassment Act 1997 so victims are entitled to be heard (by making representations in court) when offenders apply to vary/terminate an order**

Costs to the public purse	Benefits
Minimal administrative costs. Following implementation of the above measures, some 15,800 orders may be issued each year. On the basis of an (assumed) 50% rate of applications to vary or terminate an order, 7,900 victims would have to be informed each year. Assuming roughly £2 per case (for postage, stationery, and administrative time), the annual cost would be in the region of <b>£15,800.</b>	Better protection for victims, probably reducing subsequent assaults.

**Making Common Assault an arrestable offence**

Costs to the public purse	Benefits
<p>In 2002/2003 the police recorded 234,244 incidents of common assault.<sup>22</sup> If common assault were made an arrestable offence the police, who can already arrest suspected offenders under certain circumstances, might record an additional 10% of such incidents, or 23,424.</p> <p>Figures for the cost in terms of police time are not available, but assuming the average incident of common assault entailed six police man hours, the cost of 23,424 extra incidents would, at a cost of roughly £24 per hour (based on an annual cost per officer of just under £41k, with each officer working eight hours a day for 220 days per year), be <b>£3,373,056.</b></p> <p>Each person arrested would be entitled to Legal Aid to cover the cost of seeing the duty</p>	<p>The measure would simplify things for the police, ensure better protection for victims, and act as a deterrent to further offending. There would be increased revenue in fines levied on those prosecuted.</p>

<sup>22</sup> Jon Simmons & Tricia Dodd (eds.), *Crime in England and Wales 2002/2003* (London: Home Office, 2003), p. 123.

<sup>23</sup> Marianne Hester et al, *Domestic Violence: Making it Through the Criminal Justice System – research commissioned by the Northern Rock Foundation* (International Centre for the Study of Violence and Abuse, 2003), p. 7.

solicitor, which at the rate of approximately £150, would cost roughly **£3,513,600**.

A recent study of domestic violence cases in the Northumbria police force region suggested that, at best, a third of those arrested for such offences were charged.<sup>23</sup> In fact, the percentage would almost certainly be lower for the additional people arrested, as these would be the cases where, even with a pro-arrest policy, the police would not previously have been able to arrest. Assuming a 25% charging rate, an additional 5856 alleged perpetrators would be charged.

At an average cost of £167 per proceeding in magistrates' court, the cost of bringing charges against the additional 5856 cases to the CPS would be roughly **£977,952**.

Each defendant to appear before the magistrates' courts would be eligible for Legal Aid to cover the £326 cost of the hearing, adding **£1,909,056** to the bill.

In terms of court time, the cost of an average Indictable or Triable Either Way case in the magistrates' court is £198, so the additional cases would cost just over **£1,159,488**.

Imprisonment is very rare in cases of common assault, which is a summary offence. This measure is therefore unlikely to have any significant effect on prisoner numbers.

In total, therefore, the cost of this measure might be in the region of **£10.9m**.

### Familial Homicide Provisions

Cost to the public purse	Benefits
<p>We have estimated approximately 7 cases per year.</p> <p>It costs the CPS an estimated £2412 to prosecute murder or manslaughter and with an additional 7 cases this would cost approximately <b>£17,000</b>.</p> <p>Crown Court costs are £3438 per day with an</p>	<p>This will make sure that people cannot evade justice if they are co-accused of a homicide in familial circumstances by remaining silent or blaming the other accused. Even though this will apply to only a small number of cases, because they are</p>

<p>assumed duration of 5 days per case. With 7 cases a year this costs <b>£121,000</b>.</p> <p>We estimate legal aid costs at <b>£294 000</b></p> <p>Finally the policy objective is to ensure more people are convicted for manslaughter or murder of the crimes they commit, and will necessarily lead to a rise in the prison population. Estimated costs for this is <b>£280,000</b>.</p> <p>This gives a total cost of approximately <b>£0.7m</b></p>	<p>high-profile it will have a large effect on public confidence in the criminal justice system.</p> <p>It will also avoid the waste of public money where cases fail because of lack of evidence.</p>
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## Multiple Offending Measures

