

**PRACTICE DIRECTION UPDATE No. 4 of 2024**

The new Practice Direction, supplementing the Family Procedure Rules 2010, is made by the President of the Family Division under the powers delegated to him by the Lady Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by Lord Bellamy KC, Parliamentary Under-Secretary of State, Ministry of Justice.

The new Practice Direction 36ZG comes into force on the day after the date on which this Practice Update is signed.

Signed:

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Date:

Sir Andrew McFarlane, The President of the Family Division

Signed:

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Date: 8<sup>th</sup> May 2024

Lord Bellamy KC, Parliamentary Under-Secretary of State, Ministry of Justice

**NEW PRACTICE DIRECTION 36ZG – PART 3 OF THE DOMESTIC ABUSE ACT 2021:  
PROVISION DURING PILOTED COMMENCEMENT**

(1) After Practice Direction 36ZF insert new Practice Direction 36ZG as set out in the Annex to this Practice Direction Update.

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ANNEX

NEW PRACTICE DIRECTION 36ZG TO BE INSERTED AFTER PRACTICE DIRECTION 36ZF

**PRACTICE DIRECTION 36ZG – PART 3 OF THE DOMESTIC ABUSE ACT 2021: PROVISION DURING PILOTED COMMENCEMENT**

This Practice Direction supplements rule 36.2A FPR (Domestic Abuse Act 2021: provision during pilot commencement of Part 3).

**1. Scope and application of the Family Procedure Rules 2010 and associated practice directions**

1.1 This practice direction applies to proceedings in the family court and Family Division of the High Court under Part 3 of the Domestic Abuse Act 2021 during the piloted commencement of that Part.

1.2 The Family Procedure Rules 2010 (FPR) and associated practice directions apply to proceedings to which this practice direction applies, but where a provision of the FPR or practice directions conflict with this practice direction, this practice direction will take precedence.

1.3 During the operation of the pilot—

- (a) rule 16.6 FPR will apply as modified by paragraph 1.4; and
- (b) Practice Direction 5A will apply as modified by paragraph 1.5.

1.4 In rule 16.6 FPR, after paragraph (1)(d) insert—

“(e) under Part 3 of the Domestic Abuse Act 2021”.

1.5 In Practice Direction 5A—

(a) in Table 1, after the row relating to Part 34 Reciprocal Enforcement of Maintenance Orders insert—

“Part 36 Transitional Arrangements and Pilot Schemes	DA1, DA2, DA3”
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(b) in Table 2, after the row for form D651 insert—

“DA1	Application for a domestic abuse protection order (DAPO)
DA2	Application for leave to apply for a domestic abuse protection order (DAPO)
DA3	Application to vary or discharge a domestic abuse protection order (DAPO)”

## **2. Interpretation**

2.1 In this practice direction—

“the 2021 Act” means the Domestic Abuse Act 2021;

“DAPO” means a domestic abuse protection order within the meaning of section 27 of the 2021 Act;

“an individual” means a person (whether legally represented or not) who is not applying on behalf of an organisation, and includes the person to be protected;

“organisation” includes a local authority, an NHS trust established under section 25 of the National Health Service Act 2006 or under section 18 of the National Health Service (Wales) Act 2006, a charity or a company (whether incorporated or not);

“P” means the person against whom a DAPO is sought or against whom the DAPO has been made;

“personally connected” has the meaning given by section 2 of the 2021 Act;

“person to be protected” means—

(a) the person who will be protected by the DAPO applied for or being considered by the court of its own initiative, if that order is made; or

(b) the person who is being protected by the DAPO, where a DAPO has been made;

“piloted commencement” means during any period when, pursuant to regulations made under section 90(7) to (9) of the 2021 Act, any provisions of Part 3 are in force only for a specified purpose, in relation to a specified area or for a specified period”;

“relevant occupant” means a person within the meaning of section 33(2) of the 2021 Act”;

“responsible person” means the person who is, or is to be, responsible for supervising or monitoring compliance with a positive requirement, or an electronic monitoring requirement, as the case may be.

## II — APPLICATION FOR A DAPO

### **3. Application for a DAPO on notice**

3.1 An application for a DAPO may be made by—

(a) the person to be protected; or

(b) an individual or organisation who has been granted permission by the court to apply under section 28(2)(d) of the 2021 Act.

3.2 An application for a DAPO must be made using Form DA1 and be supported by a witness statement.

3.3 An application for a DAPO made by an organisation must state—

(a) the nature of the organisation;

- (b) the name and address of the person submitting the application; and
- (c) the position which that person holds in the organisation.

3.4 An application for a DAPO must set out the following information, if known—

- (a) whether the contact details for the applicant or the person to be protected, if that person is not the applicant, are to be kept confidential;
- (b) the opinion of the person to be protected about the making of an order, if that person is not the applicant;
- (c) where the application relates to a property—
  - (i) the opinion of any relevant occupant about the making of an order; and
  - (ii) details of any mortgagee or landlord of the property; and
- (d) details of—
  - (i) the times and location of where P normally works or attends an educational or religious establishment;
  - (ii) any other court order or injunction to which P is or was previously subject, including a DAPO made against P; and
  - (iii) any application for a court order or injunction in respect of P, including a DAPO, which has been refused by the court.

