
MAPPING THE LEGISLATION AND ASSESSING THE IMPACT OF PROTECTION ORDERS IN THE EUROPEAN MEMBER STATES (POEMS)

NATIONAL REPORT UNITED KINGDOM

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Please note that civil and criminal law operate separately in 3 of the 4 countries of the United Kingdom: Wales and England share similar laws and administration, Northern Ireland and Scotland have separate systems and law making in most areas.

2.2. OVERVIEW OF THE STRUCTURE OF THE NATIONAL REPORTS

2.2.1. IMPOSITION OF PROTECTION ORDERS

- 1) We would like to know about the different forms of protection orders in your country
 - a. Identify the laws in which protection orders are regulated. Through which areas of law (criminal, civil, administrative, other) can protection orders be imposed?

Wales and England The laws regarding protection orders are the same for Wales and England: Part IV of the Family Law Act 1996, the Domestic Violence Crime and Victims Act 2004, and sections 24-33 of the Crime and Security Act 2010. The first two pertain to non-molestation orders (NMOs) and occupation orders and are civil law tools.

Section 1 of the Domestic Violence, Crime and Victims Act 2004 (DVCVA) came into force on 1 July 2007. It amends the Family Law Act 1996 by inserting a new section 42A. The offence may be punished either as a criminal offence with a maximum penalty of five years' imprisonment, or as a civil contempt of court.

Section 12 of the Domestic Violence, Crime and Victims Act 2004, as well extending the availability of **restraining orders** to all offences, provides the court with the power to make a restraining order even when a person has been acquitted, where the court considers it necessary to do so to protect a person from ongoing harassment from the defendant.

Stalking The Protection from Harassment Act 1997 (PHA) was brought into force on 16 June 1997 and was amended by the Protection of Freedoms Act 2012 to include two new specific offences of stalking, through the insertion of sections 2A and 4A. A court dealing with a person convicted of any offence, including those under sections 2, 2A, 4 or 4A of the PHA, may make a restraining order prohibiting the defendant from doing anything described in the order. This order can be made in addition to a custodial sentence or other sentence. The order can be especially useful in preventing continued stalking and harassment by defendants, including those who are given sentences of imprisonment.

The PHA includes the following provisions:

- Harassment (section 2): a summary only offence, carrying a maximum of six months' imprisonment and/or a level 5 fine;
- Stalking (section 2A): a summary only offence, carrying a maximum of six months' imprisonment and /or a level 5 fine;
- Fear of violence (section 4): an either way offence, carrying a maximum of five years' imprisonment and/or a fine on indictment;
- Stalking - involving fear of violence or serious alarm or distress (section 4A): an either way offence, carrying a maximum of five years' imprisonment and/or a fine on indictment;
- Breach of a civil injunction (section 3(6)): an either way offence, carrying the same penalty as for the section 4 offence;

- Breach of a restraining order (section 5(5)); an either way offence, carrying the same penalty as for the section 4 offence;
- A civil tort of harassment, created by section 3.

Use of **restraining orders** in cases of stalking: The purpose of the order is to protect the victim (or other named person) from any future harassment or fear of violence. The order can be granted for a specified or indeterminate period of time, therefore, leaving the onus on the defendant to satisfy the court that they no longer present a risk to the victim. The restraining order is imposed at the time of sentence.

(http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/)

Scotland

The Domestic Abuse (Scotland) Act 2011 [During the passage of this Bill, there was considerable written and oral evidence on civil protection orders.

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/21239.aspx> and

<http://archive.scottish.parliament.uk/s3/committees/justice/reports-11/jur11-01.htm>]

Stalking The Criminal Justice and Licensing Act was passed on June 30th 2010 and came into effect on December 13th 2010. Section 39 of this Act makes stalking a criminal offence. [You can read the legislation by clicking here.](#)

Northern Ireland

The Protection from Harassment Order 1997 (Northern Ireland) is similar to the Protection from Harassment Act 1997 (England and Wales). To view the legislation in Northern Ireland visit <http://www.statutelaw.gov.uk> and search under Protection from Harassment Order.

The [Family Homes and Domestic Violence \(Northern Ireland\) Order 1998](#) allows victims of domestic violence to apply for protective civil **orders**. These are called non-molestation **orders** and occupation **orders**. A non-molestation order prevents a victim of domestic violence from being molested by a partner or close family member. It is served on this person and if they continue with their behaviour, they can be arrested for breaching the order.

- b. Are protection orders regulated in generic law or in specific laws on forms of (interpersonal) violence (e.g., domestic violence act)?

In all jurisdictions, the orders are regulated via specific laws that amend previous generic legislation.

- c. Are these laws (or the text on the protection orders) available on the internet in English or in your local language? If so, could you provide us with a link?

<http://www.legislation.gov.uk/asp/2010/13/section/39/enacted>

- 2) a. Within the different areas of law (criminal, civil, administrative, other), you can also have different legal provisions through which protection orders can be imposed (e.g., a condition to a suspended trial, a condition to a suspended sentence, a condition to a conditional release from prison or as a condition to a suspension from pre-trial detention). Which different ways of imposing protection orders can be distinguished in the different areas of law? (please, be as exhaustive as possible).

Wales & England

Non-molestation orders and **occupation orders** are civil measures.

Bail (criminal)

A court can remand a defendant in custody or grant bail, with or without conditions attached. Before the first court hearing, the police can also retain a defendant in custody or grant bail, with or without conditions attached, but their powers to do so are more limited than the court's.

Conditions can only be imposed to ensure that the defendant attends the next court hearing, commits no new offences in the meantime, and does not interfere with any witnesses or obstruct the course of justice.

Victims will be consulted when possible, prior to bail decisions: "Once a defendant is charged with an offence (where there has been an arrest), the police will decide whether or not to release the person on bail or to keep him in custody for the court to decide. . . .We will work closely with the police and, where possible, obtain your views about bail conditions (for example, the defendant may have a condition not to approach you, your home address or your children) and any proposed variations. Ultimately, the court will decide whether or not the defendant is given bail. If the defendant breaches their bail conditions, the police can arrest them and the court can remand them in custody." (http://www.cps.gov.uk/publications/prosecution/domestic/domv_guide_for_victims_and_witnesses_faqs.html#a07)

Examples of bail conditions imposed by courts

A court can impose any condition that seems appropriate in the circumstances of the particular case. Here are some examples of typical bail conditions imposed by courts:

- The defendant must not contact, either directly or indirectly, a named person or persons. This means no contact whatsoever, including by telephone, fax or letter or through another person, e.g. the defendant cannot get a relative to make contact on his behalf.
- The defendant must not go to a named place.

This is usually a specific address, but may also be a street, a town, an area or even a whole county. Sometimes the court will say that the defendant must not go within a specified distance of a place, e.g. within half a mile of Victoria Road.
- The defendant must reside at a named address. This means live and sleep each night there.
- The defendant must report to a named police station on a given day or days at a given time. For example, every weekday morning at 8.30am.
- The defendant must abide by a curfew between certain specified hours.

This means remain indoors, for example, from 9pm until 8am.
- The defendant must provide a security to the court.

If it is thought that the defendant might not attend the next court hearing, the court can order that a set sum of money be paid into the court. If the defendant does fail to attend the next hearing then the money can be forfeited.
- The defendant must provide a surety.

A friend or relative must agree to ensure that the defendant attends court, or the friend or relative could lose a specified sum of money.
Sometimes, for practical reasons, there are exceptions attached to the condition. For example:
- The defendant must not go to a named place except:
 - to attend court;
 - to see their solicitor by prior appointment;
 - to collect their belongings at an appointed time and accompanied by a police officer or other specified person;
 - to see the children, under supervision, at a specified time.

