SUMMARY OF CONSULTATION RESPONSES
CIVIL PROTECTION ORDERS AND ACCESS TO JUSTICE (SCOTLAND) BILL

Introduction

The purpose of the draft proposal is to improve access to protection and justice for anyone who is subjected to domestic abuse.

The consultation document accompanying the draft proposal for the Civil Protection Orders and Access to Justice (Scotland) Bill was issued on 1 December 2009 and the consultation ran until 26 February 2010.

The consultation document was made available from a link on the Proposals for Members’ Bills web pages on the Scottish Parliament website. There was also a link to the consultation on the Member’s website.

225 copies of the consultation document were issued to organisations, MSPs and MPs. Further copies were posted or e-mailed in response to individual enquiries.

There were 40 responses to the consultation document. These can be categorised within the following groups:

- Voluntary sector - 16
- Local Authorities – 9
- Professional bodies – 5
- Individuals – 4
- Police Bodies – 3
- Campaigning Groups – 1
- Unions – 1
- Public Bodies - 1

Respondents to the consultation document were invited to submit their own general comments and/or to answer the seven questions contained in it.

Analysis of Responses

General

As noted above, there were 40 responses to the consultation. Of these, 36 supported the proposal, 2 expressed opposition to the proposal and 2 neither opposed nor supported the proposal.
Support for the proposal was drawn from across all groups. The small number of responses questioning the merits of the proposal recognised that domestic violence was unacceptable and that measures had to be taken to respond to it, but did not believe that the Member’s proposal as currently framed was the best approach.

General comments

Responses to the consultation were primarily focussed on the questions, however, some respondents chose to provide some general comments in addition to or instead of responding to the questions.

All of the respondents expressed concern about the current prevalence of domestic abuse and the growth in the number of reported incidences of domestic abuse. In its response, UNISON noted that 53,681 incidences of domestic abuse were reported in 2008/09. Furthermore, the overwhelming majority of the general comments provided affirmation of the Member’s proposal, welcoming the improved access to protection and justice for victims of domestic abuse that the proposal seeks to deliver. Children 1st highlighted the benefits that this would also deliver to the children of victims of domestic abuse.

Amongst those expressing support for the proposal, a small number highlighted areas in which the proposal could be improved. In particular, four respondents advocated the widening of the definition of domestic abuse within the Bill to include stalking. Another two respondents sought affirmation that psychological and emotional abuse would be included within the understanding of domestic abuse. Shakti Women’s Aid work with women from Black and ethnic minority groups. Their response highlighted that in some black and ethnic minority groups there is pressure not to report domestic violence and that this would not necessarily only come from the perpetrator. As such, Shakti Women’s Aid argue that protection should be afforded from others and not just the perpetrator.
Three of the four respondents who did not explicitly support the proposal recognised that there is a real need to tackle the problem of domestic abuse, however, believed that this proposal was not the best approach. One respondent argued that the proposal was gender biased and did not provide for male victims of domestic abuse. Another respondent considered that the intervention of the police and courts is not the best way to respond to domestic violence and that education and counselling should instead be pursued with more vigour. Finally, one respondent questioned the impact of providing legal aid to all victims of domestic abuse, suggesting that in order to comply with ECHR, it would also be incumbent on the Legal Aid Board to provide legal aid to all those accused of domestic abuse.

The fourth respondent not to support was the Scottish Legal Aid Board who explained the position in terms of legal aid, but did not offer a view one way or the other.

As noted above, however, the most common feature of the general comments was the strong support for the proposal and the support for increasing access to justice and protection for victims of domestic violence.

Questions

The consultation document posed seven questions. The majority of the 40 responses were focussed around these questions. The questions and the responses to them are considered in turn below.

Q1 What advantages or problems might arise as a result of removing the course of conduct requirement?

The proposal advocates the removal of the need to demonstrate course of conduct in obtaining a non-harassment order. Currently, in the civil court, a victim of abuse must make their own application for an order to be protected from further abuse or harassment. The onus of proof lies with the victim. When a victim of abuse applies for a non-harassment order, two different occasions of harassment need to be shown in the civil court. This is because a ‘course of conduct’ must be established before an order can be granted.

A study carried out in 2003 showed that the victim’s statement about the abuse is often not enough to meet this evidential requirement. Eyewitness accounts and the evidence of professionals, particularly doctors, are preferred, for each of at least two separate incidents of harassment. Providing this is problematic given substantial anecdotal evidence that many victims do not tell anyone about their abuse. As a consequence, the required supporting evidence of a course of conduct is simply not available.