3.5 Where the contact details for the applicant or the person to be protected, if that person is not the applicant, are to be kept confidential, the applicant must also complete Form C8 (confidential contact details form).

3.6 An application for a DAPO on notice must be served in accordance with paragraph 8.

3.7 This paragraph applies to an application for variation or discharge of a DAPO as it applies to an application for a DAPO on notice, except such an application is to be made using Form DA3.

(Section 32(2) of the 2021 Act provides that the first condition that a court must be satisfied of before making a DAPO is that on the balance of probabilities P has been abusive towards a person aged 16 or over to whom P is personally connected. Section 32(5) provides that a DAPO cannot be made against a person who is under the age of 18.)

(Section 28 of the 2021 Act requires an application to be made to the family court unless the person to be protected is applying in existing proceedings where they and P are parties and the court would have the power under section 31(2) to make a DAPO in those proceedings, in which case the application may be made to the family court or the Family Division of the High Court.)

(The person to be protected may also apply for a DAPO to the county court in existing proceedings where they and P are parties and the court would have the power under section 31(7) of the 2021 Act to make a DAPO in those proceedings.)

(Section 28 of the 2021 Act enables the appropriate chief officer of police, as defined in that section, to apply for a DAPO by complaint to a magistrates' court. In criminal proceedings, where P has been convicted or acquitted of an offence, the court dealing with the conviction or acquittal may make a DAPO against P (section 31(3) – (5) of the 2021 Act). And where

the Crown Court in criminal proceedings allows a person's appeal against a conviction for an offence, it may make a DAPO against the person (section 31(6) of the 2021 Act.)

(Section 33(3) of the 2021 Act provides that the court may make a DAPO without the consent of the person to be protected.)

#### **4. Application for a DAPO without notice to P**

4.1 An application for a DAPO may be made without notice to P.

4.2 Where an application is made without notice to P, the witness statement in support of the application must explain why notice has not been given.

4.3 Subject to paragraph 4.4, the application must be completed in accordance with the relevant provisions of paragraph 3.

4.4 The application must be served in accordance with paragraph 9.

4.5 This paragraph applies to an application for variation or discharge of a DAPO without notice to P as it applies to an application for a DAPO without notice to P, except such an application is to be made using Form DA3.

(Section 34(1) of the 2021 Act enables the court to make a DAPO without notice to P where it is just and convenient to do so. Where the court makes a DAPO without notice to P, it must provide P with an opportunity to make representations about the order as soon as just and convenient at a hearing (section 34(4).)

#### **5. Permission to apply for a DAPO**

5.1 An application to the court for permission to apply for a DAPO under section 28(2)(d) of the 2021 Act may be made without notice to P.

5.2 An application for permission must be made using Form DA2 and set out—

- (a) whether the contact details for the applicant are to be kept confidential;
- (b) the reasons for making the application on behalf of the person to be protected; and
- (c) the applicant's connection with the person to be protected.

5.3 Where the contact details for the applicant are to be kept confidential, the applicant must also complete Form C8 (confidential contact details form).

5.4 The application for permission must be accompanied with the proposed DAPO application, completed in accordance with the relevant provisions of paragraph 3, together with sufficient copies for service on P, the person to be protected and any other person directed by the court.

5.5 Where an application for permission is made without notice to P, it must explain why notice has not been given.

5.6 As soon as practicable after receiving an application under paragraph 5.2, the court must—

- (a) grant the application for permission; or

(b) fix a date for the hearing of the application for permission.

5.7 Subject to paragraph 5.8, the court officer must inform the following persons of the court's action under paragraph 5.6—

(a) the applicant;

(b) P;

(c) the person to be protected; and

(d) any other person directed by the court.

5.8 If the application for permission was made without notice to P, paragraph 5.7(b) does not apply unless the court directs otherwise.

5.9 Where permission is granted to apply for a DAPO and—

(a) the application for a DAPO is made on notice to P, the application must proceed in accordance with the relevant provisions of paragraph 3; or

(b) the application for a DAPO is made without notice to P, the application must proceed in accordance with the relevant provisions of paragraph 4.

## **6. Application for a DAPO in existing proceedings**

6.1 An application for a DAPO by the person to be protected made in existing proceedings under section 31(2) of the 2021 Act, in which the person and P are both parties, may be made—

(a) in the family court or the Family Division of the High Court; and

(b) only by the person to be protected.

6.2 The application may be made—

(a) orally or in writing; and

(b) without notice to P.

6.3 Subject to paragraph 6.5(a), if the application is made in writing it must be—

(a) made using Form DA1; and

(b) completed in accordance with the relevant provisions of paragraph 3.

