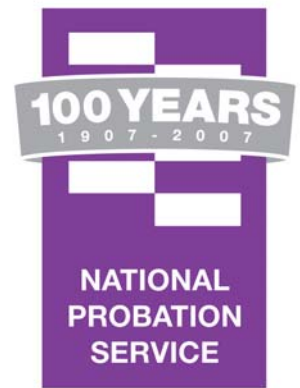


# Probation Circular



## PC31/2007 – IMPLEMENTATION OF PROVISIONS OF DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004

**IMPLEMENTATION DATE:** 20 September 2007

**EXPIRY DATE:** September 2012

**TO:** Chairs of Probation Boards, Chief Officers of Probation, Secretaries of Probation Boards

**CC:** Board Treasurers, Regional Managers

**AUTHORISED BY:** Gordon Davison, Acting Head of Public Protection and License Release Unit

**ATTACHED:** Annex A - Caseload monitoring form

Annex B – Equality Impact Assessment Form

### RELEVANT PREVIOUS PROBATION CIRCULARS

PC42/2005, PC12/2007

### CONTACT FOR ENQUIRIES

[Angela.colyer@homeoffice.gsi.gov.uk](mailto:Angela.colyer@homeoffice.gsi.gov.uk) or 020 7217 0702

## PURPOSE

This PC draws attention to the coming into force on 1 July 2007 of section 1 of the Domestic Violence, Crime and Victims Act 2004 (DV, C&V Act) and the delay in implementation of section 12 of the Act, which was scheduled to come into force on the same day.

## ACTION

Chief Officers are asked to:

- Bring the contents of this Circular to the attention of all relevant staff; and
- Ensure the attached caseload monitoring form is completed and returned to PPU by 31 January 2008 and 30 April 2008.

## SUMMARY

Section 1 of the DV, C&V Act 2004 makes breach of a non-molestation order a criminal offence. Breach will be punishable by up to five years' imprisonment on indictment. Section 1 came into force on 1 July 2007. Section 12 of the Act enables courts to impose restraining orders when sentencing for any offence and on acquittal. The implementation of section 12 was originally scheduled for 1 July 2007 but has been delayed until further notice due to the need to carry out further work on its implementation. This Circular sets out details of both sections of the Act and highlights issues for court staff, report writers and offender managers. A further communication will be sent to Areas once the implementation date of s12 is known.

### **Section 1**

Section 1 of the DV, C&V Act 2004 makes breach of a non-molestation order a criminal offence. A non-molestation order is a protective order under the Family Law Act 1996, which is made by a judge in a civil court for the purpose of restraining a person, either directly or indirectly from molesting an 'associated person' or a relevant child, or from otherwise doing what the court orders the person not to do. Molestation can include visiting or hanging around a workplace, home or children's school; contacting a person by letter, phone, email or text (even on one occasion); and getting someone else, for example a friend or family member, to contact a person on their behalf.

Prior to the coming into force of section 1, breach of a non-molestation order had been punishable only as a civil contempt of court. Speedy enforcement depended on whether the court attached a power of arrest to the order. If no power of arrest was attached, the victim had to go to the civil court to get an arrest warrant.

From 1 July 2007, when a non-molestation order is made the order will state that breach is an arrestable offence. A person may be arrested for breaching a non-molestation order if they do so without reasonable excuse and at a time when they were aware of the existence of the order. If a person is arrested for breaching an order, they will be taken before the Magistrates' Court in the first instance. The maximum penalty for the offence of breaching an order is 5 years' imprisonment. Section 1 applies to orders made from 1 July 2007. It cannot be applied retrospectively to orders made prior to 1 July 2007, which will continue to be punishable only as a civil contempt of court.

### **Section 12**

At present, restraining orders are available only when an offender has been convicted under sections 2 or 4 of the Protection from Harassment Act 1997 of either harassment or putting someone in fear of violence. Once implemented, section 12 of the DV, C&V Act 2004 will amend section 5 of the Protection from Harassment Act 1997 and insert a new section 5A to give courts wider powers to impose restraining orders. It will extend the court's power to make a restraining order on conviction for *any* offence, rather than only on conviction for offences under the 1997 Act. This provision will also introduce the ability for the courts to impose restraining orders – for any offence – where the defendant has been acquitted. The aim of section 12 is to deal with the situation where a criminal case ends in acquittal but it is apparent from the circumstances of the case that the victim needs continuing protection. The purpose of the restraining order would be preventative, not punitive – a measure to protect someone from harassment.