Breaching bail conditions

If the defendant breaches bail conditions, the police can arrest the defendant and the court can remand the defendant in custody. Sometimes, despite bail conditions that say, for example, a defendant cannot contact the victim or return home, the victim contacts the defendant or invites or allows the defendant to return home.

There are all kinds of reasons why victims sometimes do this, but if the defendant responds in such a way as to continue the contact, then the defendant is breaching bail conditions because the police or the court have not released the defendant from the conditions of bail they imposed.

It does not matter that the victim has agreed to the contact; the victim is not subject to the bail conditions, the defendant is.

The defendant is responsible for complying with any conditions imposed by the police or the court until released from those conditions by the police or court.

Restraining orders (criminal) may be made on conviction or acquittal for any criminal offence. These orders are intended to be preventative and protective. The guiding principle is that there must be a need for the order to protect a person or persons. A restraining order is therefore preventative, not punitive.

Restraining orders can only be made in respect of the defendant (not the victim or any witness), even if evidence in the course of a trial indicates that the behaviour of both the defendant and the victim requires addressing.

The test to be applied by the court before making an order is whether an order is necessary to protect the persons named in it from harassment or conduct that will put them in fear of violence. This necessitates an evaluation by the court of the evidence before it. It will require the court to determine whether there is sufficient evidence in front of it to enable it to form a view that an order is necessary. Restraining orders are civil behaviour orders and therefore the standard of proof is a civil one (*R v Major [2010] EWCA Crim 3016*).

Scotland

There are three types of protection orders available to victims in Scotland:

- I. interdict with no power of arrest
- II. interdict with a power of arrest
- III. non-harassment order

Interdict (<http://www.legislation.gov.uk/asp/2011/13/crossheading/breach-of-domestic-abuse-interdict-with-power-of-arrest>) An interdict is a judicial remedy granted by the courts that prohibits the commencement or continuation of a certain act or activity. An interdict may prohibit specific actions by a named individual. However, breaching such an interdict is not necessarily a criminal offence and the police have no power to arrest someone who breaches the terms of an interdict unless the behaviour complained of is itself a criminal offence. Instead, an individual who is granted an interdict must raise a further action in the civil court for breach of interdict. Raising such an action can be cumbersome, ineffective and, for many, unaffordable.

Non-harassment order A non harassment order is a court order which can be used against a partner/expartner, their family or any third party behaving in a way that frightens or causes distress. It orders them not to commit certain actions (for example following the victim, repeatedly e-mailing, phoning or texting, sending letters, unwanted and unsolicited gifts, e.g. flowers). There are two ways that a non-harassment order can be obtained:

In a civil court. Victim's solicitor needs to show evidence of one previous incident of harassment. *If there's been criminal proceedings.* If offender has been convicted of an offence against victim, the prosecutor can ask the sheriff to impose a non-harassment order along with the sentence.

If offender breaks a non-harassment order: Breach of a non-harassment order is a criminal offence, whether obtained through civil or criminal courts. The police can arrest offender without a warrant. They will send a report to the Procurator Fiscal and the offender will need to go back to court. If offender is convicted of breach in the sheriff court, they could be imprisoned for up to six months, or receive a fine, or both. If convicted by a judge or sheriff sitting with a jury, they could be imprisoned for up to 5 years, or receive a fine, or both.

Bail conditions (http://www.scotland.police.uk/assets/pdf/keep_safe/175573)

Where the accused is granted bail, in summary cases the Procurator Fiscal will ask the court to provide an early date for trial. Investigations and any subsequent proceedings in solemn cases will be expedited.

Where there are reasonable grounds to suspect that an accused person has broken or is likely to break any condition of bail imposed, the accused can be arrested and a **bail review** sought. There does not require to be corroboration of the conduct giving rise to the arrest. In such circumstances, the police will consider whether it is appropriate to invoke this power of arrest and report the accused in custody to the Procurator Fiscal.

Northern Ireland

The Family Homes and Domestic Violence (Northern Ireland) Order 1998 allows victims of domestic violence to apply for protective civil **orders**. These are called **non-molestation orders** and **occupation orders**.

A **non-molestation order** prevents a victim of domestic violence from being molested by a partner or close family member. It is served on this person and if they continue with their behaviour, they can be arrested for breaching the order.

An **occupation order** specifies who can live in the family home. This, along with the non molestation order offers added protection to victims of domestic violence by preventing the abuser from living in the family home and entering other specified areas too. If the abuser ignores the order and tries to occupy the specified areas, they can be arrested for breaching the order.

Bail (http://www.courtsni.gov.uk/en-GB/Publications/UsefulInformationLeaflets/Documents/p_uil_Bail-guide/A-guide-to-Bail-applications.pdf)

Where the Judge is satisfied on the evidence presented to him/her that one or more of the grounds for refusing bail has been proven by the prosecution, the Judge must assess whether there are any 'bail conditions' which could be imposed which would sufficiently alleviate the relevant risk contained within the ground(s) for refusing bail. Examples of bail conditions which may be considered by the Judge include:

- One or more sureties.
- The accused must reside at a specified address (which may not necessarily be the address where they were living before being charged with the offence).
- The imposition of a curfew whereby the accused must be inside the house between certain hours (such a condition may also contain a requirement that the accused wear an electronic tag which monitors their presence in the house during the hours of curfew).
- The accused must not enter a defined geographical area.

- The accused must not contact, directly or indirectly, certain specified persons (e.g. the alleged injured party or a co-accused).
- The accused must not drink alcohol (such a condition may also contain a requirement that the accused must submit to a breath test if the police suspect the accused has been drinking alcohol).
- The accused must not enter any licenced premises (e.g. pubs, nightclubs or certain restaurants).
- The accused must not take any drugs which have not been prescribed to them by a doctor.
- The accused must surrender their passport.
- The accused must not use the internet or any device which is capable of accessing the internet.
- The accused must not drive any form of motor vehicle.
- The accused must not be a passenger in/on any form of private motor vehicle

The above list is not exhaustive and the wording of any bail condition(s) is dependent on the individual circumstances of the case and the risk it is seeking to alleviate.

Ex parte orders. In an emergency, a victim can go to court and get short-term orders very quickly, without the offender being present at court. If the order contains an exclusion element, the offender will have to leave the family home. When an ex-parte order is granted there will normally be a full hearing within five or six weeks, where both parties can put their case to the court. The court will decide if a full order is to be granted.

b. When it comes to criminal law: can protection orders be imposed in all stages of the criminal procedure?

Yes in all jurisdictions.

If protection orders can be imposed through multiple areas of law, please make a distinction between these areas of law in answering the following questions. In other words, make sure that the following questions are filled in separately for each category of protection order. For instance, if a protection order can be imposed in both criminal and civil law, make sure that you answer for both areas of law which persons can apply for a protection order (question 3).

- 3) a. Who can apply for such an order (victims/complainants or only the police/the public prosecution service)?

In all jurisdictions, victims must apply (themselves or through a solicitor but not through a third party) for civil interdicts/injunctions.

If there's been criminal proceedings. If offender has been convicted of an offence against victim, the prosecutor can ask the sheriff to impose a non-harassment order or restraining order along with the sentence.

b. Which organizations or authorities are involved in applying for and issuing protection orders? (Do, for instance, probation services play a role in the issuing of criminal protection orders?)