6.4 If the application is made orally, the applicant must detail the information required by paragraph 3.4 to the court.

6.5 If the application is made without notice to P and—

(a) in writing—

(i) the applicant must explain why notice has not been given in Form DA1; and

(ii) it must be completed in accordance with the relevant provisions of paragraph 4; or

(b) orally, the applicant must—

- (i) explain to the court why notice has not been given; and
- (ii) detail the information required by paragraph 4.3 to the court.

6.6 Where the application is made on notice it must be served in accordance with paragraph 10.

6.7 This paragraph applies to an application for any variation or discharge of a DAPO in existing proceedings as it applies to an application for a DAPO in existing proceedings, except such an application, if in writing, is to be made using Form DA3.

### III — PARTIES

#### **7. Parties**

7.1 Where the person to be protected is not the applicant (whether or not that person is a child aged 16 or 17) the court must consider, at every stage in the proceedings, whether to join that person as a party to the proceedings.

7.2 The court may join the person to be protected as a party to proceedings if it considers it is in the best interests of that person to do so.

7.3 Where the court joins a child as a party to proceedings, the court must consider if the child should have a litigation friend to conduct the proceedings on the child's behalf.

7.4 A person, including the person to be protected, may make an application to the court for that person or another person to—

- (a) be joined as a party to the proceedings; or
- (b) cease to be a party to the proceedings,

under Part 18.

7.5 As soon as practicable after receiving an application under paragraph 7.4, the court must do one of following—

- (a) grant the application, where it is under paragraph 7.4(a);
- (b) order that the application be considered at a hearing and fix a date; or
- (c) invite written representations as to whether the application should be granted, to be filed within a specified period, and on expiry of that period act as it sees fit under subparagraph (a) or (b).

7.6 The court officer must inform—

- (a) the applicant under paragraph 7.4;
- (b) the person to be protected and P (if those persons are not the applicant);
- (c) the person who applied for the DAPO (if that person is not the applicant or the person to be protected); and
- (d) any other person directed by the court,

of the court's action under paragraph 7.5.

7.7 The court may at any time direct that—

- (a) a person be joined as a party to the proceedings; or
- (b) that a party to the proceedings cease to be a party,

and such direction may be made by the court of its own initiative or on application under paragraph 7.4.

7.8 Where the court directs that a person be joined as a party or that a party cease to be a party under paragraph 7.7, it may give consequential directions as to—

- (a) service of the application for the DAPO and other relevant documents on the new party; and
- (b) the management of the proceedings.

7.9 This paragraph applies to proceedings for any variation or discharge of a DAPO as it applies to proceedings for a DAPO.

(For when a child should be joined as a party to proceedings generally see section 1 of Part 4 of Practice Direction 16A).

(Chapter 5 of Part 16 and Part 2 of Practice Direction 16A make general provision about the appointment of a litigation friend.)

#### IV — SERVICE OF APPLICATIONS

### **8. Service of application for a DAPO on notice**

8.1 Where a DAPO application is made on notice, subject to paragraph 8.2, the applicant must serve a copy of the DAPO application and supporting statement, together with notice of the hearing on—

- (a) P, personally;
- (b) the person to be protected (if that person is not the applicant); and
- (c) any other person directed by the court,

not less than 2 days before the date on which the application will be heard.

8.2 The court may direct that—

- (a) service is effected by an alternative method or at an alternative place; or
- (b) service be dispensed with.

8.3 Subject to paragraph 8.6, where the applicant is—

- (a) an organisation, service must be effected by the organisation, the organisation's representative or the representative's agent;
- (b) an individual who is represented, service must be effected by their representative or the representative's agent; and

- (c) an individual acting in person, the court officer must effect service.
- 8.4 The court may abridge the period specified in paragraph 8.1.
- 8.5 Service on any person other than P (who must be served personally) must be in accordance with Part 6.
- 8.6 Where the person to be served is a child—
  - (a) unless the court directs otherwise, the court officer must not effect service; and
  - (b) the court must give directions as to how service is to be effected.
- 8.7 Where the documents listed in paragraph 8.1 are served on the person to be protected (and that person is not the applicant), they must be accompanied by a notice informing that person—
  - (a) how to apply to be joined as a party to the proceedings; and
  - (b) of that person's right to make representations orally or in writing at any hearing.
- 8.8 Where the DAPO application relates to a property and sets out details of any mortgagee or landlord of the property pursuant to paragraph 3.4(c)(ii), the applicant must serve on the mortgagee or landlord—
  - (a) a copy of the application; and
  - (b) notice of the right to make representations in writing.
- 8.9 A certificate of service stating the date and time of service on each person served must be filed by—
  - (a) the person or organisation who served the DAPO application and any other documents; or
  - (b) the representative of the person or organisation.
- 8.10 This paragraph applies to service of an application for variation or discharge of a DAPO on notice as it applies to service of an application for a DAPO on notice.

