

Prevention of Domestic Abuse (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by the Non-Government Bills Unit on behalf of Pam Gosal MSP, the member in charge of the Bill, in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Prevention of Domestic Abuse (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 67–EN);
 - a Financial Memorandum (SP Bill 67–FM);
 - a Policy Memorandum (SP Bill 67–PM);
 - statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 67–LC).
3. This Memorandum has been prepared by the Non-Government Bills Unit, on behalf of Pam Gosal MSP, the member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

Outline of Bill provisions

4. The Bill, which makes a number of changes to the law in relation to domestic abuse, is in 5 parts as follows:
 - Part 1 – will introduce notification requirements for domestic abuse offenders, similar to those on sex offenders, to ensure they can be effectively monitored and subject to monitoring and management through the existing multi-agency

public protection arrangements (MAPPA)¹ under the Management of Offenders etc. (Scotland) Act 2005.²

- Part 2 – will require consideration to be given to the suitability of rehabilitation measures for domestic abuse offenders at various stages in their journey through the criminal justice system: prior to sentencing; while in custody; and prior to release.
- Part 3 – will provide for the collection of data on the victims of domestic abuse by Police Scotland, the Crown and Procurator Fiscal Service and charities, as well as the production and publication of an annual report to the Scottish Parliament by Scottish Ministers to enable scrutiny of the data collected.
- Part 4 – will establish duties on the Scottish Ministers and education authorities around the promotion, facilitation and support of domestic abuse education in schools, including related guidance, standards and reporting.
- Part 5 – contains the final provisions, including regulation-making powers, ancillary provision and provides for the commencement of the Bill.

5. Further information about the Bill's provisions is contained in the Explanatory Notes, Policy Memorandum and Financial Memorandum.

Rationale for subordinate legislation

6. The Bill contains 12 delegated powers provisions (10 regulation-making powers including ancillary provision, one amendment to an existing delegated power and one duty to issue guidance) described in more detail below.

7. In considering if and how provision should be set out in subordinate legislation or covered in guidance, rather than on the face of the Bill, the Member has had careful regard to—

- The need to strike a balance between the importance of ensuring full Parliamentary scrutiny of the core provisions of the Bill and making proper use of Parliamentary time;
- The use of subordinate legislation to address practical matters of detail, to make further provision over time as the legislation establishes itself, or to make other refinements so as to assist the effective operation of the various Parts of the Bill, or where other unexpected circumstances arise which require a legislative solution;

¹ The MAPPA scheme is aimed at managing certain offenders and any risk posed to the public by them. For more information, see the ministerial guidance to Responsible Authorities (Police Scotland, Scottish Prison Service, local authorities and Health Boards) on the discharge of their obligations, available at: <https://www.gov.scot/publications/scottish-government-multi-agency-public-protection-arrangements-mappa-national-guidance/>

² [Management of Offenders etc. \(Scotland\) Act 2005 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2005/10/section/1).

- The relatively better position of the Scottish Ministers when compared with the individual Member in making decisions on the best use of public resources to meeting objectives.

8. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill, and why the selected form of Parliamentary procedure has been considered appropriate.

Delegated powers

Section 3(3)(i): Initial notification

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

9. Part 1 of the Bill establishes notification requirements for domestic abuse offenders – those convicted on indictment of certain offences involving domestic abuse and sentenced to imprisonment for 12 months or more or subject to a community payback order with a supervision requirement. Section 3(3) provides a list of information which a domestic abuse offender must, within the period specified, notify to the police as part of their initial notification, such as date of birth, national insurance number, name, address etc. Section 3(3)(i) allows the Scottish Ministers to add other information about the offender or the offender's personal affairs to this list.

Reason for taking power

10. The Member considers it is important to have the flexibility, as the notification requirements are established in practice, for other information about a domestic abuse offender or their personal affairs to be added to the list. For example, information about an offender's relationship status. These notification requirements are similar to those imposed on sex offenders under the Sexual Offences Act 2003³ ("the 2003 Act") and the Scottish Ministers have a similar power to add information under section 83(5)(i) of that Act. This was used to prescribe information under the Sexual Offences Act 2003 (Notification Requirements) (Scotland) Regulations 2007/246,⁴ to require sex offenders to notify information about their banking details. Such information is not considered necessary for domestic abuse offenders for the purpose of the Bill. However, it is considered necessary to take this power to enable the Scottish Ministers to adapt the list of information in section 3(3) over time in response to lessons learnt from the experience of operating the notification requirements in a domestic abuse context and a further understanding of risk as a result of the inclusion of more domestic abuse offenders in the Multi-Agency Public Protection Arrangements (MAPPA).

³ [Sexual Offences Act 2003 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2003/35/section/83).

⁴ [Sexual Offences Act 2003 \(Notification Requirements\) \(Scotland\) Regulations 2007/246 \(legislation.gov.uk\)](https://legislation.gov.uk/ukdsi/2007/246).

Choice of procedure

11. Section 33(2)(a) provides that any regulations made under section 3(3)(i) would be subject to the affirmative procedure. The regulations would be adding a further requirement to notify personal information and the failure to supply this information would be an offence under section 7. Therefore, the use of the affirmative procedure is considered appropriate.

