

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT LEGAL AID, SENTENCING AND
PUNISHMENT OF OFFENDERS ACT 2012
(LEGAL AID: DOMESTIC ABUSE)
(AMENDMENT) ORDER 2024

Wednesday 8 May 2024

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The Committee consisted of the following Members:

Chair: DEREK TWIGG

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| † Bacon, Gareth (<i>Parliamentary Under-Secretary of State for Justice</i>) | Shanks, Michael (<i>Rutherglen and Hamilton West</i>) (Lab) |
| † Cairns, Alun (<i>Vale of Glamorgan</i>) (Con) | Simmonds, David (<i>Ruislip, Northwood and Pinner</i>) (Con) |
| † Davies-Jones, Alex (<i>Pontypridd</i>) (Lab) | † Smith, Cat (<i>Lancaster and Fleetwood</i>) (Lab) |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | † Sturdy, Julian (<i>York Outer</i>) (Con) |
| † Freeman, George (<i>Mid Norfolk</i>) (Con) | † Timpson, Edward (<i>Eddisbury</i>) (Con) |
| † Lewell-Buck, Mrs Emma (<i>South Shields</i>) (Lab) | † Warman, Matt (<i>Boston and Skegness</i>) (Con) |
| † Lewis, Clive (<i>Norwich South</i>) (Lab) | † Wheeler, Mrs Heather (<i>South Derbyshire</i>) (Con) |
| Mahmood, Mr Khalid (<i>Birmingham, Perry Barr</i>) (Lab) | |
| † Mann, Scott (<i>Lord Commissioner of His Majesty's Treasury</i>) | Aaron Kulakiewicz, <i>Committee Clerk</i> |
| † Robinson, Mary (<i>Cheadle</i>) (Con) | † attended the Committee |

First Delegated Legislation Committee

Wednesday 8 May 2024

[DEREK TWIGG *in the Chair*]

Draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid: Domestic Abuse) (Amendment) Order 2024

9.25 am

The Parliamentary Under-Secretary of State for Justice (Gareth Bacon): I beg to move,

That the Committee has considered the draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid: Domestic Abuse) (Amendment) Order 2024.

It is a pleasure to serve under your chairmanship, Mr Twigg. For context, part 3 of the Domestic Abuse Act 2021 introduced a new civil domestic abuse protection notice, or DAPN, to provide immediate protection following a domestic abuse incident, and a new civil domestic abuse protection order, or DAPO, to provide flexible longer-term protection for victims.

In summary, the difference between DAPNs and DAPOs is as follows. DAPNs are police-issued notices to provide victims with immediate protection following an incident. A DAPN can require the perpetrator not to contact or come within a specified distance of the victim. If the police issue a DAPN, they must then apply for a DAPO in the magistrates court, and this application must be heard by the court within 48 hours of the DAPN being issued. DAPOs are a new civil order available in all courts: magistrates courts, Crown court, family court and county court. They can be sought by a variety of parties and have a flexible duration to provide longer-term protection to the victim when necessary and proportionate. The DAPO can place firmer conditions on the perpetrators than other currently available protection orders such as electronic monitoring, and impose requirements such as mandating attendance on a behaviour change or substance misuse programme. Breach of a DAPO is a criminal offence punishable by up to five years in prison.

Appeals against a DAPO would have to be made to the appropriate court. That would mean that where a DAPO was made in the magistrates court, the appeal must then be heard in the Crown court; where the DAPO was made in a Crown court, the appeal must be heard in the Court of Appeal. Appeals against decisions made by other courts, such as the family court, county court or the High Court, would be heard in accordance with section 46 of the Domestic Abuse Act 2021.

This year, the Government will launch a pilot for an anticipated two years for DAPNs and DAPOs. To ensure that those protected by and subject to the DAPO are able to access legal aid, subject to means and merits tests, this statutory instrument will expand civil legal aid services in England and Wales by making civil legal aid for advocacy available in magistrates courts' proceedings for DAPOs and in the Crown court on any related appeal.

The provisions in this statutory instrument complement the provisions in SI 2023/150 of 7 February 2023, which brought both DAPOs and DAPNs into the scope of legal aid. SI 2023/150 also increased the flexibility with which medical professionals can provide supporting evidence to victims of domestic abuse. Medical professionals are now able to provide supporting evidence for a legal aid application following a telephone or video conferencing consultation, rather than only after a face-to-face consultation. The intention of the legal aid scheme, as set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or LASPO, is to provide legal aid to those most in need. We believe that this SI, together with SI 2023/150, will help to meet that objective for DAPNs and DAPOs.