(Rule 6.35 FPR enables the court to direct that service is effected by an alternative method or at an alternative place and rule 6.36 FPR enables the court to dispense with service.)

## **9. Service of application for a DAPO without notice to P**

- 9.1 This paragraph applies where an application for a DAPO without notice to P is made by—
  - (a) the person to be protected; or
  - (b) an applicant who has been granted permission by the court to apply for a DAPO under section 28(2)(d) of the 2021 Act.
- 9.2 The applicant must serve the following persons with the documents listed in paragraph 9.3—
  - (a) any person directed by the court (where the applicant is the person to be protected); and

(b) where the applicant has been granted permission by the court to apply for a DAPO under section 28(2)(d) of the 2021 Act—

- (i) the person to be protected; and
- (ii) any other person directed by the court,

not less than 2 days before the date on which the application will be heard.

9.3 The documents that must be served on the persons listed in paragraph 9.2 are—

- (a) a copy of the DAPO application and supporting statement;
- (b) notice of the hearing; and
- (c) the notice of information for the person to be protected, if required by paragraph 8.7.

9.4 The court may abridge the period specified in paragraph 9.2.

9.5 Where the DAPO application relates to a property and sets out details of any mortgagee or landlord of the property pursuant to paragraph 3.4(c)(ii), the applicant must serve on the mortgagee or landlord—

- (a) a copy of the application; and
- (b) notice of the right to make representations in writing.

9.6 The documents under paragraphs 9.3 and 9.5 must be served in accordance with the relevant provisions of paragraph 8.

9.7 This paragraph applies to service of an application for variation or discharge of a DAPO without notice to P as it applies to service of an application for a DAPO without notice to P.

## **10. Service of application for a DAPO in existing proceedings**

10.1 This paragraph applies where the person to be protected applies for a DAPO in existing proceedings in which both the person and P are parties.

10.2 The person to be protected must serve a copy of the DAPO application and supporting statement, if made in writing, together with notice of the hearing on—

- (a) P, personally, unless it is made without notice to P; and
- (b) any other person directed by the court,

not less than 2 days before the date on which the application will be heard.

10.3 The court may abridge the period specified in paragraph 10.2.

10.4 Where the DAPO application relates to a property and sets out details of any mortgagee or landlord of the property pursuant to paragraph 3.4(c)(ii), the person to be protected must serve on the mortgagee or landlord—

- (a) a copy of the application, if made in writing; and
- (b) notice of the right to make representations in writing.

10.5 The documents under paragraphs 10.2 and 10.4 must be served in accordance with the relevant provisions of paragraph 8.

10.6 This paragraph applies to service of an application for variation or discharge of a DAPO in existing proceedings as it applies to service of an application for a DAPO in existing proceedings.

## V — DAPO PROCEEDINGS

### 11. Hearings

11.1 Subject to paragraph 11.2, any hearing relating to proceedings under this Practice Direction will be in private unless the court directs otherwise.

11.2 Where—

(a) the DAPO application or the application for variation or discharge of the DAPO is made in existing proceedings under paragraph 6; or

(b) the court is considering making, varying or discharging a DAPO, in existing proceedings, under paragraph 16,

the hearing must be—

(i) in public, if the existing proceedings are in public; or

(ii) in private, if the existing proceedings are in private,

unless the court directs otherwise.

### 12. Representations in respect of DAPOs

12.1 Where the court makes a DAPO without notice to P under paragraph 4 or 6 (or varies or discharges a DAPO under paragraph 22) it must fix a hearing date, to consider any representations made by P.

12.2 Where the court makes a DAPO of its own initiative under paragraph 16 (or varies or discharges a DAPO of its own initiative under paragraph 22), it may direct that a hearing be held to consider any representations made by any of the persons served with the DAPO under paragraph 16 including where a DAPO is varied or discharged by the court under paragraph 22.

12.3 Where the order relates to a property and details of any mortgagee or landlord of the property were set out in the DAPO application pursuant to paragraph 3.4(c)(ii), the court may direct that a hearing be held to consider any representations made by the mortgagee or landlord.

12.4 An order made under paragraph 12.1 must be served in accordance with the relevant provisions of paragraph 18.

12.5 Where the court makes an order under paragraph 12.2 or 12.3, it must give directions as to how the order, and any other documents directed by the court, are to be served.

## VI — PROVISIONS IMPOSED BY A DAPO

### **13. General**

13.1 This paragraph applies where the court makes or varies a DAPO—

- (a) on application; or
- (b) of its own initiative in existing proceedings.

13.2 The court must—

- (a) have regard to the terms of a DAPO already made against P ('the previous order'), if any;
- (b) where a previous order has been made, consider whether the DAPO ('the new order') should specify that it takes effect on the previous order ceasing to have effect; and
- (c) tell P about the notification requirements that P must comply with under sections 41 and 42 of the 2021 Act.

