Rape Crisis Scotland welcomes the opportunity to provide evidence on this Bill. We consider that the Bill represents a significant step forward in improving justice responses to people in Scotland experiencing domestic abuse.

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. Women may experience ongoing controlling and abusive behaviour over the course of many years, but the current incident based approach can at times fail to recognise the context and impact of this abuse. It is important to recognise the impact of psychological abuse, which can be as harmful in its impact as physical assaults.

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. The provisions in the Bill are needed to prosecute some forms of domestic abuse, including controlling behaviours, that are not currently addressed under existing legislation and common law.

Rape Crisis Scotland 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 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.

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?

We consider that prosecuting a course of behaviour rather than individual assaults is an important change, and one which should enable the Scottish criminal justice
system to be more responsive to the reality of abuse experienced by domestic abuse survivors.

The offence is restricted to abuse between partners and ex-partners. Do you agree with this approach?

Yes, although it is crucial that the impact on children is recognised. We welcome the introduction of an aggravator where children have been impacted by the behaviour libelled. Further, we support the position of Scottish Women's Aid, in raising child contact in the context of domestic abuse, which frequently enables the continuation of ongoing abusive and controlling behaviour. We believe that this is an issue which requires far greater consideration, particularly in relation to the lack of cross over between criminal proceedings and civil contact cases.

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

It is important to consider the best means of making the Scottish public aware of the new legislation and the policy intent behind it. A public awareness campaign should be developed to coincide with the Bill's implementation, to ensure people are aware of what coercive control is and that it is a crime with serious consequences.

We are anxious to ensure that the inclusion of sexual violence within the definitions in this bill does not lead to the creation of a hierarchy of rape, where rape which takes place within a relationship is prosecuted as abusive behaviour rather than rape. We are clear that this is not the intention of the Scottish Government, however we are also aware of the challenges in securing successful rape prosecutions, and we would not wish to see an unintended consequence of this bill being a reduction in prosecutions for rape, where the accused is a partner or ex-partner. COPFS, working with the police, have had significant success in recent years in prosecuting serial rapists operating within domestic contexts, and we hope that this approach will continue.

The creation of an offence which criminalised coercive and controlling behaviour was originally considered when the Scottish Government was legislating to remove the unique requirement in Scots law for corroboration. Prosecuting this new offence in a justice system which still requires corroboration may present some challenges. We consider that the Scottish Government should look again at the requirement for corroboration, and the disproportionate impact it has on crimes such as rape and domestic abuse.

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 is not appropriate in any circumstances for an accused in a domestic abuse case to conduct his own defence. We welcome the inclusion of this provision within the Bill. This is a crucial protection.
Consideration should also be given to introducing a statutory right to anonymity for complainers in domestic abuse, sexual offence, stalking and trafficking cases. Currently, there is a convention that the press do not publish the names of rape complainers. We consider that this could be made more robust by moving this protection onto a statutory footing, and broadening it to include complainers in sexual offence, domestic abuse, stalking and trafficking cases.

_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?_

We agree with this approach. We are aware of numerous examples of men convicted of domestic abuse related offences who are able to harass their victims from prison. Automatic consideration of non-harassment orders could significantly improve survivors’ safety and prevent delays in accessing NHOs that can prove to be dangerous for women and children.

**Conclusion**

Rape Crisis Scotland is very supportive of the policy intent behind this Bill, and considers that the legislation as drafted has the potential to significant improve the protection offered to people in Scotland experiencing domestic abuse.

Sandy Brindley  
National Coordinator  
30 April 2017