I refer to the above and thank you for inviting the Scottish Police Federation (SPF) to contribute to the consultation.

The SPF approaches this consultation from the basis of the practical and real experiences of our members. Ultimately it is they who will be at the forefront of enforcement of any legislation that may be passed. We have largely limited our response to issues that will directly fall within the operational expectations of our members but also make some general observations on what we consider to be areas of difficulty.

From the outset I wish to be unequivocal - the SPF finds domestic abuse to be utterly abhorrent and we are supportive of any practical measures that can be taken to protect and mitigate the effects on the victim. There can be no doubt that the behaviours this proposed legislation attempts to tackle are corrosive, pernicious, and can have a devastating impact on victims. As a general statement of intent, it is impossible to argue against that steps should be taken to attempt to eradicate them.

As a general observation the SPF is struck by the fact that almost unlike any other crime the apparent policy approach to domestic abuse is one geared almost exclusively towards punishment. We find this at variance with diversionary and educational activities in most other crimes. We simply ask whether a long term strategy that seems built on prosecutorial activities is likely to bring about the attitudinal changes that are necessary to help eradicate domestic abuse.

As the Committee will be aware the SPF, whilst fully supportive of measures to protect victims of domestic abuse, has been critical of an approach that lent itself to arrest almost regardless of the evidential circumstances. Whilst the Police Service of Scotland (PSoS) refuted this, the real experience of our members was such that this merited being highlighted. Indeed this was also supported by others during the evidence sessions in the review of the Crown Office & Procurator Fiscal Service.

We sense there is a danger this expectation could be heightened with this new legislation. The accompanying documentation makes clear there is an expectation that in cases where the police currently do not record a crime, this could change with this new legislation. Whilst self-evidently no one wants to see victims being left to suffer, we see real risks that police officers could be used in pawns in routine family disagreements where the police happen to be called. There can be little doubt that the attending police officer is likely to often to be the referred to “reasonable person”.

Whilst the reasonable test is one which is fairly familiar in legislation, it tends to be to set against behaviours or actions that are witnessed directly. Changing that to a perception test is a significant step and the implications of doing so must be carefully considered. At the very least this can be seen as fundamentally changing the role of
the police officer from evidence gatherer to one of formulation based on allegation alone.

Despite the legislation stating a course of behaviour will necessitate at least two separate events or occurrences, it is not clear if these need arise from two separate complaints. If we consider for a moment the police attending an incident where B alleges A behaved in a particular manner, and then states that A behaved in the same manner last week, is this a course of behaviour for the purpose of this legislation?

Further difficulties are presented when we face the fact there is an expectation that our members will become some form of thought police. It appears, at least on face value, they will be expected (in the apparent absence of any psychological qualification) to form an opinion on the “intentions” of A in the alleged behaviour towards B.

Whilst the proposed legislation also talks about the options to utilise experts to speak to the potential effects of the course of conduct, it is unclear how these experts are to form their views without actually speaking to both the complainer and accused. We have not seen any suggestion that the accused will not have the right to silence (or that any inference of guilt can be drawn from such silence).

This raises yet more questions for the purposes of court proceedings as those charged with conducting any defence could be doing so against a third hand interpretation of the alleged conduct.

There are also the added questions of who is going to make the determination on who is an expert, who is/are expected to seek the expert opinion and crucially, who is going to pay for it?

We highlight these matters not to be obstructive but to draw the committees’ intention to real issues that have to be properly thought out. We would hope that the practicalities of what this might mean in practice are given as much weight as the intention behind the legislation.

If implemented, it is clear that the legislation will necessitate training to assist officers with the practical application of the law. It is unclear how the PSoS has determined that this will amount to one days training per officer as to have reached this figure, it must have a determined view on what that training must entail. Quite simply without any knowledge on what that assessment was based on, we cannot offer a qualified view on its adequacy. What we can say however is that experience tends to suggest the service grossly underestimates training needs and often seeks to address that by delivery of low quality and remote online training.

We also consider their training cost estimates as laid out in the financial memorandum to be wildly inaccurate. They take zero account of the abstractions and back cover costs for removing officers from duties to undertake the training. However these costs could be offset to some degree by utilising in-house capabilities within our own internationally recognised centre for training excellence. Additionally
and whilst the PSoS felt unable to quantify the additional costs arising from courts etc, our experiences suggest these will be considerable.

Calum Steele
General Secretary
3 May 2017