



Office of Law Reform

Office of Law Reform

Review of the Family Homes and Domestic Violence (Northern Ireland) Order 1998

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Introduction

The basis of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 lies in the Family Law Act 1996. This Act, which applies only to England and Wales, seeks in Part IV to rationalise the law relating to civil remedies for domestic violence and occupation of the family home. The Family Homes and Domestic Violence (NI) Order 1998, makes corresponding provision for Northern Ireland and is designed to offer civil protections against the blight of domestic violence which plagues this jurisdiction.

The 1998 Order replaced the civil remedies for domestic violence which were contained in the Domestic Proceedings (Northern Ireland) Order 1980. The 1998 Order aimed to provide clarity and accessibility by way of a single set of remedies which are available in all courts. Two main remedies were created: the non-molestation order and the occupation order, with provision being made for these orders to be applied for by way of *ex parte* application, that is without the respondent or alleged perpetrator of the violence being present. It should be noted that the occupation order has a dual purpose. As well as being a complement to the non-molestation order and an additional protection for victims of domestic violence, when applied for as a stand alone order it is also designed to regulate short term occupation of the family home upon relationship breakdown where *no* violence has taken place.

As part of its ongoing review of civil law and its commitment to appraise legislation for which it has responsibility, the Office of Law Reform undertook to review the operation of the 1998 Order shortly after its commencement. This document contains an analysis of the consultation process underlying that review and the recommendations for changes to the legislation.

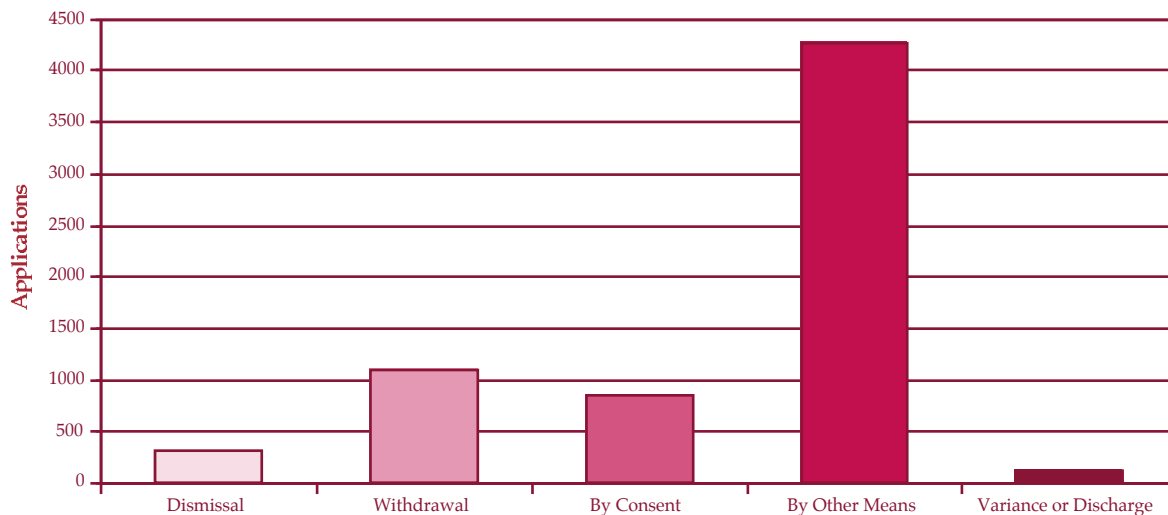
The Office of Law Reform was greatly assisted by Mr Donal Sayers BL, Barrister, in the preparation of this report.

Consultation Process

Background and History of Civil Remedies for Domestic Violence

Domestic violence is a real problem in Northern Ireland. In 2001, there were approximately 6672 applications made for orders under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 in magistrates' courts, these applications being dealt with by way of dismissal (322), withdrawal (1104), order made by consent (852), order made by other means (4265) and 129 applications for variance or discharge of an order. (Source Judicial Statistics 2001).

Outcome of applications 2001



This, of course, only reflects the numbers of victims of domestic violence who approached the courts for assistance. The real number of people who are affected by domestic violence in Northern Ireland in any year is impossible to calculate. Although the situation has improved enormously, domestic violence is still a crime which many people find difficult to talk about and deal with. The public work of the statutory, voluntary and private sectors is invaluable in tackling this crime which very often takes place within the isolation and seclusion of the family home.

Primary civil legislation is a clumsy tool to use to provide protection against such a serious social problem. However, the provision contained within legislation can offer much needed protection to individuals who suffer domestic crime and can set a tenor which can influence how society at large views domestic violence. The civil law is not a panacea for domestic violence, but it offers a mechanism that victims can embrace to enable them to escape a situation which has become unbearable.

Victims of domestic violence have been able to access civil remedies for domestic violence for some time. Civil injunctions have been available and most notably protections had been available under the Domestic Proceedings (Northern Ireland) Order 1980. The 1980 Order had put in place provisions which allowed victims of domestic violence to apply for personal protection orders and exclusion orders. Personal protection orders were designed to protect the applicant from molestation by the perpetrator of the violence and were available to married persons against his or her spouse and to cohabitants. Exclusion orders effectively barred the perpetrator from defined areas, their purpose being to keep the perpetrator away from areas which the applicant frequented, for example, the family home or schools.