In all jurisdictions, protection orders are applied for by victims or their solicitors in civil cases and by prosecution services in criminal cases. Sheriffs and judges in all jurisdictions make the decisions. Although practice varies widely across courts within and outwith jurisdictions, judges and sheriffs and prosecutors may consider/refer to reports from victim advocates, social work in their decision making.

c. Can protection orders be issued on an *ex parte* basis (without hearing the offender)?

Yes in all jurisdictions.

In **Wales & England**, the test for granting an *ex parte* protection order is:

- (a) any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately;
- (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and
- (c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved—
 - (i) where the court is a magistrates' court, in effecting service of proceedings; or
 - (ii) in any other case, in effecting substituted service.

- 4) a. Are protection orders available for all types of victims or crimes, or only for a certain subset of victims or crimes (e.g., only victims of domestic violence, stalking, female victims)? In other words, can all victims receive protection?

In all jurisdictions, protection orders are available for all types of victims.

b. Can protection orders be issued independent from other legal proceedings (e.g., independent from criminal proceedings if the victim does not wish to press charges or independent from divorce proceedings)?

Yes in all jurisdictions. Although the victim will bear the costs if not eligible for legal aid and some of the costs unless she is on public benefit.

- 5) a. What procedures have to be followed in order to obtain a protection order? (please explain the different steps that need to be taken)

Non-harassment (Scotland) and **non-molestation** (Wales & England, Northern Ireland) **orders**

This is similar for all jurisdictions.

There are two ways that a non-harassment/non-molestation order can be obtained:

In a civil court. Victim's solicitor needs to show evidence of one previous incident of harassment.

If there's been criminal proceedings. If offender has been convicted of an offence against victim, the prosecutor can ask the sheriff to impose a non-harassment order along with the sentence.

Injunctions (Wales & England and Northern Ireland) and **interdicts** (Scotland): In order to get an interdict victim must see a solicitor who will go before a Judge in the Sheriff Court, who will hear the application and decide whether it is suitable to issue an interdict. At the first hearing the Judge will (more than likely) issue an interim order with a hearing in seven days time to issue the interdict.

b. Could you give an indication of the length of the proceedings?

Widely variable. Other than ex parte proceedings, the process of acquiring an injunction or interdict will take at least a month and usually longer.

c. Does the protection order come into effect as soon as the decision on a protection order is made or are there any additional requirements before the orders really come into effect (e.g., in civil proceedings the notification/service of the verdict to the defendant)? In other words, is the victim immediately protected or can there be a lapse of time before the actual protection begins?

In all jurisdictions, protection begins immediately but breach cannot be prosecuted unless offense occurred after offender notified of order.

d. Is there a regulation for interim protection that can be given immediately upon request or very quickly? For how long? What steps have to be taken in order to finalize the protection after the interim order?

All jurisdictions An interim (or ex parte) interdict can be granted as soon as victim applies to the court for an interdict, before the offender has had the opportunity to be heard in court. The court will base their decision on the information in the application.

Victims do not have to appear in court personally to get an interim interdict. However, if the perpetrator defends the action, they may have to appear in court at a later date.

6) a. What are the application requirements in order to (successfully) apply for a protection order? In other words, under what conditions will a protection order be imposed?

Wales & England and Northern Ireland

Non-molestation order

There is no statutory definition of what molestation includes. Section 42 (5) Family Law Act 1996 states that the court will have regard to all the circumstances that go toward securing the health, safety and well being of the applicant, relevant child or any other person that the order is being sought to protect.

Occupation order

There are two tests to which the court must have regard when deciding whether to grant an occupation order.

1. The first is known as the 'balance of harm test' because it requires the court to balance the harm caused to the applicant, respondent and any relevant children if the order were or were not to be made. If the applicant is entitled [2] to occupy the dwelling house [3] or a spouse or former spouse of the respondent and there would be a risk of the applicant or relevant child suffering significant harm, attributable to the respondent, if the order was not made, greater than any harm caused to the respondent or relevant child if the order were made then the court have a duty to grant the order (FLA 1996, s 33(7), s 37(4)). If the applicant is not entitled to occupy the property and a cohabitant or a former cohabitant then the court must simply 'have regard' to the balance of harm test (s 36(7)(b); s 38(4)(e)). If the applicant is associated in some other way to the respondent and not entitled to occupy the property then they are unable to make an application for an occupation order.

2. The second test is usually referred to as the 'core criteria', which the court may have regard at any time when granting an occupation order, even if they have found against the applicant on the balance of harm test. The content of the core criteria depend upon the applicant's entitlement to occupy the property and their relationship with the respondent. If the applicant is entitled to occupy the property then the core criteria are (S 33(6))[4] :
 - (a) the housing needs and housing resources of each of the parties and of any relevant child;
 - (b) the financial resources of each of the parties;
 - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child; and
 - (d) the conduct of the parties in relation to each other and otherwise.

Restraining orders (http://www.cps.gov.uk/legal/p_to_r/restraining_orders/#a03)

Post-conviction

Section 12 of the DVCVA 2004 amended section 5 of the Protection from Harassment 1997 to allow the court to make a restraining order following a conviction for any criminal offence, where the conviction occurs after 30 September 2009. When sentencing for any offence the court can now, under the above provisions, make a restraining order for the purpose of protecting a person (the victim or victims of the offence or any other person mentioned in the order) from conduct which amounts to harassment or which will cause a fear of violence.

Restraining orders are therefore likely to be appropriate in cases where the defendant and the victim are known to each other (whatever the charge) and where there is a continuing risk to the victim of harassment or violence after the date of conviction.

Post-acquittal

Section 12 of the DVCVA 2004 introduced section 5A into the PHA 1997, which allows the court to make a restraining order after acquitting a defendant of any offence if the court considers it necessary to do so to protect a person from harassment from the defendant. Unlike restraining orders on conviction, there is no power to protect a person from fear of violence that falls short of harassment where the defendant has been acquitted. Harassment is not defined in the PHA 1997, except that it includes causing a person alarm or distress.

Section 5A was introduced to deal with those cases where there is clear evidence that the victim needs protection, but there is insufficient evidence to convict on the particular charges before the court. It is still open to the victim to seek a non-molestation order or injunction from a civil court. However, this more proactive approach on the part of the courts using section 5A is seen as not only avoiding delay and increased costs to the legal aid budget, but also providing a more seamless process of providing protection to victims. Section 5A only applies where there has been an acquittal. It does not apply where proceedings have been withdrawn or discontinued.

Scotland

Interdicts When deciding whether to grant an interdict, the court is meant to ensure that:

- the behaviour to be banned is unlawful
- the offender is likely to try to carry out the action(s) to be banned
- there is the likelihood of immediate harm
- the behaviour can be clearly explained so the offender can understand what it is they're banned from doing
- the interdict is necessary for the victim's protection.

Exclusion orders A court can grant an exclusion order to suspend an offender’s right to occupy the home, where the court is satisfied that the order is “necessary for the protection of the applicant or any child of the family from any conduct or threatened conduct or reasonably apprehended conduct of the non-applicant spouse, which is or would be injurious to the physical or mental health of the applicant or child”, Section 4(2) of Matrimonial Homes Act. Although the orders are intended to provide protection in the home, the Act also directed courts to consider generally whether exclusion of an offender would be unjustified or unreasonable taking into account a range of factors including the needs and resources of both parties.

b. Is legal representation/advice of victims required by law or in practice?

In all jurisdictions, victims themselves may bring civil petitions but in practice it is very difficult to do so.

c. Is free legal representation/advice available?