There were 33 responses to this question. The removal of course of conduct was universally welcomed. Four respondents simply welcomed the removal of course of conduct, while the remaining respondents explained the advantages
of its removal. 21 responses highlighted the increase in protection to the victims of domestic abuse that this would deliver, highlighting that victims would no longer have to wait to be subjected to further abuse to receive protection. Three of these 21 responses noted that before making a first report it was likely that the victim would already have been abused and as such the requirement to prove course of conduct was meaning that the victim may have had to endure at least a third bout of abuse to get support. Another advantage noted within four of the responses was that it would give victims greater confidence to report domestic violence if they knew they would not have to demonstrate course of conduct to receive protection. A further advantage of removing the course of conduct set out in the responses was that it would mean services could be more directed toward the victim and less to establish proof against the perpetrator of the abuse. Another respondent suggested that establishing course of conduct in rural and remote communities was particularly challenging due to the close nature of the community and the fear of reporting incidences of domestic violence.

While all of the responses exhibited support for the removal of course of conduct, there was an indication in two responses that this could lead to more malicious reporting. And one respondent contended that removing the course of conduct may lead to a reluctance on the part of courts to grant orders.

**In general, however, there was strong support for removing course of conduct and a belief that it would give victims greater confidence to report domestic violence and would increase the availability of protection to victims.**

**Q2 What do you see as the main benefits of making it easier to obtain a non harassment order?**

As previously advanced in response to the first question, it was clear that respondents welcomed the removal of the course of conduct requirement and the consequent effect this would have on the ability of victims to obtain non-harassment orders.

There were 24 responses specifically to this question. 17 of those responses highlighted the fact that in making it easier to obtain non-harassment orders it increased protection available to victims of domestic violence and their children.

Three responses suggested it would be beneficial as it would remove the burden on pursuing the order from the victim to the Procurator Fiscal.

One respondent argued that it provided a deterrent and raised awareness of domestic violence.

The Association of Chief Police Officers in Scotland argued that it would empower the police to come forward at an earlier juncture and protect the victim.
Finally, one respondent contended that it would go some way to redressing what they saw as currently an unfair bias toward the accused.

Q3. What advantages or problems might arise with the removal of means testing?

The proposal seeks to make legal aid free to all for an application to a civil court for an interdict with a power of arrest, or a non-harassment order where domestic abuse is involved. This will allow all victims of domestic abuse, regardless of economic background, to access the protection afforded by these orders. Victims would no longer have to pay for their own protection.

There were 26 responses to this question, all of which intimated that there would be significant benefits to removing means testing in this regard. Some respondents highlighted some disadvantages, but there was a general consensus that these would be outweighed by the advantages.

Eleven responses stressed that this was the right approach as people should not have to pay to be protected from domestic abuse.

Five responses suggested that leaving an abusive partner often left the victim in financial hardship and this was further exacerbated by the need to pay to get protection. A further respondent noted that it might give victims greater confidence to leave abusive partners as they could be more confident of getting access to justice and protection.

Six respondents highlighted that in the past the accused had been more likely to receive access to legal aid and this would redress the current imbalance and bring greater fairness. One respondent suggested, however, that in order to comply with European Convention of Human Rights, non means tested legal aid would also need to be given to the accused.

One respondent argued that to comply with Articles 3 and 8 of the European Convention of Human Rights states had an obligation to protect citizens from violence and in that regard victims should have access to justice and protection free of charge.

One respondent suggested that low to medium earners would benefit significantly as they may not previously have had access to legal aid, but at the same time did not have sufficient funds to seek protection through the courts.

One other respondent noted that 1 in 4 women do not proceed to seek justice due to lack of legal aid contribution or failure to access legal aid. As such, it was argued that this change would be vastly beneficial.

Four responses recognised the increased burden this would place on the legal aid budget, but the responses equally recognised that the benefits would outweigh the costs.
One respondent suggested that even with access to legal aid, victims of domestic abuse would still struggle to access the justice system due to the scarcity of solicitors in the field of family law willing to take on legal aid clients. This was not, however, suggested as an argument for retaining means testing for legal aid for domestic abuse victims.

Q4. What do you see as the main benefits of removing means testing?

There were 20 responses to this question expressing a variety of different benefits of removing means testing.

Five responses argued that this would lead to greater fairness and equality with the accused who to date has had greater access to legal aid. A further four respondents highlighted the increased access to justice resulting from the change.

