



Third party action on behalf of victims of domestic violence

Standard Note: SN/HA/6398

Last updated: 31 July 2012

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Section Home Affairs Section

Part IV of the *Family Law Act 1996* contains a series of measures which the Conservative Government of the time brought in with the aim of improving civil law remedies for victims of domestic violence. Most of these were brought into force shortly after the General Election by the Labour Government. However, section 60 has never been brought into force. This provision would allow third parties to bring an application for orders under Part IV on behalf of victims of domestic violence.

The Labour Government said that it had not brought section 60 into force in order to give courts, police and practitioners time to become familiar with the new legal remedies “before considering the introduction of new procedures and responsibilities of this nature.” Its Domestic Violence Advisory Group concluded that the problems experienced by victims of domestic violence would not be most effectively addressed by implementing section 60.

The Labour Government went on to introduce a series of changes to the law, mainly in the *Domestic Violence Crime and Victims Act 2004*, to address these problems. It went on to legislate for Domestic Violence Protection Orders (DVPOs) in the *Crime and Security Act 2010*. Under the Act, the police can issue a notice prohibiting a suspected domestic violence perpetrator from molesting the victim, and (possibly) requiring him to leave the premises they cohabit. The police then apply to the court for a DVPO lasting between 14 and 28 days, which again prohibits molestation and can make provision about access to shared accommodation. However, these provisions were not brought into force before the General Election of 2010. The present Government reviewed the policy before piloting DVPOs in three police areas. The pilots were originally due to end in June 2012, but have been extended for another year.

The then Home Office minister David Hanson said, in February 2010, that the Labour Government was considering how and when it might implement section 60. The present Government has said it will consider the case for implementing section 60 after the DVPO pilots have been concluded and evaluated. This is not expected to be before late summer 2013.

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1 What would section 60 of the *Family Law Act 1996* do?

The Conservative Government legislated in Part IV the *Family Law Act 1996* for a series of measures to try to improve civil law remedies for victims of domestic violence. Section 60 is a rule-making power. It would provide for rules of court to be made to allow third parties to act on behalf of victims of domestic violence in relation to the various proceedings contained in Part IV. In particular, it would allow third parties to apply for an occupation order or a non-molestation order on behalf of a victim.

Debate during the passage of the *Family Law Bill 1995-96*

The clause which became section 60 was debated in the House of Commons on 17 June 1996 when it was added to the Bill.¹ During the debate, Members expressed concerns that the police would be “wary of getting involved in domestic disputes” and that “politically correct pressure groups could home in on a victim and use her to make their political points before a court”.²

The provision was then discussed in the House of Lords on 27 June 1996. The Lord Chancellor acknowledged concerns about third parties, particularly the police, intervening in cases of domestic violence and said:

However, the new clause is purely permissive and is drawn widely. For example, it does not prescribe that it is the police who shall act as the representatives; there may be others who could more appropriately do so in consultation with the police. It also makes provision in a very special and appropriate way for the piloting of any rules made. The provision enabling piloting to take place is a quite unusual but very useful one.

It may well be that a measure of agreement will emerge amongst those concerned with the prevention of domestic violence as to the need for the provision of third party action in the way envisaged by the new clause, and for suitable pilot schemes to be devised. It would not seem sensible then to have to await a further legislative opportunity in order to provide for this rule-making power. I am grateful for the suggestion of this particular clause. As I have said, it has many advantages. It came from the Opposition Front Bench in the other place.³

¹ [HC Deb 17 June 1996 c593](#)

² c594 and c597

³ [HL Deb 27 June 1996 c1108](#)

2 Why was section 60 not brought into force by the Labour Government?

The *Family Law Act 1996* received Royal Assent in July 1996. Following the May 1997 General Election, the Labour Government brought all the domestic violence provisions in part IV of the Act in October 1997, with the exception of section 60.⁴ A Parliamentary Question from 2003 sets out why section 60 was not brought into force at that time:

Margaret Moran: To ask the Parliamentary Secretary, Lord Chancellor's Department if she will list legislation involving protection for survivors of domestic violence which has not been brought into force, stating the reasons in each case. [88311]

Ms Rosie Winterton: Section 60 of Part IV of the Family Law Act 1996 has not been implemented. This section would give the Lord Chancellor the power to make rules to allow a prescribed person, or category of person, to act on behalf of survivors of domestic violence.

It was not implemented in 1997 with Part IV in order to give the courts, police, practitioners and others time to become familiar with the new law and gain experience in its operation before considering the introduction of new procedures and responsibilities of this nature.

