Introduction

Zero Tolerance is the leading Scottish charity working to prevent men’s violence against women (VAW) by promoting gender equality and challenging the attitudes that normalise violence and abuse. We have taken a practical, evidence-based approach to such primary prevention for twenty-five years.

Primary prevention tackles the root causes of violence against women in order to eradicate it and is a core objective of the Scottish Government’s Equally Safe Strategy\(^1\). Of particular relevance to the Domestic Abuse (Scotland) Bill 2017\(^2\) is the following excerpt: ‘[primary prevention] …requires a step change in the attitudes which condone and excuse violence against women and girls, which enable perpetrators to deny the reality of what they are doing and place the blame on their victims. It raises fundamental questions about the way our society is currently organised.’

While primary prevention seeks to prevent violence before it occurs, and the Bill focuses on the criminal sanctions for violence that has occurred, in combination they offer a powerful instrument for ending VAW. This response will highlight how this can be capitalised upon in addition to offering some suggestions for how the Bill might be made an even more effective tool.

Overall Zero Tolerance strongly supports the Domestic Abuse (Scotland) Bill 2017. It offers pioneering protections for women and children subject to domestic abuse and contributes to our wider goal of ending VAW by acknowledging the power inequalities that cause, enable and perpetuate all such violence. This Bill is a notable step by the Scottish Government to enact its stated commitment to eradicate VAW.

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 – It is essential that Scot’s law comprehensively cover the nature of the crimes it seeks to prevent. The overarching pattern of control characteristic of domestic abuse is currently not encompassed by existing legislation. It is this exertion of power that is both central to women and children’s lived experience of domestic abuse and also testifies to the gender inequality that underlies such abuse.

Popular understanding of this gender-based power imbalance is minimal and the passage of this Bill can, if we take appropriate steps, serve to increase awareness. Zero Tolerance suggest that to fully realise the preventive potential of this Bill an

\(^1\) Equally Safe: Scotland’s strategy for preventing and eradicating violence against women and girls
\(^2\) Hereafter: ‘the Bill’
extensive public education campaign be scheduled. It will obviously be necessary that frontline workers such as police, the judiciary and social services receive training on the new measures contained in the Bill to look beyond the incident-specific model currently employed in domestic abuse cases. It would also be smart to describe the range of non-violent measures of coercion and control that comprise the lion’s share of domestic abuse to the wider population too.

The definition of domestic abuse contained in this Bill is commendable – it notes the economic, psychological and physical abuse experienced; and highlights the interlinked inequalities which place women in a subordinate position, both making them more vulnerable to abuse and less able to escape it. **This is not common knowledge.** It must become so if we are to encourage women to speak up about abuse, and Scottish society to understand the scale of the issue. Thus to reap the maximum reward from this Bill the public must be educated – not specifically as to its contents – but on the comprehensive definition of domestic abuse contained therein.

As noted by Professor Evan Stark ‘The multiple tactics deployed in coercive control imply that the scope of identification and intervention must be broadened…If taken alone, many tactics used in coercive control could typify a “bad” marriage. So it is critical to recognize that it is the combination of these tactics into a pattern of domination that comprises the offense, not the acts themselves’. This is a sea-change in popular understanding of domestic abuse – we must ensure the chance to update public awareness offered by the Government’s efforts is not wasted.

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

Yes – the Bill is of value both because of the large gaps in legal protections for women and children it closes but also in its recognition of the real nature of domestic abuse. It effectively sets a normative baseline within Scotland. It not only addresses a gap in existing law, but could be a lever to enact the Scottish Government’s commitment that ending VAW requires eradicating the full spectrum of gender inequality that underpins such abuse. In conjunction with targeted measures in economic, social and political fields, popular attitudes must be influenced. A nationwide awareness-raising campaign is not only conducive to the functioning of this new law, and tackling domestic abuse, but essential to protecting every woman and girl in Scotland who, at present, will each experience some degree of VAW in her life.