In all jurisdictions, victims are eligible for legal representation if they are on public benefit. Other women are eligible for assistance but must ‘contribute’ to the costs on a sliding scale, and these contributions are often more than women can or will pay.

7) a. What types of protection can be provided for in the orders (e.g., ‘no contact’ orders, orders prohibiting someone to enter a certain area, orders prohibiting someone to follow another person around, etcetera)?

See 2(a) above.

b. Is there an order that has the effect of moving/barring a violent (or threatening) person from the common or family home (eviction or barring order)? For how long can the violent/threatening person be barred? During the barring period, is help provided to the victims? And to the offender?

Yes in all jurisdictions.

In Wales & England it is called an *occupation order* and in Scotland an *exclusion order*. It is a court order that suspends the right of a married person, civil partner, or cohabitee to live in the family home.

In Scotland, If a victim has occupancy rights, she can ask a lawyer to apply to the court for an exclusion order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981. This is a court order that suspends the right of a married person, civil partner, or cohabitee to live in the family home. She can apply for an exclusion order even if she had to leave her home because of the abuse and is currently living elsewhere as long as she applies within two years of leaving. The victim will need a solicitor to apply for the order.

c. Which of these types of protection (e.g., no contact order) are imposed most often in practice?

No data available.

d. Can the different types of protection orders also be imposed in combination with each other (e.g., a no contact order and a prohibition to enter a street)?

Yes in all jurisdictions.

e. If so, which combinations are most often imposed in general?

No data available.

- 8) a. Are there any formal legal requirements for the formulation of protection orders? In other words, are there certain elements that always need to be included in the decision or does it, for instance, suffice if the restrained person is told 'not to contact' another person?

No formal requirements in any jurisdiction.

- b. How does this work in practice? How elaborate are these protection order decisions in general?

No overarching evaluation data available but anecdotally, in civil cases they are hugely dependent on the quality of legal assistance available to the victim and in criminal cases dependent on the quality of the advocacy available to the victim as well as the training and resource provided to the prosecution professionals.

- 9) a. Are there any legal limitations to the scope of these protection orders – e.g., only a couple of streets – or are the legal authorities free to decide the scope of protection orders any way they see fit?

No legal limitations.

- b. If there are limitations, which factors do the legal authorities have to take into account when deciding on the scope of protection orders?

- c. Which factors do they take into account in practice?

No empirical data available. Anecdotally, factors are highly variable, depending on court and prosecution expertise as well as presence of a trained advocate in process.

- 10) a. How are prohibitions to enter a certain area mostly delineated? For instance, are these areas indicated on a map or are they indicated by naming the surrounding streets? Or do legal authorities use radiuses ("person A is no longer allowed to be within 200 meters of the victim's house")?
b. What is the average scope of an order that prohibits someone to enter a certain area (one street, multiple streets, a village)?

No data available for 10a-b.

- 11) a. Are there any legal limitations to the duration of protection orders? Do the orders always have to be issued for a specified or a determined period? And is there a maximum or minimum duration attached to the orders?

In all jurisdictions, interdicts/injunctions are normally for a specified period of time (e.g. six months) but can be renewed; or they may be made 'until further order'.

In Wales & England and Northern Ireland, there is no limit on the length of time that **non-molestation orders** can be extended, **occupation orders** can only be extended beyond 12 months if victim has a legal right to stay in the home (i.e. as owner or co-owner, or tenant/joint tenant, or because you are or have been married to the owner/tenant). In Scotland, non-harassment orders must be for a specified time, although there is not a legal limit.

Duration of exclusion orders in Scotland

Duration depends on personal circumstances.

If victim and offender are married or in a civil partnership, an exclusion order will last until:

- one party applies to the court to suspend or change the order
- one party gives up your rights to live in the family home
- parties get divorced
- one party dies
- both lose rights to live in the property, for example, because they have been evicted.

If victim and offender have been living together, an exclusion order will last:

- for up to six months, or
- until either applies to the court to suspend or change the order.

b. Which factors do legal authorities generally take into account when deciding on the duration of a protection order?

No data available.

c. What is the average duration of the different protection orders (half a year, one year, two years)?

No data available.

12) a. To what extent (if any) do the wishes of the victims influence the imposition of protection orders? Can victims, for instance, request the cessation of protection orders?

There is no way to evidence 'influence' but all jurisdictions allow victim input and victims may request (although the request may be denied) the cessation of protection orders.

Authorities are less likely to respond to victims' requests where there is evidence of physical violence in the case.

b. In cases where a protection order is not directly requested by the victims, is there always an assessment of the victims' need for a protection order or do victims have to bring this up themselves?

Consideration of the need for a protection order is standard practice in all jurisdictions.

Although risk assessment is far from standardised, it has improved. Probably the most commonly used one is the CAADA/DASH one, which still needs to be informed by input from victim in opinion of most advocates but is an improvement on police-driven assessments, which privilege physical injury inappropriately. You can access the CAADA/DASH at http://www.caada.org.uk/marac/RIC_without_guidance.pdf

c. Can victims influence the type/scope/duration of protection orders? Are they, for instance, involved in deciding on the type of protection order or the scope of protection orders?

This depends on the quality of advocacy and extent to which police and prosecution service are engaged with victims. Certainly victims' input will be influential where engagement is adequate.

13) a. Can offenders formally challenge/appeal the imposition of protection orders?

b. To what extent (if any) do the wishes of the offender influence the imposition of protection orders? Are, for instance, (disproportionate) disadvantageous consequences for the offender taken into account?

c. Can offenders influence the type/scope/duration of protection orders? Are they, for instance, involved in deciding on the type of protection order or the scope of protection orders?

See question 6a above.

14) To what extent (if any), do practical impediments (such as shortage of police personnel, lack of available resources in certain (rural) areas) to the enforcement of protection orders play a role in the decision to impose a protection order? Do legal authorities, for instance, refuse to impose certain protection orders, because they know their enforcement in practice is problematic or do they impose these protection orders anyway (e.g., for reasons of 'sending a message' to the offender)?

No empirical data available.

Wales & England It should be kept in mind, however that the cuts to Police services have had a huge impact on action being taken by the Police to protect victims of domestic violence. Crown Prosecution Service figures show that the number of domestic violence cases referred by the police rose by 23% between 2007 and 2010. The latest available CPS data show that the number of domestic violence incidents reported by victims to the police rose from 728,145 in 2010-11 to 796,935 in 2011-12. However, the number of domestic violence cases being referred by the police to the Crown Prosecution Service to be considered for charge and prosecution has fallen from 101,242 in 2010-11 in England and Wales to 88,110 in 2012-13.

15) Can previous protection orders be taken into account in other ensuing legal proceedings against the same perpetrator (e.g., as evidence of a pattern of violence)?

Yes, in all jurisdictions.

16) a. When a protection order is issued in a case of domestic violence, are the children automatically included in the protection?

All jurisdictions

No, children are not automatically included. In Wales & England, there has to be demonstrable evidence that anyone being protected is at risk of imminent physical harm. Where the perpetrator has hit the children as well, they should be specifically named in the order and the application should include them. In most cases, even where children have witnessed the violence, the reality is they will not be included.

b. How is the order granted/implemented if the violent partner has visitation rights?

It is an assumption under the law in Wales & England and Northern Ireland that the offender will continue to have contact with the children. If the victim cannot safely come into contact with him, she will be expected to agree that someone else known to the parties - such as a grandparent - will do the handover and collection.

c. Are there any problems with protection orders and custody/visitation decisions by the courts?