Before turning to the amendments in this instrument, I will briefly set out how the civil legal aid scheme works. In general, civil legal aid is available to an individual if their issue is listed within part 1 of schedule 1 of LASPO. Then, in most cases, an individual must pass a means test—a check on their financial eligibility—and a merits test, which is a check to ensure that the taxpayer is not funding entirely unmeritorious claims.

I will now turn to the changes covered by the order before us today, which is relatively short. This statutory instrument will make advocacy—for those persons who are protected by a DAPO, or for those who are subject or potentially subject to a DAPO—under civil legal aid available in the magistrates courts. This form of civil legal aid will apply in DAPO cases where the application for the DAPO is made by the police in the magistrates courts, and it will extend to appeals in the Crown court and to applications to vary or discharge the DAPO in these courts. As I indicated in my introduction, this order complements the changes made by SI 2023/150 of 7 February 2023, and ensures that we meet the policy objective of making legal aid available, subject to tests, for DAPNs and DAPOs across civil, family and criminal courts.

To conclude, the draft instrument before us expands the civil legal aid services available in relation to DAPOs and DAPNs to ensure legal aid continues to be available to those most in need, thus ensuring that the DAPO pilot is fully implemented from a legal aid perspective, and that the original policy intention of LASPO is maintained.

9.30 am

Alex Davies-Jones (Pontypridd) (Lab): It is a pleasure to serve under your chairship, Mr Twigg. I am grateful to the Minister for introducing this order. It is the latest step towards amending current legislation to give full effect to the Domestic Abuse Act 2021, and it is welcome. The Opposition also welcome the pilot in the areas listed by the Minister, and we look forward to seeing the effects of that; hopefully, it can be rolled out across the UK.

I do, however, have some concerns about the current use of legal aid and the victim-survivor experience that I hope the Minister will look into while he is considering this. Only last week, while speaking with independent domestic violence advisers and independent sexual violence advisers—IDVAs and ISVAs—in my constituency of Pontypridd, I was informed of the way in which legal aid is currently being applied, and I was utterly horrified. I heard examples of court-mandated drug tests for the

perpetrators being taken out of the victim's legal aid budget. I heard of survivors having to use legal aid to pay for copies of their own victim impact statement, and I heard of victims who had to fund their own special measures granted in the court. It cannot be reasonable for them to have to sacrifice these vital funds simply to limit the traumatising process and access their rights as a victim-survivor. This should not be happening.

Although the expansion of legal aid is welcome, when it is finally granted, which can be a challenge in itself, there is concern that there are not enough professionals seeking to take up these cases. We have heard from victim-survivors who are unable to get a solicitor who wants to take their case because it is simply not worth their while. What are the Government doing to ensure that victims have adequate representation, that these cases are taken up by legal professionals, and that we have adequate solicitors and barristers to take them forward? Can the Minister assure me that once these changes go through, he will consider carefully the legal aid system as a whole? We have been waiting far too long. The sector has urged me to place on record its frustrations with the need to update the current status quo. It is not just that it needs to be kept in line with the current legislation—it needs to be fit for purpose. From listening to victim-survivors, I know that it is not.

As has been acknowledged by the Minister, this draft order seeks to implement a change to the current legislation that is required as a result of the Domestic Abuse Act, and the Opposition therefore have no reason to oppose it.

9.32 am

Gareth Bacon: I thank the hon. Lady for welcoming the measures in this SI. The means test that I mentioned earlier is to ensure that the legal aid that we provide goes to the people who need it the most. Every case will have to be subject to it, which is why not everybody will get legal aid in every circumstance.

We are keeping things under review. We have increased legal aid fees, and we are encouraging more providers to undertake the work that is required. The reason we are doing a pilot, rather than rolling out the measure nationally, is to make sure that we have set the fees at the right level so that they attract the right level of interest from firms to provide the work that is needed. We are going to keep that under review. The reason for doing a pilot is to assess that. If the pilot does not deliver the desired outcome, we will seek to review that. With that, I commend the SI to the House.

Question put and agreed to.

9.33 am

Committee rose.