13.3 A DAPO must set out—

- (a) the requirements which are to be imposed on P; and
- (b) the duration—
  - (i) of each requirement imposed on P; and
  - (ii) for which the order is to have effect.

(Section 35(1) of the 2021 Act specifies that 'requirement' includes any prohibition or restriction.)

(Section 36(1) of the 2021 Act provides that requirements imposed on P by a DAPO must not, as far as practicable, conflict with P's religious beliefs, interfere with the times at which P normally works or attends an educational establishment or conflict with the requirements of any other court order or injunction to which P is subject.)

(Sections 41 and 42 of the 2021 Act impose mandatory notification requirements on P. Within 3 days of a DAPO being made, P must notify the police of their name and home address. And P must notify the police of any changes to such details within 3 days of it happening.)

### **14. Including a positive requirement in a DAPO**

14.1 This paragraph does not apply in relation to electronic monitoring requirements (in relation to which paragraph 15 makes provision).

14.2 The court may not include in a DAPO a requirement that P do something (a "positive requirement"), including on variation of a DAPO, until it has received evidence about the suitability and enforceability of the proposed positive requirement under section 36(3) of the 2021 Act, from the person who is to be responsible for supervising compliance with the requirement.

14.3 The evidence under paragraph 14.2 may be given orally or in writing.

14.4 Where the evidence under paragraph 14.2—

(a) has been taken, the court may make a DAPO which includes the positive requirement; or

(b) has not been taken, the court may—

(i) make an interim DAPO which does not include the positive requirement; and

(ii) give directions for the taking of the evidence to determine whether to include the positive requirement in the DAPO once the evidence has been taken.

14.5 Any directions given by the court under paragraph 14.4(b)(ii) must specify the time within which the person who is to be responsible for supervising compliance is to submit the evidence to the court.

14.6 Where the court makes a DAPO that includes a positive requirement, it must tell P about the obligations that P must comply with under section 36(7) of the 2021 Act.

14.7 Where the DAPO includes a positive requirement, the court officer must—

(a) inform the responsible person of—

(i) P's name, address and, if available, telephone number; and

(ii) details of the requirement to be supervised by the responsible person;

(b) inform P of the responsible person's identity and the means by which the responsible person may be contacted; and

(c) notify the responsible person of any variation or discharge of the positive requirement.

## **15. Imposing an electronic monitoring requirement**

15.1 This paragraph applies where the court imposes an electronic monitoring requirement, where available, in a DAPO.

15.2 The court may not impose an electronic monitoring requirement in a DAPO, including on variation of a DAPO—

(a) in P's absence; or

(b) if the person's consent required under section 37(3) of the 2021 Act has not been obtained.

15.3 Where the requirements of paragraph 15.2 are—

(a) satisfied, the court may make a DAPO which imposes an electronic monitoring requirement; or

(b) not satisfied, the court may—

(i) make an interim DAPO which does not impose the electronic monitoring requirement; and

(ii) give directions so that the requirements of paragraph 15.2 are met.

15.4 Where the court makes a DAPO that imposes an electronic monitoring requirement, it must tell P—

(a) about the obligations that P must comply with under sections 36(7) and 37(8) of the 2021 Act; and

(b) that if P intends to change or changes home address, P must apply to the court for a variation of the DAPO.

15.5 Where the DAPO imposes an electronic monitoring requirement, the court officer must—

(a) inform the responsible person of—

(i) P's name, address and, if available, telephone number;

(ii) details of the requirement to be monitored by the responsible person; and

(iii) details of the place at which P's presence must be monitored and the period or periods during which P's presence at that place must be monitored by the responsible person;

(b) inform P of the responsible person's identity and the means by which the responsible person may be contacted; and

(c) notify the responsible person of any variation or discharge of the electronic monitoring requirement.

## **16. DAPOs made by the court in existing proceedings**

16.1 Where the family court or the Family Division of the High Court makes a DAPO of its own initiative under section 31(2) of the 2021 Act, it must—

(a) have regard to the requirements of paragraph 13.2; and

(b) set out in the order—

(i) a summary of its reasons for making the order;

(ii) the names of the persons who are to be served with the order; and

(iii) the requirements of paragraph 13.3.

16.2 The court may order service of the order (and any other documents directed by the court) on—

(a) any of the parties to the current proceedings;

(b) any other person whom the court considers should be served; and

(c) any mortgagee or landlord where the DAPO relates to a property and details of the mortgagee or landlord of the property were set out in any DAPO application pursuant to paragraph 3.4(c)(ii).

16.3 Where P is to be served, service must be effected personally, unless the court directs otherwise.

16.4 Subject to paragraph 16.5, service on any person other than P (who must be served personally) must be in accordance with Part 6.

16.5 Where the person to be served is a child—

- (a) unless the court directs otherwise, the court officer must not effect service; and
- (b) the court must give directions as to how service is to be effected.

16.6 This paragraph applies to the court varying or discharging a DAPO of its own initiative in existing proceedings as it applies to the court making a DAPO of its own initiative in existing proceedings.