<b>Cost to the public purse</b>	<b>Benefits</b>
<p>It is difficult to be precise about the numbers of cases each year that would qualify for the new procedure. However, on the basis of existing numbers of multiple theft, deception and indecent images offences, we have estimated 400 cases each year. This figure takes into account an anticipated conviction rate of 62% (based on the number of contested trials in the Crown Court). This is because only cases resulting in a conviction at the “sample” (jury) stage of the trial will incur the additional costs of a judge alone trial. It also reflects our expectation that the new procedure will be likely to encourage guilty defendants, either on initial arraignment or after conviction of a number of specimen counts, to plead guilty or to admit any linked offences of which they are also guilty. (There is currently little incentive for defendants to do this).</p> <p>It is expected that the numbers will rise year on year as the new procedure “beds in”, and as a result of prosecutions arising from Operation Ore (the police child internet pornography operation), a significant number of which are likely to be appropriate for the new procedure.</p> <p>We have assumed that the judge will sit alone to hear the remaining counts in each case for, on average, two days.</p> <p>Crown Court costs are £3,042 per day, excluding jurors’ costs: an additional cost (ie for the judge-alone days) of approximately £2.4m per year.</p> <p>We estimate legal aid costs for two additional days per trial to amount to around £880,000 per year (based on an average of £2,200 for a two-day trial).</p> <p>Additional CPS costs would come to approximately £550,000 per year.</p> <p>This gives an annual cost of approximately</p>	<p>Increase the confidence of victims and the public at large in the criminal justice system by ensuring defendants are appropriately sentenced for their offending.</p> <p>Be likely to encourage defendants to plead guilty or admit any linked offences of which they are guilty, thus saving court and witness time.</p>

**£3.86m.**

We expect that the measures will lead to a small increase in the prison population, on the basis that people will be receiving longer sentences that reflect the full extent of their offending.

### Summary:

- On this basis, the total cost of the proposed measures will be:
- The cost of setting up the Commissioner for Victims and Witnesses is estimated to be **£1m** running costs with an additional **£1m** in set up costs.
- The cost of enabling agencies to comply with the Code of Practice each year is estimated to be **£6.91m**.
- The cost of reviewing 150 domestic violence homicides each year is estimated to be **£7.5m**.
- The cost of extending the availability of occupation and non-molestation orders and criminalising the breach of the latter under the Family Law Act 1996 is estimated to be **£3.8m**.
- The cost of extending the availability of restraining orders under the Protection from Harassment Act 1997 is estimated to be **£5.9m**.
- The cost of amending the Protection from Harassment Act 1997 so that victims are entitled to make recommendations representations in court when offenders apply to vary or terminate an order is estimated to be **£15.8k**.
- The cost of making common assault an arrestable offence under the Police and Criminal Evidence Act 1984 is estimated to be **£10.9m**.
- It is **impossible to estimate** the cost of reforming the law on the defences to murder until the Law Commission publishes its report on the subject.
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- The cost of the familial homicide measures **£0.7m**
- The cost of the multiple offending measures is **£3.86m**

31. Total costs would therefore be roughly **£40.8m**, all of which would be an **ongoing, annual cost**, plus an additional **£1m** in set up costs.

The annual costs would divide as follows:

Home Office and Police	£18.8m
Commissioner for Victims and Witnesses (HO Budget)	£ 1 m
Crown Prosecution Service	£ 3.4m
Department for Constitutional Affairs	£ 17.3m
Parliamentary Commissioner for Administration	£ 0.13m
Victim Support	£ 0.03m

Note: Besides the costs associated with the specific measures, above, it is also possible that increased publicity and awareness around domestic violence will lead victims to report more domestic assaults. Publicity might lead to a 5% increase in the number of incidents reported and recorded - roughly 8940 incidents, the vast majority of which would be cases of common assault, as more serious attacks would have been more likely to come to the attention of the authorities. Home Office research<sup>24</sup> suggests that the cost of the average incident of common assault is roughly £205 to the Home Office (police, probation, prisons), £5 to the CPS, and £25 to DCA (Legal Aid, court costs, etc.). The costs of the additional incidents would therefore be **£1,832,700 to the Home Office, £44,700 to the CPS, and £223,500 to DCA.**

## **SECTORS AFFECTED**

### **Business**

32. The Government believes business will benefit from these measures. They do not impose any costs on the private sector. In the longer term they will produce savings as improved services for victims and witnesses will reduce and anxiety and therefore losses to firms caused by lower productivity of workers and reducing domestic violence will reduce the substantial losses forms currently suffer in the form of the lost days and lower productivity that results when their employees suffer domestic violence.

### **Public Sector**

33. The implications for the public sector, in some cases include an increase in workload and resources, and these are set out in the cost and benefits table. The Police, CPS, courts and Parliamentary Commissioner for Administration's Office are all affected by the measures in the Bill. In the short term, raising the profile of domestic violence and encouraging victims to leave and prosecute their abusers may entail an increase in demand for housing, advocacy, legal, educational, and other public services. However, by preventing domestic violence these measures should entail significant savings in terms of healthcare and costs to the criminal justice system. In the longer term the deterrent effect of the new measures will further reduce the burdens on these bodies.