The protections offered by the Domestic Proceedings (Northern Ireland) Order 1980 were limited in who could apply for protection, and did not offer any assistance to the applicant, apart from allowing for the perpetrator to be removed from the home or prevented from being in a particular area.

When the Law Commission of England and Wales carried out its review of civil law remedies for domestic violence "Family Law: Domestic Violence and Occupation of the Family Home" (Law Com No. 207 May 1992) it criticised existing law as being complex and confusing because it had developed in an ad hoc way to deal with two separate but inter-related problems: providing protection from violence within families and regulating occupation of the home when a relationship breaks down.

The Office of Law Reform initially consulted on the Law Commission's recommendations in early 1995 and it received a clear response that, notwithstanding the fact that existing civil remedies in Northern Ireland were more satisfactory than their English counterparts, the same criticisms of the law could be made. A draft Order was published for consultation in June 1996 and, as a result of comments received, another consultation was carried out on the specific issue of how cohabitants were to be treated under the Order.

England and Wales adopted the Law Commission's recommendations by enacting Part IV of the Family Law Act 1996. The Family Homes and Domestic Violence (Northern Ireland) Order 1998 is the Northern Ireland response to the criticisms that were made of the then existing law. As well as containing provisions to offer civil protections to victims of domestic violence, the 1998 Order, like its English counterpart, also contains provisions to assist those who make decisions about occupation of the family home in the immediate aftermath of relationship breakdown. Northern Ireland actually went a little further than the 1996 Act, by providing that breaches of orders was to be a criminal offence (therefore perpetuating the provisions under the 1980 Order) and by providing that domestic violence had to be considered as a factor during child contact cases.

The Legislation Explained

The purpose of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 is to streamline and consolidate the law on domestic violence and occupation of the family home. It replaces Articles 18,19 and 21 of the Domestic Proceedings (Northern Ireland) Order 1980 (personal protection and exclusion orders) and Part II of the Family Law (Miscellaneous Provisions)(Northern Ireland) Order 1984 which dealt with the occupation rights of spouses.

The main features of the 1998 Order can be summarised as follows:

- the 1998 Order contains provision for two types of order – the non-molestation order and occupation order;
- the range of people who can apply for a remedy under the legislation is extended to include former spouses and wider family members;
- the Children (Northern Ireland) Order 1995 is amended to allow the court power to remove a suspected abuser from the family home rather than the child being removed under an interim care order or emergency protection order. Additionally, the court must now take into account the effect of domestic violence when considering whether to make a contact or residence order;
- breach of a non-molestation order or a non-molestation order made in conjunction with an occupation order is an arrestable criminal offence;
- the court's power to transfer certain tenancies between spouses is extended to cohabitants;
- a provision is made which will allow specified third parties to act on behalf of victims of domestic violence in certain cases (Articles 35 & 36).

The main provisions of the 1998 Order came into operation on 29th March 1999, but Articles 35 & 36 have not yet been commenced. The question of third party representation is currently being considered by the Department for Constitutional Affairs in England and Wales and the Office of Law Reform is looking closely at the work which is being undertaken there.

What Remedies are available under the Order?

The 1998 Order provides for four main types of remedy which may be applied for in any combination.

1. *Non-molestation orders* – contained in Article 20 of the 1998 Order, these are designed to protect individuals in certain family or domestic relationships, and/or certain children, from the use of violence or other forms of molestation. This provision should give wide protection, as there is no requirement to prove that violence has been used or threatened.
2. *Occupation orders* - contained in Articles 11 – 19, these orders declare, confer or regulate occupation (but not *ownership*) rights in the family home between those in certain family or domestic relationships. If combined with a non-molestation order, occupation orders can be used for protection purposes. Alternatively, they can simply be used to declare or regulate the right of occupation in the home in cases where protection is not an issue but where the relationship has broken down and the parties require the court to determine who should occupy the home in the short term.
3. *Exclusion requirements attached to interim care or emergency protection orders* – under Article 29, the court can attach an "exclusion requirement" to an interim care order or emergency protection order under the Children (Northern Ireland) Order 1995. This will allow a suspected abuser to be removed from the home rather than the child.
4. *Orders for transfer of certain tenancies* – Article 30 activates Schedule 2 of the 1998 Order which deals with the court's power to transfer certain protected, secure or statutory tenancies between former spouses or cohabitants who are no longer living together.

Now that the legislation has had time to "bed in", a review of the working of the 1998 Order is necessary to identify any teething problems which may have occurred when the provisions were put into practice in the Northern Ireland courts.