## VII — SERVICE OF DAPO MADE BY THE COURT

### **17 Service of DAPO made on notice**

17.1 Where a DAPO is made by the court on notice, subject to paragraph 17.2, the applicant must serve a copy of the DAPO, as soon as reasonably practicable, on—

- (a) P, personally;
- (b) the person to be protected (if that person is not the applicant); and
- (c) any other person named in the order.

17.2 The court may direct that—

- (a) service is effected by an alternative method or at an alternative place; or
- (b) service be dispensed with.

17.3 Subject to paragraph 17.5, where the applicant is—

- (a) an organisation, service must be effected by the organisation, the organisation's representative or the representative's agent;
- (b) an individual who is represented, service must be effected by their representative or the representative's agent; and
- (c) an individual acting in person, the court officer must effect service.

17.4 Service on any person other than P (who is to be served personally) must be in accordance with Part 6.

17.5 Where the person to be served is a child—

- (a) unless the court directs otherwise, the court officer must not effect service; and
- (b) the court must give directions as to how service is to be effected.

17.6 Where a DAPO is served on the person to be protected (and that person is not the applicant), it must be accompanied by a notice informing that person—

- (a) how to—
  - (i) apply to be joined as a party to the proceedings; and

- (ii) make an application to vary or discharge the DAPO; and
- (b) of that person's right to make representations orally or in writing at any subsequent hearing.

17.7 Where the DAPO relates to a property and details of any mortgagee or landlord of the property were set out in the DAPO application pursuant to paragraph 3.4(c)(ii), the applicant must serve a copy of the DAPO on the mortgagee or landlord of the property.

17.8 A certificate of service stating the date and time of service on each person served must be filed by—

- (a) the person or organisation who served the DAPO and any other documents; or
- (b) the representative of the person or organisation.

17.9 This paragraph applies to service of a DAPO varied or discharged by the court on notice as it applies to service of a DAPO made by the court on notice.

## **18. Service of DAPO made without notice to P**

18.1 Where the court makes a DAPO without notice to P, the applicant must serve the persons listed in paragraph 17.1, as soon as reasonably practicable, with the following documents—

- (a) a copy of the DAPO;
- (b) a copy of the application for the DAPO together with supporting statement; and
- (c) if required by paragraph 17.6, the notice of information for the person to be protected,

in accordance with the relevant provisions of paragraph 17.

18.2 Where the DAPO relates to a property and details of any mortgagee or landlord of the property were set out in the DAPO application pursuant to paragraph 3.4(c)(ii), the applicant must serve a copy of the DAPO on the mortgagee or landlord of the property.

18.3 Rule 27.2 FPR (reasons for a decision: proceedings before a lay justice or justices) does not apply.

18.4 This paragraph applies to service of a DAPO varied or discharged by the court without notice as it applies to service of a DAPO made by the court without notice.

## **19. Service of DAPO made in existing proceedings**

19.1 This paragraph applies where a DAPO is made by the court—

- (a) on application under paragraph 6 by the person to be protected in existing proceedings in which both the person and P are parties; or
- (b) of its own initiative under paragraph 16.

19.2 Service must be—

- (a) as soon as reasonably practicable; and
- (b) in accordance with the relevant provisions of paragraph 17.

- 19.3 Where paragraph 19.1(a) applies, the person to be protected must serve—
- (a) a copy of the DAPO; and
  - (b) where the DAPO is made without notice to P, a copy of the application for the DAPO together with supporting statement, if made in writing,
- on P, personally, and on any other person named in the order.
- 19.4 Where the DAPO relates to a property and details of any mortgagee or landlord of the property were set out in the DAPO application pursuant to paragraph 3.4(c)(ii), the person to be protected must serve a copy of the DAPO on the mortgagee or landlord of the property.
- 19.5 Where paragraph 19.1(b) applies, a copy of the DAPO must be served—
- (a) on the persons the court has ordered under paragraph 16.2; and
  - (b) in accordance with paragraphs 16.3 and 16.4.
- 19.6 This paragraph applies to service of a DAPO varied or discharged by the court in existing proceedings as it applies to service of a DAPO made by the court in existing proceedings.

## VIII — NOTIFICATION TO THE POLICE

### **20. Notifying the police of a DAPO**

- 20.1 Where the court makes a DAPO, notification must be given to the police force for P's address by the court officer emailing a copy of the order to the email address for that police force.
- 20.2 The email notification must be sent within 1 day of whichever is the earlier of—
- (a) the DAPO being sealed; or
  - (b) the order being approved by the judge, where the order states that it has effect despite not bearing the seal of the court.
- 20.3 This paragraph applies to notification of any variation or discharge of a DAPO as it applies to notification of the making of the DAPO.