Yes, the assumption of ongoing contact for the violent spouse causes significant problems for the victims. Often the offender will use contact as a means of ongoing control of the mother, e.g., he might refuse to return the children.

- 17) a. Are so-called 'mutual protection orders' (i.e., protection orders that restrain both the victim and the offender) allowed in your country?

Yes in all jurisdictions.

- b. If not or if mutual protection orders are only accepted in particular cases, in which cases are mutual protection orders prohibited and what is the rationale behind this prohibition?

NA

- 18) a. Are protection orders provided free of charge?

In all jurisdictions, in civil cases victims must get legal support or bring the application herself. Victims are eligible for legal representation to if they are on public benefit. Other victims are eligible for assistance but must 'contribute' to the costs on a sliding scale, and these contributions are often more than women can or will pay. Eligibility and contributions calculations vary across the jurisdictions, but the costs have been considered a barrier across all jurisdictions.

In criminal cases, no fees apply.

- b. If not, who has to pay for the legal costs/court fees? See a.
c. Can these costs/fees constitute an undue financial burden for the victim (and bar him/her from applying for a protection order)?

Absolutely, see a.

2.2.2. ENFORCEMENT OF PROTECTION ORDERS

If protection orders can be imposed through multiple areas of law, please make a distinction between these areas of law in answering the following questions. For instance, if a protection order can be imposed in both criminal and civil law, make sure that you answer for both areas of law where and how protection orders are registered (question 1).

- 19) Where and how are protection orders registered?

Scotland

There is no central "register" of protective orders in the way I think the question is being framed-The court will have a record of the sheriff issuing an interlocutor granting interdict, exclusion order, etc but there is no central registry of these per se.

They don't have to be "recorded" before they become operational but they have to be served on the person against whom they are made, and in certain cases that service formally recorded and stored within the case papers at court, referred to as "the court process"

Exclusion orders have to be served on the abuser and both powers of arrest and "domestic abuse interdicts" have to be served on both the abuser AND Chief Constable before they become operational and the formal notice of service has to be lodged within the process for both.

The court will instruct that various documents will have to be "served" and the victims' solicitor will have to instruct the Sheriff Officers to do this.

20) a. Is the victim always informed of the imposition of a protection order and of the conditions that the offender has to comply with?

Yes.

b. In what way is the victim informed? Does this happen automatically? By mail or letter?

This varies across both jurisdiction and locality. Depending on resources and local procedures, victim may get a telephone call, a visit from a police officer, or a letter or some combination.

21) Who is or which authorities are responsible for monitoring the compliance with protection orders? In other words, who checks whether these orders are violated or not?

No proactive mechanism is in place for monitoring civil orders across Wales & England or Northern Ireland, although local practices probably differ. Criminal justice social workers will usually monitor compliance of offenders in their caseloads, which include only those on a post-conviction order.

In Scotland, police have recently implemented a policy of visiting the victim within 24 hours of initiation of order to check on compliance and at irregular intervals after for high-tariff offenders.

22) a. Which activities can the monitoring authorities undertake to check the compliance with protection orders? (e.g., GPS, extra surveillance, house visits, etcetera)

Across all jurisdictions, a variety of monitoring mechanisms can be used. These are not prescribed in law nor guidance.

b. Which of these activities do they generally undertake in practice?

No data are available. Expanding use of electronic/GPS monitoring is under discussion in Scotland.

c. If protection orders can be monitored with the help of technical devices (e.g., GPS), how often is this used in practice?

No data are available.

d. Are protection orders actively monitored or is it generally left up to the victim to report violations?

Wales & England

Breaches are recorded but information is difficult to disaggregate for domestic violence etc. [Section 1 of the Domestic Violence Crime and Victims Act 2004, effectively gives complainants a choice on the mechanism by which a breach of a non-molestation order is dealt with. The complainant can either call the police to have the breach dealt with within the criminal jurisdiction, or they can make an application to have the person committed to custody for contempt application in the civil jurisdiction.]

In Scotland, breaches of bail conditions are recorded (see below, question 29). The number of interdicts and NHOs granted by the Scottish Court Service (SCS) in relation to domestic abuse are not available. The SCS does not have robust statistical recording systems that would allow the identification of domestic abuse related interdicts or NHOs. ([http://www.scottish.parliament.uk/S3_Bills/Domestic%20Abuse%20\(Scotland\)%20Bill/b45as3-stage2-fm.pdf](http://www.scottish.parliament.uk/S3_Bills/Domestic%20Abuse%20(Scotland)%20Bill/b45as3-stage2-fm.pdf))

e. How do the monitoring authorities generally become aware of a violation of a protection order: through the victim or through pro-active monitoring activities?

From the victim.

23) a. Is contact with the offender initiated by the victim considered a breach to the protection order?

No, as the order regulates the offender's behaviour.

b. What (if any) role does contact initiated by the victim him/herself play in establishing or proving a protection order violation?

No data available.

c. What (if any) role does contact initiated by the victim him/herself play in the official reaction to protection order violation? Are the authorities, for instance, less inclined to impose a sanction on the offender if the victim initiated contact him/herself?

No empirical data available, but anecdotal information would indicate yes.

24) a. Which evidentiary requirements have to be met before a violation of a protection order can be established?

b. Which procedure(s) has to be followed in order for the protection order to be enforced after a violation?

Wales & England, for violation of non-molestation orders, the offence is committed where a person:

- is subject to a non-molestation order; and
- does anything prohibited by the non-molestation order; and
- does not have a reasonable excuse.

If the non-molestation order was granted at an ex parte hearing, then an offence will only be committed if the person was aware of the existence of the order at the time he/she breached the order.

Scotland, breach of interdict

“The breach of the interdict does not trigger an automatic criminal justice response unless the activity which resulted in the interdict being breached is itself a criminal offence e.g. breach of the peace or assault, which the police and procurator fiscal are willing to prosecute. The police cannot arrest someone for merely breaching an interdict. To address the actual breach of interdict, which is a form of contempt of court, the pursuer can only take proceedings against the defender by lodging a fresh initial writ in court. This writ requires the concurrence but not the presence of the Procurator Fiscal, which is indicated by the signature of a fiscal depute on the initial writ submitted to the court. The writ requests the court to order the defender to appear personally to answer for the breach of interdict and on the charge being admitted, to sentence him to a fine or imprisonment. If and when the defender appears, if he denies any aspect of the proceedings, both the interdict and the alleged breach must be proved beyond reasonable doubt, however, corroboration is not required. The sanction for breach of interdict is provided by section 15 of the Contempt of Court Act 1981. The maximum penalty is 3 months imprisonment or a fine of level 4 on the standard scale contained in section 225, Criminal Procedure

(Scotland) Act 1995. Macphail (1998) notes that imprisonment for breach of interdict is rare in modern sheriff court practice.” <http://www.scotland.gov.uk/Publications/2003/11/18566/29463>

25) a. What are possible reactions/sanctions if a protection order is violated?

Across all jurisdictions, sanctions can include a fine, a suspended sentence, or jail time, depending on the type of order and the circumstances of the violation.

b. Are there only formal reactions/sanctions available, or are there also informal reactions possible to the breach of a protection order (e.g., a change of the conditions, a warning)?

No data available.

c. Which (official or unofficial) reaction usually follows on a protection order violation?

No data available.

d. In your opinion, are the sanctions/reactions to protection order violations ‘effective, proportionate and dissuasive’?

With a few exceptions, responses to violations are ineffective.