The remaining respondents focussed on the financial consequences of removing means testing for victims of domestic abuse. Five respondents argued that this would mean that victims no longer had to make the choice between seeking protection and having enough money to live on or going in to debt. Three other respondents contended that it might give victims greater confidence to leave abusive partners if they had this financial reassurance. One respondent highlighted the particular difficulties in getting access to justice for those currently in a position where they have insufficient funds to seek justice, but sufficient funds so as not be eligible for legal aid.

One final respondent highlighted long terms savings to society by enabling victims to leave abusive relationships and attain justice and protection.

5. What are the advantages and problems that might arise from making it a criminal offence to breach an interdict with a power of arrest?

The breach of a non-harassment order is a crime. Breach of an interdict with a power of arrest may involve behaviour which is criminal (such as a breach of the peace or assault), but a breach of interdict is not, in itself, a crime.

Where the abuser behaves in a way that breaches the interdict but does not commit a crime (for example loitering outside the victim’s home), the consequences are very limited. The breach is a form of contempt of court and, although the power of arrest allows the police to remove the person from the scene, the maximum possible outcome is a remand in custody for up to two days.

The Bill would make it a criminal offence to breach an interdict with a power of arrest.

This aspect of the proposal was welcomed by all 26 of those who responded to this question although a few respondents recognised that there may be some problems.
Seven respondents argued that this would provide a clear indication that domestic abuse is being taken more seriously, giving victims of abuse more confidence to report abuse.

Five respondents contended that as it stands interdicts are worthless, but that this change would give some weight to them. A further two respondents noted that to date interdicts only work if the perpetrator believes in them as the consequences of their breach are limited.

It was argued by two respondents that victims of abuse would be more likely to report their abuse if protections afforded to them were more effective. A further respondent argued that changing the nature and consequences of breaching an interdict would lessen the onus and pressure on the victim to pursue the case with a greater burden placed on the police and procurator fiscal.

Some respondents while welcoming the measure, highlighted some potential problems. Two respondents raised concern about the increased burden this would place on the courts and police. One respondent argued that it may in fact discourage reporting as victims would be concerned about giving evidence in court. One other respondent argued that it would mean requiring a higher standard of proof for breach of interdicts. It was further argued by the respondent that the court may be less likely to grant power of arrest if criminal liability is attached to the breach of interdict.

Overall, however, there was strong support for making it a criminal offence to breach an interdict with a power of arrest.

6. What do you see as the main benefits of making it a criminal offence to breach an interdict with a power of arrest?

There were 22 responses to this question. There were three main benefits identified by respondents. Firstly, nine respondents believed it provided a heightened deterrent. There was a perception that perpetrators of domestic abuse currently flout interdicts with impunity and that this would provide a greater deterrent.

Secondly seven respondents believed that in strengthening the power of the interdict, it would provide greater protection for victims of domestic abuse. ACPOS contended that it would give the police the power to respond properly to a breach.

Finally, four respondents argued that making it a criminal offence to breach an interdict with power of arrest was a demonstration of how serious a breach is and how seriously domestic violence it taken.

In addition to these main points, one respondent contended that it would engender greater consistency in the response to domestic abuse from the police while one respondent noted the burden this would place on police time.
7. What costs would be associated with all of the proposals contained in this Bill?

There was recognition amongst the 19 respondents to this question that the proposal would precipitate increased costs, but that this was outweighed by the benefits the Bill would bring to victims of domestic abuse and wider society.

Four respondents highlighted the likely additional costs in terms of legal aid and financial pressures upon the police and courts.

However, eleven respondents stressed that access to justice is paramount and outweighs any potential concerns about cost.

A further four respondents recognised short term costs, but in the long term suggested there might be savings, with a reduction in re-victimisation and reduced societal costs in terms of re-housing, placing of children and health costs.

One respondent drew attention to the Scottish Government’s document Safer Lives : Changed Lives which suggests that £2.3 billion is spent responding to domestic abuse. It was therefore argued that this Bill could precipitate significant savings.

The Scottish Legal Aid Board estimated that if there were 1,000 additional grants of advice and assistance by the Legal Aid Board, costs could amount to £500,000. They indicated, however, that this would need to be offset against a reduction of costs achieved by removing any breaches of interdicts from civil legal aid proceedings.

Conclusion

The Member very much welcomes and appreciates the interest that has been demonstrated in her proposal.

The responses to consultation have affirmed many of the Member’s concerns about the prevalence of domestic abuse. The responses have also highlighted new information, which will be drawn upon in finalising the proposal.