### **21. Notifying the police when a DAPO is served or P is informed of its terms**

- 21.1 This paragraph applies where P has been—
- (a) served with a DAPO; or
  - (b) informed of the terms of a DAPO (whether by being present when the order was made or by telephone or otherwise).
- 21.2 Where—
- (a) paragraph 21.1(a) applies, a certificate of service; or

(b) paragraph 21.1(b) applies, a notification, must be sent by email to the police force to which the DAPO was sent.

21.3 The email notification must be sent by—

- (a) the applicant or the applicant's representative, where the applicant is an organisation;
- (b) the applicant's representative, where the applicant is an individual and is represented; or
- (c) the court officer, where the applicant is an individual and is acting in person.

21.4 Where paragraph 21.3(a) or (b) applies the email notification to the police must be sent within 2 days of P being served with, or informed of the terms of, the DAPO.

21.5 Where paragraph 21.3(c) applies, the email notification to the police must be sent within 1 day of receipt by the court officer of confirmation of service, or of P having been informed of the terms of the DAPO, from the court bailiff.

21.6 Where a DAPO is varied or discharged, this paragraph applies in relation to notification to the police of—

- (a) service of the order varying or discharging the DAPO; and
- (b) P being informed of—
  - (i) the terms of the DAPO as varied; or
  - (ii) the discharge of the DAPO,

as it applies to notification to the police of service of the DAPO or P being informed of its terms.

21.7 This paragraph does not apply where the DAPO states that the court has dispensed with the need for service of the order, because the court is satisfied that P is aware of the terms of the DAPO without the need for such service to be effected.

## IX — VARIATION OR DISCHARGE OF A DAPO

### **22. Variation or discharge of a DAPO made by the court**

22.1 Subject to paragraph 22.12, the relevant provisions of paragraphs 3, 4 and 6 to 19 apply to—

- (a) an application to vary or discharge a DAPO; and
- (b) service of any variation or discharge of a DAPO,

as they apply to an application for a DAPO and service of a DAPO.

22.2 An application to vary a DAPO may be made without notice to P.

22.3 An application to vary or discharge a DAPO—

- (a) may be made by—
  - (i) the person to be protected;
  - (ii) P;
  - (iii) where the order was made under section 28 of the 2021 Act, the person who applied for the order;
  - (iv) the chief officer of police of the force maintained for any police area in which P resides; or
  - (v) the chief officer of police of any other force maintained for a police area who believes that P is in that police area or is intending to come to it;
- (b) must be made using Form DA3, supported by a witness statement and set out—
  - (i) whether the applicant is aware whether there is a relevant chief officer of police who wishes to be heard in accordance with section 44(4)(a) of the 2021 Act; and
  - (ii) if the application is made by the person to be protected and seeks to discharge the order, or to remove or make less onerous any requirement imposed by the order, the reasons for making the application; and
- (c) must be emailed by the court officer to the relevant chief officer of police when the application is issued together with a request for confirmation as to whether they wish to be heard.

22.4 The court may vary or discharge a DAPO—

- (a) on application by a person detailed in paragraph 22.3(a); or
- (b) of its own initiative in any case in which it could make a DAPO under section 31(2) of the 2021 Act.

22.5 Where practicable, within one day of the notification under paragraph 22.3(c), the relevant chief officer of police must confirm to the court whether they wish to be heard and if so, to provide their evidence to the court in writing.

22.6 The written evidence that the relevant chief officer of police wishes to provide must be submitted to the court within the period of time specified by the court.

22.7 An application to vary or discharge a DAPO shall not be determined by the court until—

- (a) where there is a relevant chief officer of police who wishes to be heard, the court has heard from that relevant chief officer of police; and
- (b) if the application is made by the person to be protected and seeks to discharge the order, or to remove or make less onerous any requirement imposed by the order, the court has heard from that person.

22.8 Where the court is considering whether to vary or discharge a DAPO of its own initiative, it must first—

- (a) ascertain, in accordance with paragraph 22.9, whether there is a relevant chief officer of police who wishes to be heard; and

(b) if so, hear from that relevant chief officer of police, in writing.

22.9 The court officer must email the relevant chief officer of police requesting confirmation as to whether they wish to be heard and the relevant chief officer of police must respond to the request in accordance with paragraph 22.5.

22.10 Where the court varies or discharges a DAPO of its own initiative, paragraphs 12.2 (court may direct a hearing to consider any representations), 13 (general) and 16 (DAPOs made by the court in existing proceedings) apply.

22.11 Where a DAPO is varied or discharged under this paragraph and the variation or discharge relates to—

(a) a positive requirement included in the DAPO; or

(b) an electronic requirement imposed in the DAPO,

the court officer must notify the responsible person of the variation or discharge, as the case may be.

22.12 Where the DAPO to be varied or discharged was made on application by a person under paragraph 5, but they are not the applicant under this paragraph, that person—

(a) must be served with—

(i) the application to vary or discharge the DAPO; and

(ii) any variation or discharge of the DAPO,

in accordance with the relevant provisions of paragraphs 8 and 17; and

(b) has the right to make representations orally or in writing at any hearing.