Analysis of Consultation Responses

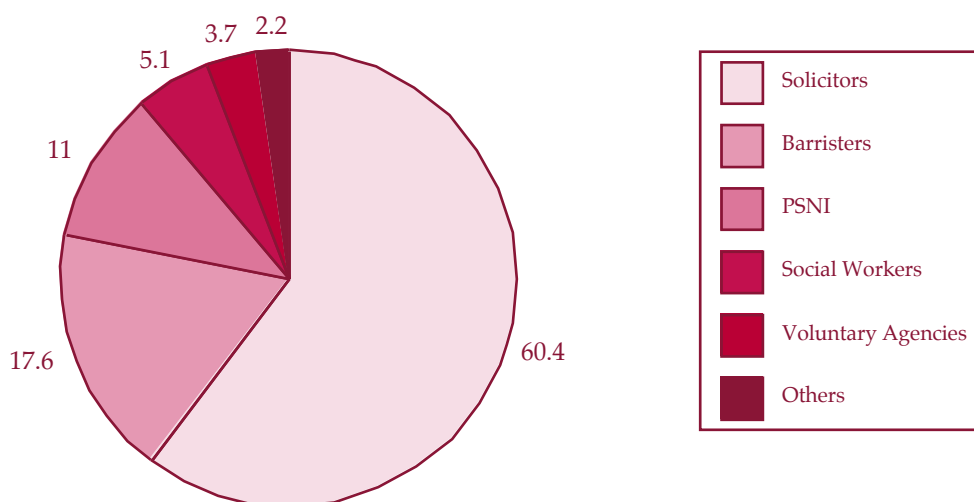
The Office of Law Reform conducted the review of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 by way of interviews and questionnaires.

The responses to the questionnaires were analysed by the Northern Ireland Statistics and Research Agency and are discussed in more detail below.

Questionnaires were distributed to solicitors, barristers, PSNI (or RUC as it was then known) Domestic Liaison Officers, social workers and representatives of voluntary agencies. Interviews were held with members of the judiciary and representatives from Women's Aid. Views were therefore sought from a variety of sources which represent both the needs of victims and perpetrators, and the views of those who operate within the civil and criminal justice system.

One hundred and thirty six completed questionnaires were returned by consultees. 60.4% of responses were from solicitors, 17.6% from barristers, 11% from the PSNI, 5.1% from social workers, 3.7% from representatives of voluntary agencies with 2.2% of respondents being from other organisations or professions.

Origin of Consultees



While just over half (52%) of the responses indicated that the volume of domestic violence cases experienced had remained at or about the level experienced before the introduction of the Family Homes and Domestic Violence (NI) Order 1998, a further 36.8% of consultees indicated an increase in their domestic violence caseload. A mere 5.9% of consultees reported that they had experienced a reduction in the number of cases which they saw. The remainder of consultees (5.1%) did not provide a response to this question.

Interviews with members of the magistracy showed that, in the majority of experiences, domestic violence cases remained more or less at the level seen before the introduction of the new legislation. There was a general feeling amongst magistrates, echoed by representatives from Women's Aid, that levels of domestic violence are prevalent and unremitting.

It is clear that the remedies under the 1998 Order are being primarily sought in the Magistrates' Court. That said, provision to apply in other courts has been of value, with 27.2% of consultees having initiated proceedings in the County Court/Family Care Centre and 11.8% of consultees having initiated proceedings in the High Court.

Associated persons

Under the 1998 Order, there are various categories of person who can apply for protection from domestic violence in the form of non-molestation orders, which is a significant extension of the previous law. The previous law only allowed spouses or cohabittees to apply for protection, however the 1998 Order extends these categories. Now the following persons can apply for protection:

- former spouses or former cohabittees;
- those who live in the same household, otherwise than merely by reason of one of them being the other's lodger, employee, tenant or boarder;
- relatives as defined by Article 2 of the 1998 Order;
- those who have agreed to be married;
- those who are parents of the same child;
- those who have parental responsibility for the same child;
- those who are parties to the same family proceedings.

Consultees were specifically asked whether applicants other than spouses and cohabittees used the court remedies. A significant 75.5% of consultees confirmed that the remedies were being used by persons outside of such relationships.

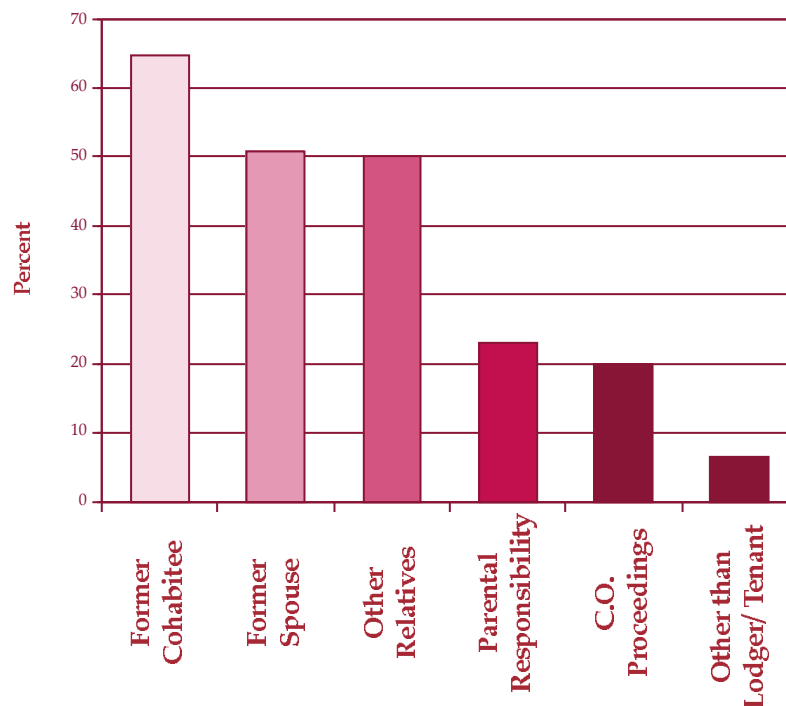
Most common - experienced by 64.7% of consultees - was a former cohabitee. Also common (50.7% of consultees reported) was an application against a former spouse. Other relatives featured highly too - 50% of consultees had experienced applications against this category.

