

## **Justice Committee**

### **Domestic Abuse (Scotland) Bill**

#### **Written submission from Engender**

#### **About Engender**

Engender has a vision for a Scotland in which women and men have equal opportunities in life, equal access to resources and power, and are equally safe and secure from harm. Engender is a feminist organisation that has worked in Scotland for 20 years to advance equality between women and men.

Engender welcomes the proposed legislation as an opportunity to advance Scotland's compliance with domestic and international obligations respecting women's rights and women's equality. In Scotland last year, 59,882 incidents of domestic abuse were recorded by police in Scotland, an increase of 2.5 percent from 2013-14.<sup>1</sup> Of the recorded incidents, 79% had a female victim and male perpetrator.<sup>2</sup>

In 2014, the Scottish Government launched Equally Safe, its strategy for preventing and eradicating violence against women and girls. Developed in partnership with CoSLA, Police Scotland, NHS Scotland, and women's organisations, including Scottish Women's Aid and Rape Crisis Scotland, the strategy sets out a vision for Scotland where women and girls are safe and respected. In Equally Safe, the Government acknowledges that early interventions are required to meet the intended aims of the strategy. It also, however, recognises the need to hold perpetrators of domestic abuse to account before the criminal and civil justice systems. As stated in Equally Safe:

*The robust approach of Police Scotland and the Crown Office and Procurator Fiscal Service to the detection and prosecution of offences involving domestic abuse and sexual assault sends an unequivocal message - there is no place for this type of offending in our society, it will not be tolerated, and that perpetrators of violence and abuse can expect the full force of the law to hold them to account for their behaviour.*

The Domestic Abuse (Scotland) Bill is a step toward implementing protections to end domestic abuse and, more broadly, violence against women and children.

#### **Domestic Abuse (Scotland) Bill**

Introduced on March 17, 2017, the Bill seeks to improve the justice system response to domestic abuse. Currently, the Bill is before the Justice Committee, which is seeking evidence on any aspect of the Bill. Several questions have been put forward by the Committee, and Engender is responding to those pertaining to the new criminal offence, specifically the first two questions.

---

<sup>1</sup> Scottish Government. 2016. *Crime and Disorder*. Available from: <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/TrendDomesticAbuse>

<sup>2</sup> Scottish Government. 2016. *Crime and Disorder*.

## Specific Questions

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?*

The proposal in the Bill to create a new criminal offence that captures coercive and controlling behaviour in intimate relationships between partners and ex-partners would strengthen existing criminal law in Scotland. Engender therefore supports the proposal.

Domestic abuse is a cause and consequence of women's inequality. The new offence would capture the psychological and emotional abuse that occurs over a sustained period of time, acknowledging that domestic abuse is not a one-time incident, nor is it necessarily limited to physical violence. The Bill creates an offence aimed at prosecuting the psychological and emotional harm sustained by victim-survivors of domestic abuse.

The Bill, however, is silent on the impact of domestic abuse on children. It is well-recognised that children experience domestic abuse, and are not solely witnesses to it perpetration. Their experience of domestic abuse, as well as coercive control, should be captured in the Bill, specifically in the language surrounding the new offence. Such an amendment to the Bill would be consistent with commitments made in *Equally Safe*, including the statement that 'We want women, children and young people affected by violence and abuse to be supported by a sensitive, efficient and effective justice system'<sup>3</sup>.

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?*

The provisions in the Bill, specifically the development of a new criminal offence, are welcome, and are needed to prosecute some forms of domestic abuse, including controlling behaviours, that are not currently addressed under existing definitions and provisions, such as those for common assault and stalking. Absent this new criminal offence, it would remain either impossible or difficult to prosecute coercive and controlling behaviours under existing legislation.

Engender echoes the input by Scottish Women's Aid, specifically that the key elements of the offence should:

- allow the court to consider a variety of behaviours within a course of conduct in an intimate partner relationship, behaviours that together create an environment where the woman is controlled by the perpetrator, and her participation, liberty, autonomy and self-determination are obstructed;
- take into account the psychological harm on the woman and any children or young people involved and the impact on the day-to-day activities these

---

<sup>3</sup> Scottish Government. 2016. *Equally Safe*.

behaviours cause, but without having to refer to an inappropriate and invasive benchmark of psychiatric diagnosis; and

- reflect the role that contact with children can play in enabling perpetrators to continue to pursue a regime of abuse, and the impact that this can have, not only on women, but also on their children, through placing them at ongoing risk and preventing recovery from abuse.

### 3. *Alignment with Equally Safe and the Istanbul Convention*

There are some critical gaps in this Bill, as drafted. We consider that the new law should provide protect women and children during civil child contact actions, and support police and housing authorities to keep women and children safe in their own homes should they choose to remain. As evidenced by Scottish Women's Aid's work on housing<sup>4</sup>, this would substantively contribute to reducing homelessness in Scotland.

*Equally Safe* makes reference to Scotland's ambitions to align its action on violence against women with the Istanbul Convention, an instrument of the Council of Europe. Article 52 of this Convention speaks to Member States' obligation to ensure victims of domestic abuse are protected from immediate danger without having to vacate their homes.

#### Article 52: Emergency barring orders

*Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.* (Council of Europe, 2012, pg. 22)

It would be helpful for the bill to be amended to address this serious threat to safety for children and women. UK ratification requires compliance in Scotland with the Convention, so we would also draw the Committee's attention to the need to include any language around extraterritorial jurisdiction required for compliance with Istanbul.

### **Conclusion**

The addition of the proposed offence to Scottish criminal law, which captures coercive and controlling behaviour in the context of domestic abuse, is a step towards achieving a more equal and safe society in Scotland. However, there are particular provisions which could strengthen the Bill, including the consideration of children in the wording of the offence, the incorporation of emergency barring orders, and language around extraterritorial jurisdiction.

---

<sup>4</sup><http://www.scottishwomensaid.org.uk/sites/www.scottishwomensaid.org.uk/files/Change%2C%20Justice%2C%20Fairness.pdf>

Emma Trottier  
Policy Manager  
Engender  
1 May 2017