22.13 In this paragraph, “relevant chief officer of police” has the meaning given by section 44(5) of the 2021 Act.

(Any application to vary or discharge a DAPO must be made to the court that made the order (section 45(1)). A court may vary or discharge a DAPO made by any other court of its own initiative.)

## X — ENFORCEMENT

### **23. Application for issue of warrant for arrest**

23.1 An application under section 40(3) of the 2021 Act for the issue of a warrant for the arrest of P—

(a) may be made by—

(i) the person to be protected;

(ii) the person who applied for the DAPO (if that person is not the person to be protected); and

(iii) any other person who has been granted permission of the relevant judge to apply under section 40(4)(c) of the 2021 Act; and

(b) must include a copy of the DAPO which P has allegedly breached and be supported by a sworn statement.

23.2 An application for permission under paragraph 23.1(a)(iii) must set out—

- (a) the reasons for making the application on behalf of the person to be protected; and
- (b) the applicant's connection with the person to be protected.

23.3 As soon as practicable after receiving an application under paragraph 23.1(a)(iii), the court must—

- (a) grant the application; or
- (b) fix a date for the hearing of the application for permission.

23.4 The court officer must inform the following persons of the court's action under paragraph 23.3—

- (a) the applicant;
- (b) the person to be protected (if that person is not the applicant); and
- (c) any other person directed by the court.

23.5 In this paragraph, “the relevant judge” has the meaning given by section 40(8) of the 2021 Act.

(Section 40 of the 2021 Act provides that where the DAPO was made by the family court or the Family Division of the High Court, the application must be made to a judge of the family court or a judge of the Family Division of the High Court respectively.)

## **24. Proceedings following arrest**

24.1 This paragraph applies where P is arrested pursuant to a warrant of arrest issued on an application under section 40(3) of the 2021 Act.

24.2 The relevant court before whom P is brought following arrest may—

- (a) determine whether the facts and the circumstances which led to P's arrest amount to breach of the DAPO; or
- (b) adjourn the proceedings.

24.3 Where the proceedings are adjourned, P may be released and must—

- (a) unless the court directs otherwise, be dealt with within 14 days of the day on which P was arrested; and
- (b) be given not less than 2 days' notice of the adjourned hearing.

24.4 An application notice seeking P's committal for contempt of court may be issued if P is not dealt with within the period specified in paragraph 24.3(a).

24.5 In this paragraph, “relevant court” has the meaning given by section 40(2) of the 2021 Act.

(The powers of the court to remand P are contained in section 40 of and Schedule 1 to the 2021 Act.)

## **25. Enforcement of orders**

25.1 At the time when the order is drawn up, the court officer will, where the order made is (or includes) a DAPO, issue a copy of the order, endorsed with or incorporating a notice as to the consequences of breach, for service in accordance with Chapter VII.

25.2 Part 37 applies where an application is made to commit P for breach of an order.

(Rule 37.4(2) FPR sets out the information to be contained in a contempt application in relation to breach of an order.)

## **26. Power to adjourn the contempt hearing for consideration of the penalty**

26.1 The court may adjourn the hearing of a contempt application for consideration of the penalty to be imposed for any contempt of court found proved and such hearing may be restored if the contemnor does not comply with any conditions specified by the court.

## **27. Hospital orders under the Mental Health Act 1983**

27.1 Where the court makes a hospital order under the Mental Health Act 1983, the court officer must—

(a) send to the hospital any information which will be of assistance in dealing with the patient; and

(b) inform the persons directed by the court to be informed about when the patient is being transferred to hospital.

(Section 40 of the 2021 Act contains provision about the court's power to remand P following arrest for breach of a DAPO. Schedule 1 to the 2021 Act sets out further provision about remand including the court's power to remand for the purpose of enabling a medical examination to take place and the power to make an order under section 35 of the Mental Health Act 1983 (remand to hospital for report on mental condition).)

## **28. Transfer directions under section 48 of the Mental Health Act 1983**

28.1 Where a transfer direction given by the Secretary of State under section 48 of the Mental Health Act 1983 is in force in respect of a person remanded in custody by the court, the court officer must notify—

(a) the governor of the prison to which that person was remanded; and

(b) the hospital where that person is detained,

of any committal hearing which that person is required to attend.

28.2 The court officer must also give notice in writing of any further remand to the hospital where that person is detained.

## **29. Recognizances**

29.1 Where, in accordance with paragraph 2(3)(b) of Schedule 1 to the 2021 Act, the court fixes the amount of any recognizance with a view to it being taken subsequently, the recognizance may be taken by—

- (a) a judge of the court;
- (b) a police officer of the rank of inspector or above or in charge of a police station; or
- (c) the governor or keeper of a prison where the arrested person is in the custody of that governor or keeper.

29.2 The person having custody of an applicant for bail must release the applicant for bail if satisfied that the required recognizances have been taken.

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