Consultees reported that the most common applications concerning other relatives tended to be between parents and children (including in-law relationships). Consultees also reported that grandparents, siblings, aunts/uncles and step-parents were the subject of applications, demonstrating both the flexibility of the 1998 Order and, by inference, the range of perpetrators of domestic violence that exist in Northern Ireland society. A number of Magistrates who were interviewed as part of the review reported that the child/parent and parent/child relationships were the most common applications after the spouse or cohabitee applications.

Consultees also reported that engaged or formerly engaged persons were seeking protection under the 1998 Order – up to a quarter of consultees had experience of cases involving this group.

Consultees also commented that 22.8% had experience of people with parental responsibility for the same child applying for orders, and 19.9% of consultees had familiarity with cases which involved people who were parties to the same Children Order proceedings. Persons living together other than lodger and tenant (for example, friends sharing accommodation) was less frequently experienced by consultees – only 6.6% of consultees were familiar with this type of case. Of course, this does not give an indication of the actual numbers of individuals who apply under each category and therefore should not be taken as an indicator of the value of this category. Magistrates confirmed that applications from the full variety of categories are coming before the court.

Type of Applicants other than Spouses or Cohabitees



Apart from the issue of categorisation of associated persons, the question arises of whether potential applicants fail to qualify as eligible at all. Of respondents who answered the question, 48.5% of consultees had not experienced an applicant failing to bring him/herself within the category of associated persons. However, 25.7% of responses did disclose such an experience. Of this type, the most common type of relationship was between a (former) boyfriend and girlfriend, whose relationship had not involved cohabitation or engagement to be married. Magistrates also raised this category as a potential limitation to the legislative scheme. Further examples cited by the consultees which are excluded from the categories of associated persons include cousins, partners of former cohabitantes and in-law relationships. This last exclusion merits particular attention. One example of the in-law anomaly is that a person will be associated to the siblings of her spouse or cohabitee, but not associated to the spouse or cohabitee of her sibling. It is difficult to justify the exclusion of this category of person, and it is considered that this anomaly should be addressed. There is also a difficulty in that a mother-in-law cannot obtain a protective order against a son-in-law.

In the NIO, DHSS&PS & OLR consultation "Tackling Violence at Home – the Government's proposals on domestic violence in Northern Ireland", further consideration is given to this issue, and readers are urged to consider the arguments surrounding the extension of the protection to individuals who fall into these groups. OLR considers that further consultation on this issue is required, especially in relation to those who are (former) girlfriend and boyfriend, before any policy decisions can be made and therefore encourages responses to the questions posed by the consultation paper.

Other responses referred to situations where the perpetrator of violence was a neighbour or a "stalker" who did not fall into any categories under the 1998 Order. Very often in these types of cases, another remedy is available, most notably the civil and criminal remedies provided for by the Protection from Harassment (Northern Ireland) Order 1997.

Non-molestation Orders

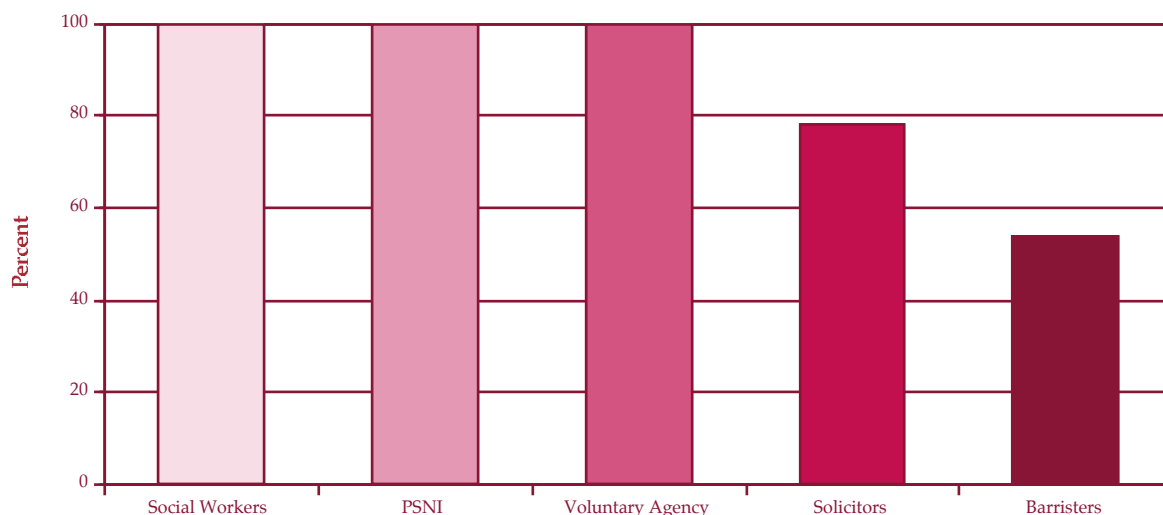
Under the strict interpretation of the 1998 Order, non-molestation orders can be made on an ex-parte basis until further order. The orders are considered by some to be draconian in nature and therefore the respondent should have an early opportunity to have his or her case heard. The Human Rights Act 1998 incorporates the European Convention on Human Rights into domestic law and it is argued that making ex parte orders until further notice infringes upon the respondent's right to a fair trial under Article 6 of the European Convention on Human Rights. In the case of *Re Sloan*, (27th June 2001), in which the court was asked to consider whether a return date should be attached to an ex-parte non-molestation order, Higgins J stated:

"Article 6 of the European Convention on Human Rights provides that anyone is entitled to a fair and public hearing of the determination of his civil rights....Article 23 does not offend Article 6 of the European Convention *provided that the court fulfils its obligation to secure a full hearing as soon as just and convenient...*where there is in place a mechanism for the early review of a non-molestation order made ex-parte, which ex-parte application can only be made in urgent and compelling circumstances, no breach of Article 6 arises." (Italics added for emphasis).

At the time of the circulation of the questionnaires, 52.9% of consultees reported that inter parties orders were made until further notice. Of those consultees which indicated a finite duration, 37.5% indicated that the most common duration for orders was one year, while 14.7% indicated that orders were made for six months. Since the duration difficulty has now been addressed in practice, the legislation requires amendment to reflect human rights obligations.

In response to questioning, 78.7% of consultees considered that the non-molestation order is an improvement on the personal protection order under the Domestic Proceedings (NI) Order 1980. The response from social workers, police domestic liaison officers and voluntary agency representatives was 100% positive. Amongst the legal profession, there was more of a mixed feeling – 78% of solicitors felt that the new order was an improvement while 58.3% of barristers felt that the measure was an improvement. The positive views of the legislation were endorsed by representatives of Women’s Aid and Magistrates who took part in interviews as part of the review. Magistrates particularly welcomed the widening of categories of applicants within the 1998 Order. The following bar chart illustrates the views of consultees:

Is the Non-molestation Order an Improvement on the Personal Protection Order?



Responses from those dissatisfied with the order were analysed to identify the cause of discontent. Some responses indicated that difficulty is experienced in processing the amount of necessary paperwork for the court and legal aid in time for an emergency ex parte hearing. Some responses indicated that paperwork and legal aid difficulties could result in a lack of access to the court.

The requirement of a written statement to be signed by the applicant was questioned. However, it is our view that certain processes are necessary for the smooth running of the court system and the Legal Aid Department. Not only must the court be on notice of all available information from the applicant at the time of the ex parte application, but the respondent must also be allowed sight of the allegations against him or her in order to allow a fair hearing to take place at the inter parties stage of proceedings. Paperwork is of course required for the legal aid application, and the Legal Aid Department must be allowed sight of information which will enable assessors to determine whether the case merits public funding.

Some consultees considered that the system was open to abuse by an unscrupulous applicant trying to raise the spectre of domestic violence to prevent a respondent from having contact with a child. We are of the view that it is intolerable that any applicant would use the legislation in this way and we hope that these cases are very few and far between. However, in any event, we are confident that court procedures exist to deal with this issue should it arise.

The power of arrest which attaches to the non-molestation order was welcomed by consultees, particularly the PSNI Domestic Liaison Officers. They considered that the power sends out very strong messages to perpetrators of domestic violence. However, the PSNI caution that they are faced with difficult judgments in situations where, for example, an applicant allows a respondent back into the home.

Some consultees felt that breach of orders was taken more seriously by the police and the courts since the introduction of the new legislation, others raised concerns that the police did not deal with breaches unless pressed to do so by a solicitor.

It may well be that there is slight variation of practice between police divisions and the Office of Law Reform have suggested to the PSNI that this is an area which may require some clarification.

Broadly, the consultation responses disclosed little difficulty with the language and drafting of the 1998 Order. There was a recognition that the development of case law

around the concepts of "harassment" and "molestation" would prove useful, but very few consultees suggested that definitions set out in the legislation would be necessary. It was considered that the lack of definition left the legislation open to wider interpretation, and therefore would assist the evolution of the concepts of harassment and molestation. "Molestation" in particular is a concept which could be hindered by limiting its meaning in a definition. Domestic violence is now considered in some circles to include physical, emotional, financial and sexual abuse. A more detailed consideration of the issue surrounding a definition of "molestation" on the face of the legislation is contained in the consultation paper "Tackling Violence at Home – the Government's proposals on domestic violence in Northern Ireland" issued by the NIO, DHSS&PS and OLR and final conclusions shall be drawn at the end of that consultation exercise.