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?**

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Zero Tolerance is aware of concerns that the proposed definition of the offence is too wide. We believe that the wording of the Bill is merely an accurate reflection of the nature of domestic abuse and not an over-statement. The non-exhaustive list of examples in Part 1:2(3) is well-considered.

Furthermore the Faculty of Advocate’s consultation response notes that ‘… as domestic abuse is to be defined by the effect of the behaviour, not by the conduct, mutual corroboration may arise between charges of domestic abuse where one is withholding money and the other (with a different complainer) is of serious assault or rape. These offences would potentially provide mutual corroboration because of underlying similarity of the coercive nature and effect of the behaviour and not the nature of the actual conduct. This would arguably lead to a widening of the doctrine of mutual corroboration as currently understood.’

This point seems specious. The initial definition of the principle of mutual corroboration, established as a precedent by the Moorov (Samuel) v HM Advocate (1930) notes that while ‘time, character and circumstance have an underlying unity’, that there also be a "unity of intent, project, campaign or adventure", which “leads by necessary inference to the establishment of some circumstances or state of fact underlying and connecting the several charges…”.

Or, as observed by the Scottish Law Commission, ‘The Lord Justice General [Clyde] appears to have viewed corroboration as arising not directly between the charges, but rather from the "particular and ascertained unity of intent, project, campaign or adventure" which lay behind, and the existence of which was established by the evidence relating to the individual charges.”

This indicates that yes: it is the underlying similarity of the coercive nature of the behaviour that is the crux of the doctrine of mutual corroboration. The current Bill therefore reflects the catching-up of Scot’s Law to the potential of the precedent set by Moorov.

Another way to explain this is with reference to current Terrorism laws. Domestic abuse has long been described amongst experts as ‘intimate terrorism’ and this is a robust comparison. Conflict occurs in all intimate relationships but, to distinguish such ordinary events from domestic abuse ‘…it is necessary to know not merely what a party does – their behaviour – but its context: its socio-political as well as physical consequences…’. Numerous, disparate acts are legally defined in the UK as terrorism due to the unifying intent of their perpetrators not their categorical similarity. This wide-angle perspective is the appropriate lens

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4 Faculty of Advocates response to Domestic Abuse (Scotland) Bill 2017 at http://www.advocates.org.uk/media/2073/consultation-on-offence-of-domestic-abuse-response.pdf
5 Moorov v HM Advocate [1930], Scottish High Court of Justiciary Decisions 1930 SLT 596, [1930] ScotHC HCJAC_1, 1930 JC 68
through which to identify and effectively respond to acts of terrorism – both political and intimate.

- With regard to Part 1. 2,2:B:ii: ‘would be considered by a reasonable person…’

Zero Tolerance would again suggest that public education is necessary to ensure the spirit of this law\(^9\) is realised. The effectiveness of this provision has the potential to be undercut by the sexist views that all too many supposedly ‘reasonable’ people hold and a lack of popular understanding of the true dynamics of domestic abuse.

For example the Scottish Social Attitudes Survey of 2014\(^10\) found that ‘Generally, attitudes towards these controlling behaviours were less negative than those towards both physical and verbal abuse…

Only 44% thought it was ‘very seriously wrong’ if a man rapes his wife after she had initiated sexual contact [kissing]…

Only 52% of men thought that a husband verbally putting-down/criticising his wife did ‘a great deal’ of harm to his wife…

Worse, fewer than half (43%) of men surveyed thought that this following example of controlling behaviour was ‘very seriously wrong’: “Imagine a married woman who wants to go out with her friends for a meal in the evening. When she tells her husband about it, he gets very annoyed. He tells her that he doesn’t want her going out without him…”

Public awareness is the key to both effective implementation of this Bill, and ultimately, eradicating VAW. While specialised agencies such as Zero Tolerance can and have undertaken awareness-raising campaigns, the reach and authority of the Scottish Government in this regard is unrivalled and should be used.