The Lord Chancellor's Department commissioned research to assess the effectiveness of current remedies for domestic violence and understand the practical impact on individuals of third party applications. The research report has now been considered by our Domestic Violence Advisory Group, which includes representation from the police, voluntary sector, judiciary and others. The group concluded that the problems identified in the research would not be most effectively addressed by implementing section 60. A sub-group of the advisory group will now consider these problems and recommend how best to tackle them.⁵

An impact assessment that formed part of a Ministry of Justice consultation paper on the *Forced Marriage (Civil Protection) Act 2007* confirmed this:

The Domestic Violence Advisory Group considered the introduction of a third party under section 60 in 2003. The option was not pursued as it was decided that it would not solve the problems faced by victims of domestic violence while taking action through the courts. Instead, at that time, changes were made to enforcement provisions to meet the concerns of victims.⁶

The research mentioned in the 2003 Parliamentary Question above was not published.⁷ However, an article on a similar topic, by one of the researchers involved, was published. This article, published in the *Journal of Social Welfare and Family Law* in 2003, provides further information about why the section was not implemented at the same time as the rest of Part IV of the Act:

It was envisaged that there would be a period of settling in for the new non-molestation and occupation orders before further consideration was given to the advantages of third parties being authorized to apply for orders. One reason for the inclusion of

⁴ See article 3 of the *Family Law Act 1996 (Commencement No. 2) Order 1997* SI 1997/1892

⁵ HC Deb 7 Jan 2003 c66W

⁶ Ministry of Justice, *Forced Marriage (Civil Protection) Act 2007 – Relevant Third Party*, CP 31/07, 12 December 2007, p20

⁷ Burton, M, McCrory M and Buck T, The civil remedies for domestic violence under the Family Law Act 1996: Is section 60 the way forward? (2002) *Lord Chancellor's Department* (unpublished)

Section 60 was that similar provisions had proved beneficial in Australia (Law Commission 1992). Shortly after the legislation came into force, an article appeared in this journal reviewing the Australian experience of third parties applying for protection orders (Humphreys and Kaye, 1997). The authors suggested that there are a number of advantages to third party applications but also pitfalls that need to be avoided.⁸

The article discusses the findings of research commissioned by the Lord Chancellor's department in March 2002 to examine service providers' views on how Part IV of the Act had been working and whether there was any need to implement section 60 at that time. It states that two thirds of the respondents that took part in the study supported the implementation of section 60 and that the main reason for supporting implementation was to remove the burden of seeking protection from the survivor herself.⁹

3 More recent debate – the *Crime and Security Act 2010*

The measures Labour introduced to deal with domestic violence are described in Library Standard Note 3989, [Labour policy on domestic violence: 1999-2010](#). Towards the end of its period in office, Labour's *Crime and Security Act 2010* introduced Domestic Violence Protection Notices (DVPN) and Domestic Violence Protection Orders (DVPOs) – dubbed “go orders” by some. The provisions were not brought into force before the 2010 General Election, and have still not been fully brought into force, although they are being piloted by the present Government – see below.

Under the Act, the police can issue the DVPN to secure the immediate protection of a victim of domestic violence from future violence or a threat of violence by a suspected perpetrator. The DVPN prohibits the suspect from molesting the victim and, where they cohabit, may require him to leave those premises. The issue of a DVPN triggers an application for a Domestic Violence Protection Order (DVPO). This is a civil order lasting between 14 and 28 days, which prohibits the perpetrator from molesting the victim and may also make provision about access to shared accommodation. The magistrates' court must hear the application within 48 hours to limit the length of time for which the suspected perpetrator can be excluded from his home without the chance to defend himself.

The issue of bringing section 60 into force was raised again in 2010 during the Public Bill Committee debate on the *Crime and Security Bill 2009-10*. The exchange between James Brokenshire (then shadow Home Affairs minister) and the then Home Office minister David Hanson, showed the Labour government was considering bringing section 60 into force:

James Brokenshire (Hornchurch) (Con): One point that has been raised is the use of section 60 of the Family Law Act, to allow a third party to initiate proceedings on behalf of an alleged victim. My understanding is that the provision is not yet in force. The Minister highlights various measures in the 1996 Act that have been introduced, but do the Government intend to bring that section into effect? It would provide another route to allow third parties to bring actions on behalf of a victim. Clearly, that is part and parcel of the Government's proposals, so has that provision been considered?

Mr. Hanson: I am grateful to the hon. Gentleman for raising that point, because section 60 is an important provision. It has yet to be implemented, as was raised in the evidence sessions, so it has been discussed as part of our consideration of the Bill.