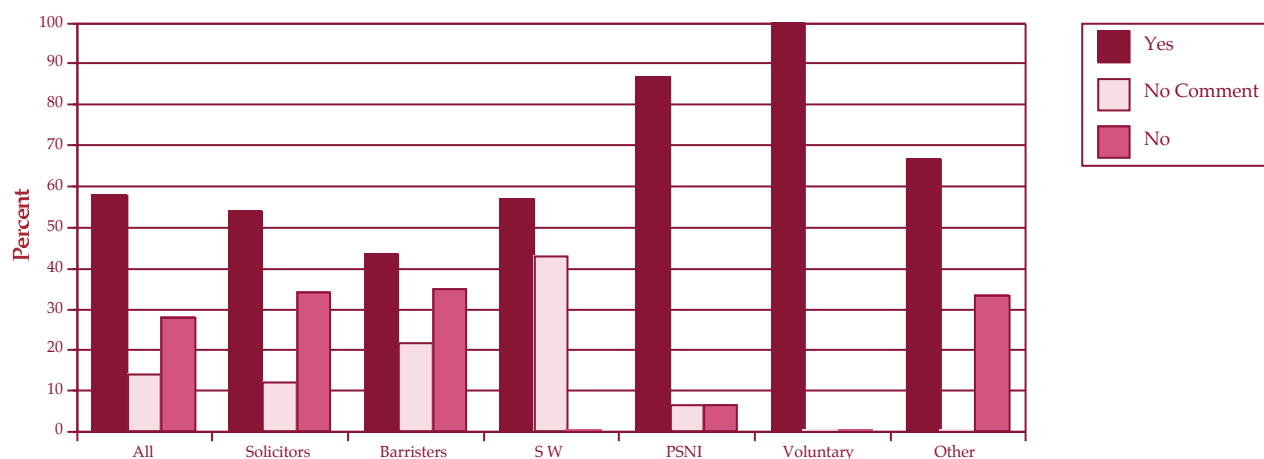
Consultees confirmed that the 1998 Order is achieving its objective of allowing individuals who have been subject to non-violent forms of domestic violence, such as verbal abuse, to access the remedies contained within its provisions. Consultees consider that the non-molestation order is easier to obtain than its predecessor, the personal protection order, though some consultees had a marked difference of opinion as to whether this was a good or bad thing. Some consultees complained of an unacceptably low standard of proof required to obtain orders.

Several responses queried the ability of the Courts to attach exclusion zones to non-molestation orders, and this possibility was the subject of some debate during interviews with Magistrates. Although not specifically stated in the legislation, *Re Glennon's Application* (2002) NIQB 37 has held that exclusion zones may be attached to non-molestation orders as well as occupation orders. However, to ensure clarity on the statute book, the Office of Law Reform will consider amending the relevant Article in the 1998 Order. Further consultation on this issue will be carried out and interested parties are directed to the discussion on the subject contained in the consultation paper "Tackling Violence at Home – the Government's proposals on domestic violence in Northern Ireland".

Occupation Orders

Consultees were asked for their opinions on the occupation order. It was viewed as an improvement by 57.8% of consultees who responded, with 28.1% stating that the new order is no better than the exclusion order which existed under the Domestic Proceedings (NI) Order 1980.

Is the Occupation Order an Improvement on the Exclusion Order?



As is shown above, 53.7% of solicitors who responded described the occupation order as an improvement, while 34.1% stated that it was not. 43.5% of barristers agreed that the occupation order was an improvement whilst 34.8% said that they did not consider it to be an improvement on the former system.

Out of the consultees who responded, 57.1% of social worker responses indicated that the occupation order was an improvement. PSNI Domestic Liaison Officers were broadly welcoming of the new order, and voluntary agencies entirely welcoming.

At the time of the distribution of the questionnaires, it was common for ex parte occupation orders to be made until further order. This is now not the case – for the human rights reasons outlined above, this practice can no longer continue.

Most ex parte occupation orders of a finite duration were made between four and six weeks (as experienced by 43.4% of consultees). Only 5.9% reported a lesser period, and 15.3% of consultees reporting a period of longer than four weeks. More recently, this has continued to be the norm for all cases.

44.1% of consultees advised that at the inter parties hearing, occupation orders were usually made for an indefinite period. Of those consultees who indicated that orders were made for a finite period, the most common duration was one year (31.6% of consultees) or six months (12.5% of consultees). A usual duration of more than a year was less likely: 3.7% of consultees reported two years as being a usual duration, and 3.7% reported a period of three years.

As with non-molestation orders, consultees were asked to highlight particular improvements or problems relating to occupation orders.

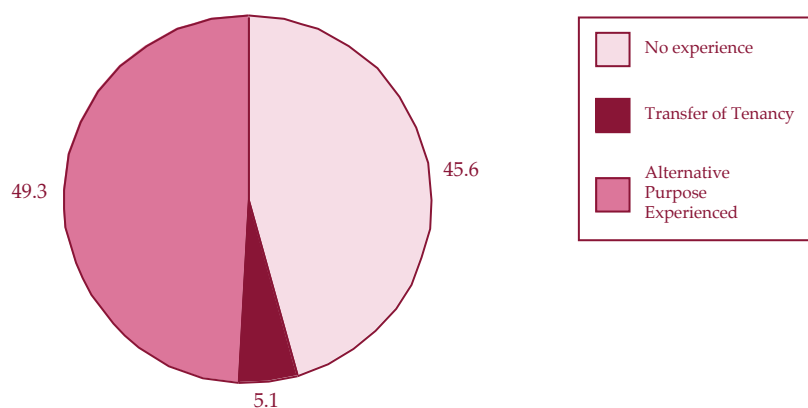
Some features of occupation orders were welcomed, such as flexibility and the clarification of rights and obligations in relation to a tenancy. The immediate power of arrest where an occupation order (in place alongside a non-molestation order) is breached was applauded.