- Regarding the defence on the grounds of reasonableness – Section 5, 1(1) ‘it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances.’

We share Scottish Women’s Aid’s concerns that this defence is open to manipulation by abusers, particularly for women with disabilities and/or health issues. We would urge that the lived experience of women who had their health used to undermine and discredit them to public authorities be recognised and this defence be re-examined\(^11\).

Black or Minority Ethnic (BME) women also experience ‘double discrimination’ and very specific forms of coercive control. It is therefore important this provision not be used to allow defences by BME perpetrators that their actions were culturally or scripturally reasonable. We know that there are concerns complicating, and in some

\(^9\) To ‘… improve how the justice system responds to domestic abuse’ Domestic Abuse (Scotland) Bill 2017, Policy Memorandum p1
\(^11\) Scottish Women’s Aid (2017) response to this call for evidence on the Domestic Abuse (Scotland) Bill 2017
cases actively inhibiting, intervention in such instances both amongst the general public and law enforcement specifically. This was recently underlined by the Scottish Government's own publication on Forced Marriage 'Many professionals reported colleagues' discomfort about dealing with issues of race and culture, for fear of being labelled racist or culturally insensitive.'\textsuperscript{12} We strongly suggest that the language around defence on the grounds of reasonableness be re-examined.

4. \textit{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?}

We agree that the definition of the domestic abuse offence should be restricted to partners and ex-partners but also believe that the full impact of domestic abuse on children must be recognised. Section 4(2:B) states that the aggravation in relation to a child applies if 'a child sees or hears, or is present during, an incident...' This is an overly-restrictive definition which does not cover the persistent, ongoing nature of domestic abuse which will have an impact on children who were not proximate to an 'incident' itself.

Zero Tolerance echo Scottish Women's Aid that this offense must 'reflect the role that contact with children can play in enabling perpetrators to continue to pursue a regime of abuse...\textsuperscript{13}'. It is possible the child, during contact, may be further traumatised by, \textit{inter alia}, witnessing their abusive parent harming a new partner. We further agree with SWA that the Bill should hold perpetrators accountable for negative effects on the most protective factor in the child's life: the non-abusing parent.

Research on the impact of domestic abuse on children is clear that the negative consequences are not restricted to the witnessing of abuse. The magnitude of domestic abuse on children is not restricted to their witnessing its occurrence – it is crucial that the legal protections are not.

5. \textit{Do you have any views on factors that might impact on the reporting, investigation and prosecution of the offence?}

As mentioned previously the primary prevention of VAW, as observed in \textit{Equally Safe}, requires we change the attitudes that underlie it. The Domestic Abuse (Scotland) Bill 2017 offers an opportunity to widen popular understandings of domestic abuse if awareness-raising is undertaken in conjunction with its implementation. Zero Tolerance would be delighted to offer our support and expertise to the Scottish government should they seek to capitalise on this opportunity with a public education campaign.


\textsuperscript{13} See footnote 11
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 – absolutely, and we further concur with SWA that ‘… that this ban should also operate in relation to domestic abuse-related offences not prosecutable under the specific offence where the domestic abuse aggravation has been added to the offence, which, again, will cover single incidents where no course of conduct is involved.’

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?

This is sensible inclusion commensurate with the fact that domestic abuse is a ‘course of conduct’. Zero Tolerance again support SWA’s call that ‘…in relation to sentencing under paragraph 7 that the reference to “victim” is construed as including children subject to the aggravation, so that they may be equally protected in terms of sentencing.

NHOs are another issue of relevance here and where the section 1 offence is committed and the section 4 aggravation triggered, children subject to the aggravation must be covered by the NHO which the court can consider under paragraph 8.’ We know that ‘Reoffending is a near certainty in domestic violence cases.’ and this expansion of the current wording is the only way to protect victims from abusers.

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14 Ibid.
15 Stark op. cit. p64