A further circular will be issued once the date of implementation of section 12 is known.

### **Court staff and report writers**

It is the role of court officers to advise courts as to which pre-sentence report type best meets the court's sentencing needs. PC12/2007 provides a PSR decision tool and indicates that a Standard Delivery Report should normally be required in domestic abuse cases. As part of the process of preparing that Standard Delivery Report a full OASys risk of harm assessment may also be needed, depending on the severity of the offence circumstances. Currently, when a court is sentencing for an offence under sections 2 or 4 of the Protection from Harassment Act 1997, report writers should consider whether the risk of harm assessment indicates that a restraining order is required to protect a victim from

harassment. If the report writer concludes that a restraining order is required, the report should include a proposal to this effect, specifying what conditions should be attached to the restraining order. The proposed restraining order should also be included within the outline sentence plan. When section 12 of the DV, C&V Act 2004 comes into effect, it will enable courts to impose restraining orders for any offence, and report writers will wish to extend their consideration of the need for a restraining order accordingly.

Report writers will also wish to have regard to the Sentencing Guidelines on Breach of a Protective Order<sup>1</sup>, which indicate that when sentencing for breach of a protective order the main aim should be to achieve future compliance with that order where that is realistic. Sentencing following a breach is for breach alone, and care should be taken to avoid punishing the offender again for the offence or conduct for which the order was made. The Sentencing Guidelines on Breach also indicate that where violence is involved in the breach of a restraining order or a non-molestation order, custody is the starting point for sentence. It is likely that all breaches of a protective order, such as non-molestation or restraining orders, will pass the threshold for a community sentence. Court staff should ensure that offender managers are informed of breaches of protective orders and the imposition of restraining orders.

### ***Offender managers***

Offender managers have an important role in supporting the enforcement of protective orders such as non-molestation orders and restraining orders. Offender managers need to be aware of such orders, ensure they are included in risk management and sentence plans, monitor restrictive requirements and liaise with police around issues of suspected breach of orders. Where an offender on a domestic abuse treatment programme is suspected of breaching a protective order, the offender manager should liaise with programme staff, including women safety workers. Where there are concerns about children arising from a suspected breach, agreed safeguarding children procedures must be followed. Offender Managers should ensure that offender behaviour is monitored and breach action taken appropriately. Breach action may raise the risk to the victim/partner whom the offender may blame inappropriately for the breach action being taken. This should not prevent breach action being taken, but offender managers must take action to manage any change in risk levels through local risk management arrangements, including MAPPA where appropriate.

### ***Caseload monitoring***

It is difficult accurately to assess the likely resource implications for the probation service of criminalising breach of non-molestation orders. There is little reliable information on breach rates and, as this is a new provision, we do not yet know how sentencers in the criminal courts will deal with breach cases. We are, therefore, asking Areas to monitor breach caseloads to provide information to inform predictions for future years. A monitoring form is provided at Annex A, which should be completed and returned to Angela Colyer, PPU. Data for July – December 2007 should be returned by 31 January 2008. Data for January – March 2008 should be returned by 30 April 2008.

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<sup>1</sup> *Breach of a Protective Order: Definitive Guidance*, Sentencing Guidelines Council, December 2006

***Further information***

HM Courts Service (HMCS) has updated the guidance *Domestic Violence: A Guide to Civil Remedies and Criminal Sanctions* to reflect the provisions of the Domestic Violence, Crime and Victims Act. Copies are available from:

Domestic Violence Branch  
Family Justice Division  
Ministry of Justice  
4<sup>th</sup> Floor  
54 Victoria Street  
London  
SW1E 6QW  
Tel: 020 7210 8339

Copies of the Sentencing Guidelines on Breach of a Protective Order are available from:

Sentencing Guidelines Secretariat  
8-10 Great George Street  
London  
SW1P 3AE  
[www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)



UNCLASSIFIED

Custodial Sentence: under 12 months									
Custodial sentence: 12 months or over but less than 4 years									
Custodial sentence: 4 years & above									