Concern was expressed that applicants are less able to understand the occupation order than the exclusion order under the 1980 Order. Some described the legislation as complex and difficult to understand, and there was some confusion over the appropriate jurisdiction for some applications. This last view would perhaps indicate a need for training and refresher training for all individuals who operate the civil system.

When asked to highlight any good practice or problems regarding the obtaining of ex parte orders, the complaints were familiar: the low standard of proof required to obtain an order; lack of standard practice for service of orders; the time consuming preparatory paperwork and the time taken for the Legal Aid Department to deal with applications in emergency situations.

When solicitors and barristers specifically were asked whether they had experience of occupation orders being used for the alternative purpose of regulating occupation of the family home where *no* violence had taken place, 45.6% of consultees stated that they had not had such an experience. Likewise, only 5.1% of consultees who responded stated that they had used the 1998 Order to apply for a transfer of tenancy. This seems to be a surprising result, given the number of maintenance cases under the Domestic Proceedings (NI) Order 1980 seen in Magistrates' Courts on a yearly basis (1568 in 2001 – Judicial Statistics 2001). This questionnaire was distributed over two years ago and no further follow-up has taken place to gauge whether uptake of this aspect of occupation orders has grown.

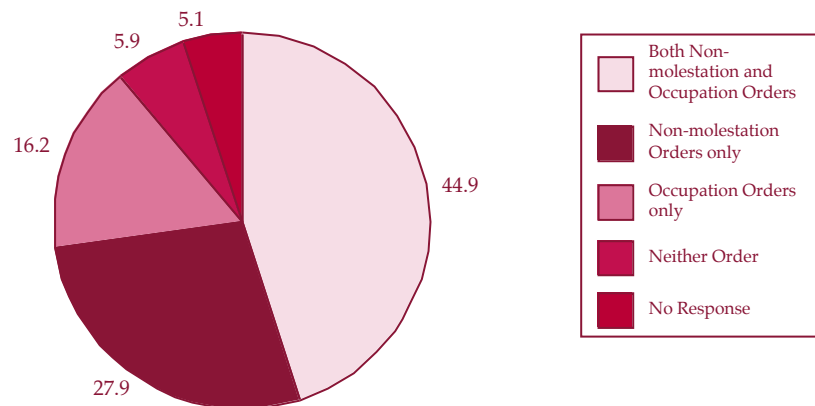
Experience of the Use of Occupation Orders where no violence has taken place



Exclusion Zones

44.9% of consultees indicated that courts attach exclusion zones to both non-molestation orders and occupation orders; 27.9% indicated that exclusion zones were attached to non molestation orders and 16.2% reported that exclusion zones were attached to occupation orders. 5.9% reported that the courts attached exclusion zones to neither order.

Attachment of Exclusion Zones



Exclusion zones were frequently (86% of consultees) placed around the applicant's home. In a substantial number of cases, an exclusion zone was placed around either the applicant's workplace or the child's school. Other zones included the houses of other specified individuals, places of worship, streets or housing estates and in some cases town centres or towns.

The issue of exclusion zones is discussed more fully in "Tackling Violence at Home – the Government's proposals on domestic violence in Northern Ireland".

Service of non-molestation and occupation orders

The most common method of service is by the police (77.2% of consultees), summons server (11.8%) and first class post (7.4%). Service by solicitors was disclosed by 2.3% of consultees and recorded delivery was reported by 1.5% of cases experienced by consultees.

Consultees raised concern over the delay between orders being made and being served. There is a problem of the practical difficulty of finding someone who has moved out of the matrimonial home or who deliberately evades service.

There does not seem to be a consistent approach to serving orders across the jurisdiction. This is compounded by recent indications that the PSNI is reconsidering its involvement in serving orders. Since the involvement of the PSNI may be a deterrent effect upon perpetrators of domestic violence, service of orders is a real issue which needs further detailed discussion. The implications of various methods of service are examined in "Tackling Violence at Home – the Government's proposals on domestic violence in Northern Ireland" and consultees are invited to consider the arguments and provide their response.

Arrest for breach of orders

Issues highlighted by consultees in relation to arrest for breach of orders reflect concerns which fall largely outside of the scope of the legislation itself. Of concern is the issue of applicants making false reports of breaches, or allowing the respondent into the home upon which an occupation order is in place. There is also a perceived concern that the police are failing to take alleged breaches seriously.

Whether these concerns relate to a minority of cases throughout Northern Ireland, or are a wider spread problem cannot be ascertained from 136 responses to our questionnaire, and it would be wrong to jump to conclusions based on these numbers. However, these are extremely worrying statements, and the Office of Law Reform would hope that the PSNI considers its policy on arrests for breaches, so that it can be sure that there is a consistent approach across the jurisdiction.