For example, in Scotland, a common law interdict is an effective instrument to curtail the actions of those who respect law and legal process. However, it is less effective in respect of those whose behaviour demonstrates an ongoing flouting of criminal law e.g. domestic abuse. The process of establishing a breach of interdict can be long and complex and if the terms of an interdict are not adhered to, the pursuer may be subjected to further abuse. Sanctions for breaches of bail conditions and other violations of protective orders are often token—a fine or at most, a night in custody.

e. Are reports of PO violations, such as emergency calls by the victims, automatically given priority (e.g., with the police)?

Yes.

26) a. Is the violation of civil, administrative or other protection orders criminalized?
In other words, is the violation of any protection order an offense in itself?

Yes, although it is a criminal offense only when the behaviour the protection order regulated was criminal.

b. If so, what is the range of sanctions (minimum and maximum penalty) attached to a violation?

Wales & England (http://sentencingcouncil.judiciary.gov.uk/docs/web_breach_of_protective_order.pdf)

(i) Restraining Order

1.2 It is an offence contrary to the Protection from Harassment Act 1997 to behave in a way which a person knows (or ought to know) causes someone else harassment (section 2) or fear of violence (section 4). When imposing sentence on an offender, a court may also impose a restraining order to prevent future conduct causing harassment or fear of violence.

1.3 An offence under these provisions may have occurred in a domestic context or may have occurred in other contexts. The Domestic Violence, Crime and Victims Act 2004 provides for such orders also to be made on conviction for any offence or following acquittal.¹

1.4 It is an offence contrary to section 5(5) of the Act to fail to comply with the restraining order without reasonable excuse. **That offence is punishable with a maximum of five years imprisonment.**

(ii) Non-Molestation Order

1.5 Section 42 of the Family Law Act 1996 provides that, during family proceedings, a court may make a non-molestation order containing either or both of the following provisions:

(a) provision prohibiting a person ("the respondent") from molesting another person who is associated with the respondent;

(b) provision prohibiting the respondent from molesting a relevant child.

1.6 Section 1 of the Domestic Violence, Crime and Victims Act 2004² inserts a new section 42A into the 1996 Act. Section 42A (1) will provide that it is an offence to fail to comply with the order without reasonable excuse.

That offence is punishable with a maximum of five years imprisonment.

1.7 In addition, breach of a non-molestation order may be dealt with as a contempt of court.

Northern Ireland

Non-molestation order

25.- Any person who without reasonable excuse contravenes-

(a) a non-molestation order;

(b) where there is in force a non-molestation order prohibiting that person from molesting another person, an occupation order or an order under Article 18;

(c) an exclusion requirement included by virtue of Article 57A of the Children (Northern Ireland) Order 1995 in an interim care order under Article 57 of that Order; or

(d) an exclusion requirement included by virtue of Article 63A of the Children (Northern Ireland) Order 1995 in an emergency protection order under Article 63 of that Order,

shall be guilty of an offence ...

Maximum Sentence: *Family Homes and Domestic Violence (NI) Order 1998, Article 25*

Summary only: 6 months imprisonment or a Level 5 Fine (£5,000) or both [for offences committed on or after 15 November 2005]

Harassment order

Protection from Harassment (NI) Order 1997, Article 5(9)

Indictment: 5 years imprisonment or an unlimited fine or both; 7 yrs for offence including fear of violence

Summary: 6 months imprisonment or a fine not exceeding

the statutory maximum (£5,000) or both

Scotland

Maximum penalties relate to the level of court in which a breach is heard:

Sheriff Court	Summary only	Summary or on Indictment (triable both way offence when prosecuted summarily)	Indictment only
Fine	Level 5 on the standard scale - £5,000	Statutory maximum	Unlimited
Imprisonment	12 months	12 months	5 years (or remit to the High Court for sentencing)
High Court of Justiciary			
Fine	N/A	N/A	Unlimited
Imprisonment	N/A	N/A	Life

Minimum sentences include community service and fines.

c. If so, how do the police generally react to a violation of a civil, administrative or other protection order?

No data available.

d. If not, can the victim still call in the help of the police and how do the police react?

No data available.

27) a. Is the monitoring authority capable of issuing a sanction following the breach of the order or does the authority have to report the violation to another authority in order for the sanction to be issued?

Across all jurisdictions: Where the breach is a criminal offense, the violation must be reported to the prosecution service.

b. If so, are they obliged to report all violations or do they have a discretionary power not to report violations?

No discretion.

c. If so, how is this discretionary power used in practice?

NA

28) Do monitoring authorities receive training in how to monitor and enforce protection orders?

No information is available about training for monitoring or enforcement.

2.2.3. TYPES AND INCIDENCE OF PROTECTION ORDERS

This section inquires after the presence of (empirical) studies into the **nature and incidence** of protection orders in your country. If such studies have been conducted, please refer to these studies and give a brief (English) summary of the research design, methods and most important outcomes of the studies in an appendix.

29) Is there any (empirical) information available on the number of protection orders imposed on a yearly basis in your country? How often are protection orders imposed on a yearly basis? Please distinguish per area of law

Scotland

Civil law statistics in Scotland can be found at <http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/civil-judicial-statistics/> These give statistics on the number of family cases, including in relation to interdicts and exclusion orders. It is important to note that, throughout these tables, data are presented on the “main crave” only – that is the case type which is listed first on the writ/summons.

Table 7: Family cases initiated and disposed of ¹ in the civil courts ² , by case type, 2008-09 to 2011-12						
Procedure	2008-09	2009-10	2010-11	2011-12	% change on 2010-11	
Initiated						
Aliment	82	88	89	69	-22	
Divorce / Dissolution	117	111	110	106	-3	

	5 2	5 9	1 8	7 8		
Exclusion Order	7	1 8	2 6	1 4	-46	
Interdict	3 8 1	4 0 9	2 6 2	3 2 9	26	
Nullity of Marriage / CP	-	-	2	1	-50	
Parental Responsibilities / Rights	2, 3 6 4	2, 7 4 2	2, 7 1 3	2, 2 7 2	-16	
Other	2 5 0	3 1 7	3 8 6	3 1 6	-18	
Total	1 4, 8 3 6	1 4, 7 3 3	1 4, 4 9 6	1 3, 6 7 9	-6	
Disposed						
Aliment	5 5	4 6	5 0	6 4	28	
Divorce / Dissolution	1 1, 5 3 8	1 0, 7 5 0	1 0, 1 1 5	9, 8 7 9	-2	
Exclusion Order	1 1	4	8	6	-25	
Interdict	9 3	1 3 4	1 4 0	1 3 7	-2	

	Ordinary cause, family action	Ordinary cause, ordinary action	Summary application	Total initiated
2011-12	4	7	2	13
2010-11	0	0	3	3
2009-10	0	0	4	4
2008-09	0	0	4	4

Cases Disposed

	Procedure			Total disposed	Granted orders ¹
	Ordinary cause, family action	Ordinary cause, ordinary action	Summary application		
2011-12	1	1	2	4	2
2010-11	0	0	1	1	0
2009-10	0	0	3	3	3
2008-09	0	0	8	8	3

Note 1: This includes Ordinary cause cases disposed as "Decree for pursuer" and Summary application cases disposed as "Application granted"

Although data are collected on bail breaches, they are not disaggregated in a way that permits identification of breaches related to interdicts and non-harassment order breaches.

No data are available regarding conditions that have been attached to bail orders or which conditions were breached.

