1. Do you agree with the proposal in the Bill to create a new offence of abusive behaviour towards a person’s partner or ex-partner covering both physical violence and non-physical abuse?

Yes, albeit presumably it will be important that the offence is worded in a wide-ranging manner to take account of emerging patterns of behaviour. The UK Parliament offence of coercive control was tightly worded but the proposed Scottish offence gives greater scope for access to justice for victims from a wider range of behaviours. I did ask whether it was realistic or helpful for the offence to provide statutory guidance over time of the range and type of behaviours.

2. Do you consider that the proposed offence is needed to address a gap in the existing law which currently makes it difficult to prosecute some forms of domestic abuse?

Yes, vital to address the abuse via non-physical methods. However, do we need to be clear in definitional terms between the Committee’s use of non-physical and psychological on the face of the bill?

3. Do you have any views on the definition of the offence, such as the requirement for a course of behaviour, the definition of abusive behaviour, or the defence that the behaviour was reasonable in all the circumstances?

In the Scottish Government’s previous consultation, I raised the issue of whether the definitions could be deemed to cover the issue of domestic abuse and a person with disabilities and whether “reckless” was enough to cover such matters and whether a clause should also cover neglect as domestic abuse unless its covered by other legislation. Also wondered if in terms of a physiological definition this non-physical form of abuse also provide coverage for an offence of a financial or economic basis where a defence could be presented that this wasn’t meant to cause psychological harm?

I would also have concerns about psychological abuse needing to cover emotional abuse as it’s potentially different in its abuse, behaviours and outcomes but potentially less overtly coercive but with the same negative outcome for the victim. Also, presumably the definition of intimidating needs to be broad, in terms of something may look reasonable e.g. a text message but set in a wider context of other non-recorded behaviour could be a trigger or coercive stimulus for the victim to change their behaviour to the abuser’s desired outcome.

I’d have personal concerns that in interpretation the phrase “at least 2 occasions” is used, it’s not a zero tolerance approach promised by the Scottish Government Programme for Government 2015-16. I realise other Governments have legislated for multiple and not singular offences on the basis that it might not be in the public
interest to prosecute a single. I disagree that even one case of domestic abuse is not in the public interest to prosecute given the fundamental human rights issue that is domestic abuse in the UK but can recognise the financial context for the public interest test. I’d also be concerned if we felt the need to have two separate occasions or forms of evidence to address any concern that this might lead to sub-optimal processes in evidence gathering, simply focusing on one occurrence and in a process sense moving onto the next crime.

However, if the first occasion was so severe, are we seriously saying that the partner would have to go and experience it again before the new offence could be used or that one severe occasion would not be enough for a conviction using this new offence? If other legislation didn’t cover the behaviour of the offender and impact on the victim during first offence they would only have access to justice after a second abusive experience that was admissible? I’m maybe reading it wrongly. I get the requirement for there to be a nexus between two proposed offences for a recourse to prosecute and sadly in case law terms limit the potentially wide-ranging reach of any legislation. However, I do hope there can be a zero tolerance clause inserted into the legislation to enable a course of conduct where one incident to one person or two incidents to two unrelated persons by an offender can be prosecuted under the Act. For me one incident of domestic abuse is enough and the offence within the legislation should send a clear strong message.

4. The offence is restricted to abuse between partners and ex-partners. Do you agree with this approach? For example, during the Scottish Government’s consultation on a draft offence, concerns were raised that it did not properly reflect the impact of domestic abuse on children. The Scottish Government has sought to address this concern in the Bill, primarily by providing that the offence will be aggravated where it involves a child. Do you have any views on this aspect of the Bill?

Welcome the widen scope, my concern was that by focussing on partners or ex-partners, there was a need for the offence to include children witnessing the abuse and reporting it as abuse to them in a non-physical sense. There is also the wider issue of whether physical or mental punishment of children, if severe should form part of a wider definition of an equally safe outcome for Scotland and whether the reduction in these forms of abuse of children, should form part of a wider preventative agenda.

5. Do you have any views on factors which might impact on the reporting, investigation and prosecution of the offence?

I would hope that any new legislation in this Parliamentary term also allows a wider strategic and preventative context to be debated and gives public bodies a proactive duty to address domestic abuse, gendered violence and progress gender equality generally. Hopefully such duties would enable proactive behaviour across Community Planning Partners to drive greater reporting, monitoring, support and ultimately prosecution of offences, giving victims greater confidence in coming forward to report abuse.
As well as strengthening criminal law to deal with offenders, is there also an opportunity to consider the introduction of a Gender-based Violence & Abuse Prevention (Scotland) Bill to prioritise further various methods of prevention across Scotland and place greater elements of the Equally Safe Strategy upon a statutory footing? I would also hope that as well as a Gender Equality national outcome, we could have a commitment from the next Scottish Parliament to place “Equally Safe” the national strategy for the elimination of violence against women and girls on a statutory footing. Any future legislation could look to excellent work of the Welsh Assembly by tabling a bill to strategically address a number of issues surrounding Gender-based Violence and Abuse as well as Sexual Violence: http://www.parliament.scot/S4_J usticeCommittee/Inquiries/ABSH1.George_Eckton.pdf

6. The Bill makes a number of reforms to criminal procedure, evidence and sentencing. For example, it would prohibit the accused in a domestic abuse case from personally conducting the defence. Do you agree with this prohibition?

Yes, it would appear to be appropriate in this context because of the potential for it to be a continuation of non-physical abuse of the victim within a formal public setting and a potential barrier to their appearance at the criminal proceedings.

7. The Bill would also require the court in a domestic abuse case to consider making a non-harassment order. What are your views on this approach?

Welcomed.

George Eckton
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