34. Secondary costs and benefits may be substantial but are difficult to quantify and dependent on a number of other factors. Improved victim and witness care could improve cooperation from reporting crime to attending court. This would allow more offenders to be brought to justice and may improve public confidence in the criminal justice system. On the other hand, encouraging victims and witnesses to come forward could lead to an increase in recorded crime and in the substantial associated costs to the CJS.

### **Charities and Voluntary Sectors**

35. The main impact on charities is on those comprising the National Association of Victim Support Schemes. Victim Support will be bound by the statutory code of practice requiring them to meet particular obligations and will

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<sup>24</sup> Sam Brand & Richard Price, *The Economic and Social Costs of Crime*, Home Office Research Study 217 (London: Home Office, 2000), p. 40.

ultimately have to answer to the Parliamentary Ombudsman if they breach the code. They have been consulted about their obligations in the draft code and it is anticipated they will be able to comply with only a small addition in resources. They may also be asked to cooperate with investigations and reports of the Victims' and Witnesses' Commissioner (the frequency is unknown but likely to be minimal). The Government does not expect the impact of these measures to be significant and we anticipate that the increased administrative workload will require only one additional member of central staff to oversee it. However we will monitor and if necessary can reflect increased workloads when agreeing the annual funding grant with Victim Support.

36. The Domestic Violence measures that encourage greater numbers of victims to leave abusive relationships could place increased strain on charities and organisations that supply refuge accommodation, advocacy, and outreach services. However, by increasing the protection and support available to some victims, these and other Government measures should also to some extent simplify some of the tasks these organisations carry out.

#### **CONSULTATION WITH SMALL BUSINESS: THE SMALL FIRMS' IMPACT TEST**

37. The proposed measures do not impact on small businesses. This has been confirmed by the Small Business Service.

#### **COMPETITION ASSESSMENT**

38. The proposed measures do not affect any market or impact on competition. This has been confirmed by the Office of Fair Trading.

#### **CONSULTATION**

39. In July 2003, the Home Office published a National Strategy for Victims and Witnesses, which outlined our legislative proposals on the victims' measures. A range of agencies and victims' groups were consulted on the proposals in the two years before the publication of the strategy and we are continuing to consult with relevant agencies in order to finalise the code of practice. Both the strategy and preliminary consultation have been well received, with responses generally extremely positive. Agencies appreciate that we need to do more to protect and inform victims of crime. There is some concern as always regarding resource implications in delivering the code of practice, but we are working closely with agencies to ensure the obligations are practical and deliverable as well as beneficial to the victim.

40. The Domestic Violence proposals were widely consulted on following the publication of "Safety and Justice". A partial RIA was produced for that document.

#### **MONITORING AND ENFORCEMENT**

41. The Victims' Code of Practice will introduce statutory obligations on agencies, which victims will have the right to enforce through internal complaints procedures and ultimately complaints to the Parliamentary Commissioner for Administration. The new Commissioner for Victims and Witnesses will monitor the effectiveness of the code as part of his/her remit and can make recommendations to the Secretary of State. The Code of Practice will be subject to review by the Secretary of State in consultation with the Lord Chancellor and Attorney General and any revisions must be laid before Parliament.

42. The Bill also introduces detailed monitoring arrangements for the office of the Commissioner for Victims and Witnesses including the requirement to produce an annual plan and annual report and terms of office.

### SUMMARY AND RECOMMENDATION

The options available to Government are summarised below;

Option	Costs	Benefits
1. Do nothing/Self Regulation	Victims and Witnesses have no confidence in the CJS. No reduction in current annual domestic violence costs of £5.25 billion, sends message that Government and society are willing to tolerate domestic violence. Those responsible for causing the death of a child continue to evade justice.	No additional expenditure or burden on other sectors.
2. Non-legislative measures	Opportunity cost in that more could still be done on tackling domestic violence and improving the confidence of victims and witnesses in the CJS. There would be no change on the current situation regarding familial homicide.	Cheaper than legislative measures. Less of a burden on the voluntary sector and charities. Implementation of the National Strategy for Victims and Witnesses will provide improvements in service delivery for victims. Non legislative measures will also help prevent domestic violence and support victims.
3. Legislative measures	Assuming all the above measures are implemented there will be annual costs of <b>£40.8m</b> and £1m set-up costs.	Ensuring victims have a consistent level of support from the CJS and that Government policy on victims is formulated in a holistic way. By providing better support to victims of DV and bringing more offenders to justice, the proposed measures will reduce the cost of domestic violence and help to build a safer and more just society. Given the scale of the problem and the costs involved, even a 1% reduction in domestic violence would represent a saving of at least £52.5m a year.

The balance of costs and benefits clearly favours the proposed legislative measures.

DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

Signed.....

Date.....

The Baroness Scotland of Asthal QC  
Minister of State  
Home Office

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