Justice Committee
Domestic Abuse (Scotland) Bill
Written submission from Scottish Women’s Rights Centre

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 Scottish Women’s Rights Centre supports the creation of a new offence of abusive behaviour that encompasses both physical and non-physical abuse. We believe that this is a necessary and important step forward in shaping Scotland’s response to domestic abuse, and one that – if implemented and resourced effectively – could improve women’s access to justice.

Though we know public misconceptions that domestic abuse must entail physical violence to be untrue, this understanding is not yet fully and clearly supported by Scots Law. We are clear that current legislation does not reflect victim survivors’ experience of domestic abuse and that this hinders both reporting and prosecution of domestic abuse. It is therefore critical that the law is strengthened and brought into line with what victim-survivors and the organisations who support them have stated for many years: physical violence is not necessarily the most traumatic element of abuse, if it is there at all. For justice to be served it is essential that a comprehensive definition of domestic abuse including coercive control is established in statute.

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?

At the moment, there is a significant gap between criminal justice responses to and the evidence and experience of women who are subject to domestic abuse. Without legislation that encompasses and criminalises the broad range of abusive tactics perpetrators use against victims, including psychological, emotional, financial, sexual and physical abuse, women are too often left vulnerable, unsupported by the legal framework and unable to access justice.

We particularly welcome the inclusion of coercive control within the proposed offence given the exertion of constant control by the perpetrator is something that has been historically very difficult to prosecute. We believe that prosecuting a code of conduct rather than individual assaults will better reflect victim-survivors experiences of domestic abuse, especially where there is no physical violence, and enhance the likelihood of prosecution. We would emphasise the additional importance of this move in changing public understanding of what domestic abuse entails. It is our view that this new law is necessary to legitimise the experiences of those living in intimate terrorism – sometimes with no physical violence – and to encourage, support and enable victim-survivors to secure successful prosecutions for domestic 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?

As stated, we believe that prosecuting a course of behaviour rather than individual assaults is an important change, and we agree that comparable to stalking law, two or more incidents is a suitable threshold to demonstrate this.

We consider the definition of abusive behaviour to be quite comprehensive and welcome the recognition that fear, humiliation, degradation or punishment are not required to be ‘proven’, given the numerous and likely insurmountable barriers to achieving this. It is sufficient that a reasonable person would consider this to be a likely effect of abusive behaviour.

We consider that it could be helpful to provide examples of where a person would be considered to be “reckless” as to whether their behaviour causes physical or psychological harm. These examples would not need to be exhaustive but the provision of examples will assist courts and prosecutors to interpret this provision without reliance on case law, given the time that that could take to develop.

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

We believe that children are direct victims of domestic abuse and coercive control, rather than simply bearing witness to a crime. As such the Scottish Women’s Rights Centre welcomes the consideration of children in this Bill, specifically that the offence will be aggravated when it involves a child. It is our view that where the aggressor has been applied, children should receive a non-harassment order in their own right. However we believe that this should be continually monitored and scrutinised to ensure that children’s rights are being upheld, and that the Children’s Act recognises these rights fully.

This is of heightened importance whilst we work within a legal process that is not yet responsive to the needs of child witnesses. Bearing in mind Scotland’s commitment to Article 3.1 of the United Nations Convention on the Rights of the Child:

“In all action concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.”

It is our view that the needs of child witnesses should be addressed in the Equally Safe Strategy using a similar approach to the Barnhaus Model, focussed on the needs of the child.

This Act should clarify the institutional response to children who remain in contact with the perpetrator, including court ordered contact, following the parents’ separation due to domestic abuse.
Separately, we are aware that extended family and friends are often “used” by the perpetrator to abuse their partner or ex-partner. For example, they will ask parents or siblings to contact and threaten their partner or ex-partner. We consider that it would be helpful to extend the definition so that those who “aid and abet” a perpetrator of abuse would also be guilty of an offence.

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

We believe this offence is necessary to challenge and change perceptions of domestic abuse, but we recognise that in isolation a new law alone will not be insufficient.

It’s important to note that whilst this Bill will in many respects be instrumental to changing public attitudes, conversely public attitudes represent a significant challenge to the success of this bill. On a wider note we support efforts to raise awareness of this Bill and its purpose, and we support calls for better domestic abuse training for Sheriffs.

With respect to reporting, we believe that a well-resourced public awareness raising campaign is necessary that supports victim-survivors to know and enact their rights, seek support and highlight the broad range of tactics perpetrators use, specifically non-physical abuse. Critical reasons for underreporting include low confidence in the criminal justice system, and a fear of how victims will be treated within this. Another reason is the implications for reporting on children. Scotland’s response must be coordinated and robust if we are to halt the victim-blaming attitudes that prevail at every level and earn women’s confidence in Scotland’s criminal justice system.

Regarding investigation and prosecution, there are several factors we believe are still uncertain and must be pinned down, in particular we are keen to see the definition of recklessness made more explicit and clear. It remains unclear how survivors will demonstrate this pattern of behaviour in line with the Scots requirement for corroboration. Additionally, it is unclear what a reasonable persons’ consideration of psychological harm will be; which if unchanged could risk the development of inconsistencies in practice.

It is also unclear at present what circumstances could enable an alleged perpetrator to argue that the abuse was “reasonable in the particular circumstances”. We are concerned that alleged perpetrators may attempt to argue that their behaviour was reasonable, for example, due to the mental health of the victim or simply in relation to the character of the victim more generally i.e. the perpetrator will be able to argue in a judicial setting that their behaviour is the victim’s “fault”. The fear of this happening may lead to underreporting. It also may create a forum where the perpetrator can continue the abusive behaviour by seeking to humiliate the victim in public.

*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?*
The Scottish Women’s Rights Centre welcomes the inclusion of reforms to criminal procedure, evidence and sentencing to reduce the likelihood that engagement in the criminal justice process will facilitate ongoing abuse. In particular we welcome the definition of ‘vulnerable witness’ for survivors and the prohibition of the accused conducting their own defence; a loophole that has allowed for the continued abuse of domestic abuse victim-survivors for too many years. We are firmly of the belief that these protections should be applied to stalking and threatening and abusive behaviour, especially where the domestic abuse threshold has not been met.

We also welcome the inclusion of the offence of stalking and threatening and abusive behaviour as alternatives where convictions under the Domestic Abuse Act seem unlikely.

Further, there is currently an “in practice” right to anonymity for victims of sexual crimes but this is often not respected for victims of stalking and threatening behaviour offences nor is a right to anonymity included within the Bill. We consider that a statutory right to anonymity for victims of this offence, as well as for the victims of stalking and threatening behaviour offences and other offences related to domestic abuse such as assault, would lead to more victims having the confidence to report.

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 are confident that this is the right approach. 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.

We would also welcome consideration of a provision that would enable the court to consider an NHO even where a Not Guilty or a Not Proven verdict is returned, if the offence has been proven on a balance of probabilities. This would avoid women having to commence separate civil proceedings seeking this order.

Conclusion

The Scottish Women’s Rights Centre welcomes the opportunity to respond to this consultation, and critically we very much welcome Scotland’s Domestic Abuse Bill as an improvement within criminal law, and as a tool with extraordinary potential to change the landscape around how we respond to domestic abuse in Scotland.

Scottish Women’s Rights Centre
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