Wales & England (http://www.cps.gov.uk/publications/docs/cps_vawg_report_2013.pdf)

Domestic violence harassment

In 2012 new legislation on stalking was announced, the next section on Harassment below, provides general data on harassment offences. The harassment offences, in which a prosecution started, as domestic violence cases, are outlined below.

Table 4 below, shows that in 2012-13:

- There were 4,217 offences flagged as domestic violence charged under Section 2 Prevention of Harassment Act (PHA) 1997 - course of conduct amounting to harassment - (compared with 4,710 in 2011-12);
- There were 775 offences flagged as domestic violence charged under Section 4 PHA 1997 - putting people in fear of violence - (compared with 1,056 in 2011-12);
- This was a fall of 10% in S2 PHA 1997 and 27% in S4 PHA 1997 prosecutions; however more breaches of restraining orders were prosecuted;
- From November 2012 the new stalking offences were introduced – 67 offences charged, 52 of which for stalking without fear/alarm or distress;
- 7,374 breaches of restraining orders were related to domestic violence; a rise of 16% from 2011-12;
- Of these, 220 were breaches of restraining orders that were made on acquittal;
- 4,414 breaches of non-molestation orders started prosecution, compared with 4,333 in the previous year.

Although there was a fall in specific harassment prosecutions (of 10% for Section 2 and 27% for Section 4); there was a 16% rise in prosecutions for breaches of restraining orders³⁵. This could possibly reflect re-offending by the same perpetrators, who are now being prosecuted for breaches of their restraining orders as opposed to a further offence under the PHA 1997, which would require two incidents to constitute a course of conduct. A breach of a restraining order would require a single incident, regardless of the type and nature of offence and would carry a higher sentence.

Northern Ireland

(http://www.courtsni.gov.uk/en-GB/Publications/Targets_and_Performance/Documents/Judicial-Statistics-2012/p_tp_Judicial-Statistics-2012.pdf)

There were 4,992 applications under the Family Homes and Domestic Violence Order disposed of in 2012 (Table E.14), a 3% decrease from the 5,160 disposed of in 2011. The majority of applications were granted (57%) in 2012. This proportion was 58% (2,972) the previous year.

Table E.14: Outcome of applications under the Family Homes & Domestic Violence Order in 2012

	Granted	Dismissed or refused	Withdrawn	Vary discharge	Other	Total
Non molestation	2811	751	848	449	12	4871
Occupation	25	12	24	6	-	67
Combination						

non-mol occupation						
Vary discharge non-mol occupation	6	10	7	31		54
Total	2842	773	879	486	12	4992

30) a. Which types of protection orders (no contact, prohibitions to enter an area, eviction from the family home, other) are imposed most often?

Data not available.

b. Which combinations of protection orders are most often imposed?

Data not available.

31) For which types of crimes are protection orders generally imposed (IPV, stalking, rape, other)?

Across all jurisdictions, the vast majority of orders are imposed for IPV. There are new laws regarding forced marriage that have just introduced Forced Marriage Protection Orders, but we have no data to report yet.

32) Is there any (empirical) information available on specific victim and offender characteristics?

a. Are protection orders generally imposed against male offenders on behalf of female victims?

Yes.

b. Which percentage of the restrainees already had a prior police record?

Data not available.

c. Which percentage of the restrainees already had a previous protection order imposed against him/her?

Data not available.

2.2.4. PROTECTION ORDER EFFECTIVENESS

*This section inquires after the presence of (empirical) studies into protection order **effectiveness** and the reaction to the violation of protection orders. If any such studies have been conducted in your country, please refer to these studies and give a brief (English) summary of the research design, methods and most important outcomes of the studies in an appendix.*

- 33) a. Is there any empirical information available on the effectiveness of protection orders in your country? Do protection orders stop or reduce the unwanted contact? Or do they have another effect (e.g. improve the well-being of the victims, change in the nature of the violence)?

England and Wales

There is a lack of robust evidence on the effectiveness of protection orders in England and Wales. There has been some research by Burton (2010) on the decline in public funding certificates issued for domestic violence proceedings from the period June 2005 – June 2008. Burton points to a number of reasons that may explain this, including: the cost of obtaining civil orders (there is a lack of clarity amongst legal practitioners about eligibility for legal aid), the lack of specialism in domestic violence by solicitors may lead to solicitors giving inappropriate advice or unsympathetic treatment, along with a negative perception about the efficacy of orders and their enforcement.

Research that does exist provides contradictory results about the efficacy of protective orders. For example Humphreys and Thiara's (2002) study reported that 13% of women interviewed found that civil protection orders were of no use. However 75% of women reported that the abuse had either stopped, they felt more protected or that the abuse had reduced. Barron (2002) reports that some advocacy services tend not to recommend the use of protection orders because of their lack of confidence in their success.

Burton (2010) notes that it is difficult to 'quantitatively assess' the impact of the recent criminalization of breaches to non-molestation orders. However Hester et al's (2008) Early Evaluation of the Domestic Violence, Crime and Victims Act 2008 provides insight in victims' and advocates views on this. Victim advocates indicated that victims welcomed the criminalization of breaches and that it encouraged victims to report breaches. Victims were reported as being generally supportive of heavier sanctions of breaches to non-molestation orders and were especially concerned with enforcement. The evaluation provides a 'snapshot' into the early implementation of legislation that aims to bring together civil and criminal protection for victims of domestic violence however further

Bettison (2012) reports on the recent introduction of restraining orders following an acquittal from a criminal court. These orders potentially offer greater support to victims involved with the criminal justice system where convictions for crimes connected to domestic abuse are difficult to secure. However, as Bettison highlights the success of these orders are dependent on the Crown Prosecution Service's willingness to apply for the orders and the court to issue them. Following first year that restraining orders came into force, data from selected police forces indicates that uptake is low. Thus suggesting that there may be a reluctance to apply for or issue orders or a lack of awareness about them.

Northern Ireland

No literature identified.

Scotland

There is a lack of robust evidence on the effectiveness of protection orders in Scotland. There has been some research by Scottish Women's Aid (2011) on the effectiveness of exclusion orders under the Matrimonial Homes (Family Protection) (Scotland) Act 1981. The research reports that there has been a decrease in the number of applications made for legal aid for exclusion orders and other protective orders. Their research

reports that only a small proportion of victims of domestic abuse use exclusion orders. This was linked to victims' pessimism that exclusions orders would be effective in protecting them from abuse and allowing them to remain their own home. There were also connections made to victims and advocates lack of awareness about exclusion orders, solicitors discouraging victims from applying and a reduction in legal aid that would finance applications for exclusion orders.

An evaluation of the Protection from Abuse (Scotland) Act 2001 was carried out by Cavanagh et al (2003). While a relatively old study, the research presents interesting findings about victims' experiences of protective orders. From questionnaires with victims, they report that over 60% experienced difficulties in accessing an interdict and only one third found that an interdict was effective in protecting them from continued abuse. They also report inconsistency about whether powers of arrest were attached to interdicts or whether they were enforced. While unable to draw firm conclusions about the effectiveness of civil protective orders in preventing further abuse, the authors' highlight that civil proceedings may be lengthy and costly to victims unlike criminal proceedings.

- b. Which percentage of the imposed protection orders are violated?
- c. If protection orders are still violated, are there any changes in the nature of the violence (e.g., violent incidents are less serious)?
- d. Is there any empirical information on the role that victims play in protection order violations (e.g., percentage of cases in which the victims themselves initiated contact)?

No data available for b-d.

- 34) Is there any empirical information available on factors which significantly influence the effectiveness of protection orders, either in a positive or a negative way?