Please complete and return to Angela Colyer, Public Protection Unit (Angela.colyer@homeoffice.gsi.gov.uk or Angela.colyer@justice.gsi.gov.uk)

**Data for July – December 2007 should be returned by 31 January 2008**  
**Data for January – March 2008 should be returned by 30 April 2008.**

## **Equality Impact Assessment**

Preliminary Screening

Statistics & Research

Gathering Evidence through Community Engagement

Assessment & Analysis

Action Plan

The EIA Report

<b>EQUALITY IMPACT ASSESSMENT</b>
Group
Performance and Improvement
Public Protection Unit

**PRELIMINARY SCREENING**

<b>Date of Screening</b>	17 July 2007
<b>Name of Policy Writer</b>	Angela Colyer
<b>Director General</b>	

<b>Implementation of Provisions of Domestic Violence, Crime and Victims Act 2004</b>	<b>X</b>	This is a <b>new</b> policy
		This is a <b>change</b> to an existing policy
		This is an <b>existing</b> policy

**Policy Aims, Objectives & Projected Outcomes**

To draw attention to the coming into force on 1 July 2007 of s1 of the Domestic Violence, Crime and Victims Act and the delay in implementation of s12 of the Act. The PC sets out details of both sections of the 2004 Act and highlights issues for court staff, report writers and offender managers.

Will the policy have an impact on national or local people/staff?	The advice is aimed at all managers and staff in NPS
Are particular communities or groups likely to have different needs, experiences and/or attitudes in relation to the policy	Research indicates that domestic abuse takes place in any section of the community regardless of race, culture, gender, age, class, sexuality and disability. Criminalising the breach of non-molestation

	orders (s1) should simplify things for victims and enhance their security and should also deter offenders from breaching orders.
	NPS staff's operational involvement with perpetrators and victims as a result of the new provisions will be covered by existing policies and National Standards.
Are there any aspects of the policy that could contribute to equality or inequality?	NO
Could the aims of the policy be in conflict with equal opportunity, elimination of discrimination, promotion of good relations?	NO
If this is an amendment of an existing policy, was the original policy impact assessed?	N/A

If your answer to any of these questions is **YES, go on to the full EIA.**

If you have answered **NO to any particular questions**, please provide explanatory evidence.

If you have answered **NO to all of these questions** then you must also attach the following statement to all future submissions that are related to this policy and ensure it is signed off by senior management. You must also include this statement within any regulatory impact assessment that is related to this policy.

**“This policy was screened for impact on equalities on [insert date]. The following evidence [Evidence] has been considered. As a result of this screening, it has been decided that a full equality impact assessment is not required. “**

## FULL IMPACT ASSESSMENT

### STATISTICS & RESEARCH

**What relevant quantitative & qualitative data do you have in relation to this policy?**

Please site any quantitative (e.g. statistical research) and qualitative evidence (monitoring data, complaints, satisfaction surveys, focus groups, questionnaires, meetings, research interviews etc) of communities or groups having different needs, experiences or attitudes in relation to this policy area.

<b>Equality Target Areas</b>	<b>How does the data identify potential or known positive impacts?</b>  <b>How does the data identify any potential or known adverse impacts?</b>
<b>Race</b> (consider e.g. nationalities, Gypsies, Travellers, languages)	
<b>Disability</b> (consider social access and physical access)	
<b>Gender</b>	
<b>Gender Identity</b>	
<b>Religion and Belief</b>	
<b>Sexual Orientation</b>	
<b>Age</b>	

<p><b>What research have you considered commissioning to fill any data gaps?</b></p> <p>For example, you may need to ensure quantitative &amp; qualitative data groups include stakeholders with respect to this policy. N.B Include any recommendations in your action plan</p>

<p><b>Who are the stakeholders, community groups, staff or customers for this policy area?</b></p>

<p><b>What are the overall trends and patterns in this qualitative &amp; quantitative data?</b></p> <p>Disproportionality; regional variations; different levels of access, experiences or needs; combined impacts.</p>

<p><b>Please list the specific equality issues that may need to be addressed through consultation (and further research)?</b></p>
<ul style="list-style-type: none"><li>•</li></ul>     

## **GATHERING EVIDENCE THROUGH COMMUNITY ENGAGEMENT**

**INTERNAL STAKEHOLDER ENGAGEMENT:** Consulting & involving Other Government Departments, Staff, Agencies & NDPBs

<b>Does this policy affect the experiences of staff? How? What are their concerns?</b>	
<b>Staff</b>	
<b>Staff Networks &amp; Associations</b>	
<b>Trade Unions</b>	

**How have you consulted, engaged and involved internal stakeholders in considering the impact of this proposal on other public policies and services?**

For example your policy may affect access to housing, education, health, employment services.