Of course, no legislation can limit the free will of an applicant who decides to take the respondent back into the family home. But, if she/he takes the respondent back into the home without the order being discharged, it somewhat defeats the purpose of the legislation. If this is happening with regularity, the Office of Law Reform would have to consider whether to consult on provisions which would allow for orders to cease upon resumption of cohabitation. This is far from ideal as it creates issues around proof and perhaps would lead to a need for a definition of cohabitation. Perhaps if this a problem which continues to arise, the area could be reviewed again. In the meantime, the difficulty could be minimised by the efforts of the judiciary, legal professions and the PSNI to reinforce to applicants the far-reaching effects of these orders and the desirability to have orders varied or discharged if circumstances change between the parties. OLR will continue to monitor this area.

The sanctions for a breach of an order received approval by 63.7% of consultees. However, the majority of Magistrates interviewed considered that the current sanction was too

moderate. Representatives from Women's Aid considered that it was extremely important to punish breaches of orders severely in order to send a powerful message to perpetrators of domestic violence who continue to offend. Only 19.3% of consultees who answered the questionnaire indicated that the sanctions imposed were not appropriate. The majority of the consultees who indicated that the sanctions were inappropriate raised the same arguments as Magistrates and representatives from Women's Aid i.e. attention was drawn to the leniency of the available sentence when compared with the crime and a number of consultees indicated that the sanctions are insufficient in terms of deterrent effect. Domestic violence, it was felt, continues to be viewed as a separate and less serious class of violent offence. Some other viewpoints were expressed too by a few consultees – that the penalties imposed were too harsh, and the classification of "family matters" and "family disputes" as appropriate for the criminal law was questioned. It would appear that these last comments indicate the continuing need for education throughout all the professions which are tasked with dealing with domestic violence.

As part of the consultation "Tackling Violence at Home – the Government's proposals on domestic violence in Northern Ireland", the issue of making domestic violence a separate criminal offence and the penalty for the breach of an order will be reviewed.

A strong 50% of consultees indicated that they have a role to play after an order is made. This takes a variety of forms:

- explanation of the order and its implications to the applicant;
- ensuring or effecting service of the order, and ensuring copies are made available where required;
- advising on any impact on contact issues with children;
- a support role for the victim (emphasised by many consultees);
- assistance in obtaining emergency accommodation;
- advice on breach of an order;
- liaison with police to ensure that breaches are acted upon promptly;
- resolution of outstanding financial, property or family issues;
- therapeutic work with children to assess the impact of domestic violence.

These responses highlight the diversity of work undertaken by professionals who operate within the civil and criminal justice fields and also provides a flavour of the practical impact of domestic violence on families – emotionally and financially.

Orders relating to children

Only 9.6% of consultees had experienced the exercise of the court's power under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 to remove the suspected abuser from the home instead of removing the child.

In child contact cases under the Children (Northern Ireland) Order 1995, where domestic violence is a factor, 29.6% of consultees reported that the court is most likely to order supervised contact. 28.7% of consultees stated that the court would most frequently order that special handover arrangements be put in place to ensure the safety of the victim of domestic violence. It is pleasing to note that England and Wales are putting in place similar provisions for contact and residence cases where domestic violence has occurred as those contained in Article 28 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998.

The legislation generally

When asked whether there were gaps in the legislation, either in the range of people covered or the type of remedy available, 36.8% of consultees confirmed that they considered that gaps existed.

The gaps referred to in the range of people covered included couples or former couples who had never lived together or been engaged to be married, mother-in-laws who are unable to obtain an order against a daughter-in-law, current partners who are being molested by former partners, and the difficulty outlined above with the in-law relationships.

In relation to gaps in the type of remedy available, consultees reported that exclusion zones that attached to non-molestation orders would be useful. They also pointed out that the failure of orders to contain information which points out that direct contact is not necessary for a breach to occur, and the requirement to apply for a new order when an applicant changes address were limitations in the existing provisions.

When asked to make any further comment about the legislation, several consultees noted that different approaches adopted by different courts led to confusion. The variation of time limits for the duration of orders was also confusing. A small number of consultees reported that workload and costs had increased, but no improvement to the system was discernible as a result of the new legislation.

Conclusion

Overall, the Family Homes and Domestic Violence (Northern Ireland) Order 1998 is working very well in principle. It provides a great deal of protection for victims of domestic violence and sends a clear message to perpetrators that domestic violence is unacceptable and will not be tolerated. A range of civil orders is available for the protection of victims which are being used regularly. The non-molestation order, the most widely available remedy, is given further weight by having criminal sanctions for breach attached. However, there are a number of areas which require change.

- Various changes are required to make the 1998 Order compliant with human rights obligations. The legislation must be amended to clearly state that ex parte orders must be made for a short duration. The legislation must also be amended to state that orders only become effective once served.
- Anomalies in relation to in-law relationships should be removed as soon as practicable.

A number of other areas have been raised by consultees during this review process. These areas are fully discussed in the "Tackling Violence at Home – the Government's proposals on domestic violence in Northern Ireland" and further views are sought on:

- whether availability of non-molestation orders should be extended to categories of person who fall outside of the current scheme;
- whether "molestation" should be defined on the face of the order;
- whether there is a need to change the legislation to clearly state that exclusion zones can be attached to non-molestation orders;
- which method of service of non-molestation orders is the most appropriate;
- whether the criminal tariff for breach of a non-molestation order should be increased.