See (1) Scottish Women's Aid (2011), Research Report The Use and Effectiveness of Exclusion Orders, Edinburgh accessed: <http://www.scottishwomensaid.org.uk/publications-resources/resource/research-report-use-and-effectiveness-exclusion-orders-011/10/13> ; (2) Cavanagh, K., Connelly, C., & Scoular, J. (2003). *An evaluation of the protection from abuse (Scotland) Act 2001*. Edinburgh, Scottish Executive, Social Research; and (3) Hester, M., Westmarland, N., Pearce, J. and Williamson, E (2008) *Early Evaluation of the Domestic Violence, Crime and Victims Act 2004 Research Series14/08*, London: Ministry of Justice

- 35) Is there any empirical information available on the formal and informal reaction of the enforcing authorities to violations?
 - a. How often (what percentage) do violations lead to a formal reaction?
 - b. How often (what percentage) do violations lead to an informal reaction?
 - c. How often (what percentage) do violations lead to no reaction?

No data available for a-c.

2.2.5. IMPEDIMENTS TO PROTECTION ORDER LEGISLATION, ENFORCEMENT AND EFFECTIVENESS

36) Which impediments are present in your country when it comes to:

- a. Problems with protection order legislation
- b. Problems with protection order imposition/issuing/procedure
- c. Problems with protection order monitoring
- d. Problems with protection order enforcement
- e. Problems with protection order effectiveness?

A key problem relates to the lack of empirical information on protection orders. Data is not routinely available on the orders issued or how effective they are in protecting victims. It is therefore difficult to carry out any monitoring.

As noted in 2.2.4, research points to problems connected to the skills and training of legal practitioners. A lack of training on domestic abuse / violence means that solicitors may not provide victims with appropriate legal advice about civil protection orders or be sympathetic.

There is a perception amongst advocates that orders are not effective. This means that they may not encourage victims to pursue civil protective orders.

Victims' access to civil protective orders presents victims with a financial burden for their own protection. This along with the reduction in legal aid funding makes access to justice difficult for many victims.

37) In your opinion, what is/are the biggest problem(s) when it comes to protection orders?

Protection orders have become increasingly better fit for the needs of victims over the last 10 years in the UK. There are several critical problems that remain however:

1. The orders are not accessible to many many victims because of the assumption that some women should pay for some or all the costs.
2. The orders are only as good as the professional understandings of the court officers, advocates, and prosecution staff. Most important is the extent to which judges and sheriffs understand the dynamics of domestic abuse and coercive control. Sadly, many of them do not understand nor are they willing to be instructed in such matters. Accountability is needed.

2.2.6. PROMISING/ GOOD PRACTICES

38) Which factors facilitate the:

- a. Imposition
- b. monitoring, and
- c. enforcement of protection orders?

See 37. For both 38 and 39:

There is some evidence, at least in Wales, Scotland, and England, that specialist courts, improved training of judiciary and prosecution professionals, and an enhanced focus on responding to perpetrators' behaviour robustly by police are slowly improving the consistency of response. This is a critical factor to improving system confidence in use of protective orders. When courts respond to violations of protection orders with more than token sanctions, the orders are, and are perceived to be, more effective.

In Scotland, police have implemented MATAAC, which is “multi-agency tasking and coordination”—activity that is solely focused on gaining intelligence about, and responding robustly to, the offender. This process is providing courts and prosecutors with improved evidence and supporting more robust responses, including more proportionate sanctions for violations of orders.

39) Which factors increase the effectiveness of protection orders? In your opinion, which factor(s) contribute most to the success of protection orders?

See 37.

40) What would you consider promising practices in your country when it comes to protection orders? Why?

The Domestic Violence Protection Order pilots in England are extremely promising. In particular because the order is faster and can be administered by police.

In Scotland, the proactive policing that is now standard practice regarding visits within 24 hours to victims also is likely to be a good move. These visits send a message and offer victims an additional opportunity to provide evidence for breaches and other prosecutions.

41) Do you have any recommendations to improve protection order legislation, imposition, supervision, enforcement and effectiveness?

Improve accountability of judiciary, ensure training is part of implementation, provide free legal assistance to all victims.

2.2.7. FUTURE DEVELOPMENTS

42) Do protection orders feature at the moment in current discussions (in politics) on the protection of victims?

Yes – as noted below new protective orders are currently being piloted in England. The Home Office is considering whether these pilots should be extended to the rest of England and Wales.

In Scotland a new specialist prosecutor for domestic abuse has been appointed. This role will co-ordinate the prosecution service's response to domestic abuse cases from across Scotland. It will also carry out a review of all prosecution policy for domestic abuse.

43) a. Will the legislation/practice on protection orders change in the nearby future? Are there, for instance, any bills proposing changes to the current practice?
b. If so, what will change?
c. Are there at the moment any pilots in your country with a new approach to victim protection orders.

Wales & England

The domestic violence protection order (DVPO) **has been piloted** within three police force areas – specifically, Greater Manchester, West Mercia and Wiltshire police force areas. The pilot was for one year and concluded on 30 June 2012. The pilot has been evaluated, and the Home Office is currently considering its findings on whether to roll the provision out across England and Wales. In the meantime, the three “pilot” police areas are continuing to operate the provision within local budgets.

- DVPOs are a new power that enables the police and magistrates courts to put in place protection for the victim in the immediate aftermath of a domestic violence incident. With DVPOs, the perpetrator can be prevented from returning to a residence and from having contact with the victim for up to 28 days, allowing the victim a level of breathing space to consider their options, with the help of a support agency.
- DVPOs are based on a two-step process, as follows:

1st Step - on being called to an incident of domestic violence, if the police have reasonable grounds to believe the victim remains at risk of domestic violence, they can choose to issue an emergency non-molestation and eviction notice – the Domestic Violence Protection Notice (DVPN). Because the DVPN is a police-issued notice, it is effective from the time of issue, thereby giving the victim the immediate support they require in such a situation. The issuing of a DVPN requires police authorisation at Superintendent rank or above.

2nd step - within 48 hours of the DVPN being served on the perpetrator, an application to a magistrates' court for a Domestic Violence Protection Order must then be made by the police and heard by the Magistrates court. Sundays and public holidays are excluded from this 48 hour time limit. The DVPN continues in effect until the court has reached a decision. If the court rules that the victim requires continued protection, then they may issue a DVPO which would last for a minimum of 14 days, to a maximum of 28 days.

The underlying legislation for DVPOs is sections 24-33 of the Crime and Security Act 2010, and can be found here - <http://www.legislation.gov.uk/ukpga/2010/17/contents>. In addition, non-statutory guidance that was developed for the three pilot areas can be found here - <https://www.gov.uk/government/publications/domestic-violence-protection-orders>.

44) Which (if any) developments in protection order legislation or enforcement do you foresee in the nearby future?

I expect to see the DVPO pilots rolled out across Wales & England sometime in the next year.

45) You have probably heard about the introduction of the European Protection Order (EPO). From now on, criminal protection orders issued in one Member State have to be recognized in another Member State. What is your opinion on the EPO? Which problems/possibilities (if any) do you foresee in the implementation of the EPO in your Member State?

I was a member of a group that considered the feasibility of the EPO in Scotland several years ago. The consensus was that an EPO would be helpful, that its implementation would not impose significant additional burdens on systems. The group (and I concurred) felt that the biggest impediment would be the challenge of congruence and communication among the justice jurisdictions within the UK rather than coordination with jurisdiction outwith the country.