⁸ Burton M, “Third party applications for protection orders in England and Wales: service provider's views on implementation of Section 60 of the Family Law Act 1960”, *Journal of Social Welfare and Family Law* 25(2) 2003, 137-150

⁹ *Ibid* p139

However, the domestic violence protection orders that the clauses are committed to are substantially different. Section 60 makes provision for third parties to apply only for protection orders, whereas the DVPOs under this clause and others do three important things. They allow the police to take the first step to issue a protection order; they offer immediate protection in the aftermath of an incident of domestic violence and they give the victim crucial protection and breathing space, which is the determinant factor that we are trying to establish.

James Brokenshire: The Minister is right to highlight the distinctions between the section 60 regime and the one contemplated by virtue of the domestic violence protection notice. Do the Government still intend to bring that section into effect as an additional measure, sitting alongside the new provisions, given the concern that has been rightly raised about the clearly described gap in support provided for the victim?

Mr. Hanson: I appreciate the way that the hon. Member for Hornchurch has brought forward that point. The Under-Secretary of State for the Home Department, my hon. Friend the Member for Tynemouth, in conjunction with colleagues from the Ministry of Justice and the Government Equalities Office, under the Minister for Women and Equality, my right hon. and learned Friend the Member for Camberwell and Peckham, are developing a strategy on violence against women. One issue they are reflecting on is how and when we can implement section 60. That is something that I hope we can resolve in the near future when the strategy is finally produced, which I expect to be shortly.¹⁰

The evidence session referred to, which mentions section 60, took place on 28 January 2010 and can be [read online](#).¹¹

There is also discussion of the subject in an article from *Family Law Week* in 2009; *More Police Powers for Domestic Violence - The Crime and Security Bill Reviewed*. In it, Michael Horton (a barrister), questioned whether the new powers in the (then) *Crime and Security Bill* were necessary or whether its provisions might be achieved through bringing section 60 into force.

4 The present Government's approach

The present Government's policy on domestic violence is discussed in Library Standard Note 6337, *Domestic Violence*. The Government reviewed the policy on Domestic Violence Protection Orders and Notices for some time, before bringing the relevant sections of the 2010 Act partially into force on a pilot basis in three police force areas: West Mercia, Wiltshire and Greater Manchester. The pilot was originally due to last for a year from June 2011, but was then extended for a further year. Information on the pilot, including interim guidance for the police, is available on the [Domestic Violence Protection Notices and Orders](#) page of the Home Office website:

On 30 June 2012, the domestic violence protection order (DVPO) provisions operating in the West Mercia, Wiltshire and Greater Manchester police force areas were extended for another year.

The domestic violence protection order (DVPO) pilot closed on Saturday 30 June 2012, but all three police forces will continue the scheme for a further year while the Home Office evaluates the pilot to assess whether or not a change in the law is needed.

¹⁰ [Crime and Security Bill PBC Deb 9 February 2010 c299](#)

¹¹ [Crime and Security Bill PBC 28 January 2010 c95](#)

Under the scheme the police and magistrates can protect a victim when they are at their most vulnerable, in the immediate aftermath of an attack, by preventing the perpetrator from contacting the victim or returning to their home for up to 28 days. This helps victims who may otherwise have had to flee their home and gives them the space and time to access the support they need and to consider their options.

Previously, there had been a gap in protection for victims of domestic violence due to either the police being unable to charge the perpetrator due to lack of evidence (meaning that the protection available to a victim through strict bail conditions could not be applied) or the process for granting longer-term injunctions taking several days or weeks to apply for. DVPOs are designed to bridge this gap by empowering the police and magistrates to issue an immediate order to ban the perpetrator from returning home or making contact with the victim for up to 28 days.

Evaluation

The Home Office has commissioned an evaluation of the pilot to capture lessons learnt and explore the implications of DVPOs for victims, perpetrators and criminal justice agencies, which is expected to report in late summer 2013.

Pending the evaluation reporting in late summer 2013, [interim guidance](#) to support DVPOs is available.

The Government's "[Call to End Violence Against Women and Girls: Action Plan](#)", published in March 2011, said that the Ministry of Justice would "consider the case for implementing section 60 of the *Family Law Act 1996*", commenting "This option could prove most helpful where the victim is particularly vulnerable, or unable to pursue an application themselves." The Action Plan states that this consideration has been deferred "until 2013 until after the DVPO [Domestic Violence Protection Order] pilots are concluded and evaluated in order to assess likely increase in civil injunctions and impact on court resources".¹² The updated Action Plan, published in March 2012, contains the same commitment and proposed timing.¹³

¹² HM Government, "[Call to End Violence Against Women and Girls: Action Plan](#)", March 2011, p30

¹³ HM Government, "[Call to End Violence Against Women and Girls: Taking action - the next chapter](#)", March 2012 p37