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**What positive and adverse impacts were identified by your internal consultees? Did they provide any examples?**

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**Feedback the results of this internal consultation and use it as a basis for work on external consultation**

**EXTERNAL CONSULTATION & INVOLVEMENT**

<b>How did your engagement exercise highlight positive and negative impacts on different communities?</b>	
<b>Voluntary Organisations</b>	
<b>Race</b>	
<b>Faith</b>	
<b>Disability Rights</b>	
<b>Gender</b>	
<b>Gender Identity</b>	
<b>Sexual Orientation</b>	
<b>Age</b>	

**Feedback the results of your community engagement (i.e. involvement and consultation) to all participants including internal and external stakeholders**

## ASSESSMENT & ANALYSIS

**Does the EIA show a potential for differential impact on any group(s) if this proposal is introduced? If Yes, state briefly whether impact is adverse or positive and in what equality areas.**

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**What were the main findings of the engagement exercise and what weight should they carry?**

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**Does this policy have the potential to cause unlawful direct or indirect discrimination? Does this policy have the potential to exclude certain group of people from obtaining services, or limit their participation in any aspect of public life?**

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**How does the policy promote equality of opportunity?**

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**How does your policy promote good relations? How does this policy make it possible for different groups to work together, build bridges between parallel communities, or remove barriers that isolate groups and individuals from engaging in civic society more generally?**

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**How can the policy be revised, or additional measures taken, in order for the policy to achieve its aims without risking any adverse impact?**

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**Are there any concerns from data gathering, consultation and analysis that have not been taken on board?**

Please justify and explain the reason for your decision.

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## ENSURING ACCESS TO INFORMATION

**How can you ensure that information used for this EIA is readily available in the future?**

(N.B. You will need to include this in your action plan)

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**How will you ensure your stakeholders continue to be involved/ engaged in shaping the development/ delivery of this policy?**

(N.B. You will need to include this in your action plan)

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**How will you monitor this policy to ensure that the policy delivers the equality commitments required?**

(N.B. You will need to include this in your action plan)

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**Now submit your EIA and related evidence to the Equality & Diversity Unit for quality assurance and clearance.**

## ACTION PLAN

Recommendations	Responsibility	Actions required	Success Indicators	Target Date	What progress has been made?
Data Collection					
Publication Arrangements					
Monitoring & Review Arrangements					
List other recommendations that are required					

**Please ensure that the action plan is agreed by your Director/ Minister**

## **THE EQUALITY IMPACT ASSESSMENT REPORT**

The EIA report is a concise summary of the results of your EIA work. You should ensure that you cover the topics described below.

### **Background:**

- Context of policy/programme
- Link to strategic aims and objectives
- Scope of the EIA work (e.g. if linked to previous EIA or work delivered by another Government Department)

### **Methodology:**

- Approach to data collection and analysis
- Results of consideration of existing evidence

### **Consultation & Involvement:**

- Stakeholder/community involvement in developing proposals
- List of organisations engaged (optional)

### **Assessment & analysis**

- Key Findings from the data collection and community engagement
  - Positive impacts: existing or potential
  - Adverse impacts: existing or potential

### **Recommendations**

- Describe how you will respond to the key findings by:
  - strengthening the potential for positive impact,
  - removing areas that may exacerbate or engender adverse impact
  - including measures to mitigate any adverse impact that may occur
  - including measures that ensure ongoing compliance with statutory obligations
  - monitoring arrangements
  - ensuring continued public access to information about the policy/programme.
  - action plan (optional)

### **Date of EIA Report**

### **Date of Publication of Results**

**Ensure that the EIA Report is published on the NOMS/ MoJ website before your policy/programme is implemented.**