Section 4(1)(g): Changes

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

12. Section 4 sets out the requirements on a domestic abuse offender to notify the police of changes to notified details, such as a change of name, address, passport or their release from custody. Section 4(1)(g) gives the Scottish Ministers the power to prescribe other changes in circumstances which would require a domestic abuse offender to make a notification.

Reason for taking power

13. The Member considers, that as with the power in section 3(3)(i), it is important for the Scottish Ministers to have flexibility. For example, if further information were added to the initial notification under section 3, then a change to section 4 may also be required so that a change in relation to that new information is also notifiable. A similar power is available to Scottish Ministers in section 84(1)(g) of the 2003 Act and was used to update that section to reflect changes to the information required as part of a notification under that Act in accordance with the regulations described in paragraph 10 above.

Choice of procedure

14. Section 33(2)(b) provides that any regulations made under section 4(1)(g) would be subject to the affirmative procedure. The regulations would be adding a further requirement to notify a change in personal information and the failure to notify this change would be an offence under section 7. Therefore, the use of the affirmative procedure is considered appropriate.

Section 5(5)(a): Periodic notification

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

15. Section 5 provides that a domestic abuse offender must re-notify the police of the required information within one year after their initial notification, a notification of a change, or their last periodic notification, unless during this period the offender re-notifies because of a change of circumstances. In cases where, at their last notification, a domestic abuse offender notifies that they have no sole or main residence in the UK and instead provides an address or location of a place where they can be regularly found, then the Scottish Ministers have the power to specify the period in which the offender must re-notify police of the necessary information, provided this period does not exceed one year.

Reason for taking power

16. The Member considers it important that the Scottish Ministers have the power to prescribe a shorter periodic notification period for those domestic abuse offenders with no fixed abode. This will enable Scottish Ministers to take a risk-based approach to the notification of information of domestic abuse offenders in these circumstances. A similar power is given to the Scottish Ministers under section 85(5) of the 2003 Act.

Choice of procedure

17. Section 33(2)(c) provides that any regulations made under section 5(5)(a) would be subject to the affirmative procedure. Given it would be an offence for a domestic abuse offender of no fixed abode at their last notification to fail to notify the information within the time period specified by these regulations, the use of the affirmative procedure is considered appropriate.

Section 6(1)(a): Method of notification and related matters

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

18. Under section 6(1)(a) the Scottish Ministers may prescribe the police stations at which domestic abuse offenders can give notification.

9(1) – that is the date when a domestic abuse offender subject to the indefinite notification requirements would be due a review by the Chief Constable of Police Scotland (or if necessary a Sheriff) as to whether they should continue to be subject to the requirements. If it is decided that the domestic abuse offender should remain subject to the notification requirements, a notification continuation order can be made under section 10(2) for up to a maximum of 15 years. Under section 14(b) the Scottish Ministers may make regulations changing the maximum period.

Reason for taking power

22. The Member considers it important that the Scottish Ministers have the flexibility to amend the periods of review for adults and children as necessary to assist with the effective operation of the Bill. For example, should there be strong evidence as to the risk of re-offending of domestic abuse offenders that supports a review of the periods in the Bill, the Scottish Ministers require a power to amend through subordinate legislation. The Scottish Ministers have similar powers under section 88H of the 2003 Act (as a result of the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011⁶) which have not yet been exercised.

Choice of procedure

23. Section 33(2)(d) provides that any regulations made under section 14 would be subject to the affirmative procedure. These regulations allow for domestic abuse offenders – including children – to be subject to the notification requirements, without review, for shorter or longer periods. Given the significance for the rights of domestic abuse offenders of a longer period for either the initial review or any subsequent review, it is considered that the level of scrutiny afforded by the affirmative procedure is appropriate for both these powers.

Section 19: Assessment of prisoners prior to release

Power conferred on: the Scottish Ministers

Power exercisable by: Rules made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

24. Part 3 of the Bill provides that a domestic abuse offender's suitability for participation in rehabilitation services is considered prior to sentencing; whilst in custody; and prior to release from prison. Section 19 inserts a new section 20A into the Prisoner and Criminal Proceedings (Scotland) Act 1993⁷ to ensure that the rules made in respect of proceedings of the Parole Board for Scotland in relation to prisoners convicted of an offence involving domestic abuse include provision for rehabilitation. Specifically (a) the Scottish Ministers obtaining and sending to the Parole Board a report from the local authority where the prisoner resides setting out an assessment of the

⁶ [Sexual Offences Act 2003 \(Remedial\) \(Scotland\) Order 2011 \(legislation.gov.uk\)](#).

⁷ [Prisoner and Criminal Proceedings \(Scotland\) Act 1993 \(legislation.gov.uk\)](#).

suitability of the prisoner for participation in a programme of appropriate rehabilitation services; and (b) for the Parole Board to take this report into account in considering and disposing of that prisoner's case.

Reason for taking power

25. This section does not provide a new delegated power, rather amends an existing one. The Member wishes to ensure that a domestic abuse offender's suitability for participation in rehabilitation services is considered at each stage of the criminal justice system, including prior to release from prison. The Member considers that the most effective way for this to happen is for rehabilitation to be considered by the Parole Board for Scotland. This is achieved through requiring the Scottish Ministers to include provision for this in the rules of the Parole Board. The most recent version of the rules are the Parole Board (Scotland) Rules 2022/385⁸ in which Rule 5 and Schedule 1 make provision for the information the Scottish Ministers must send to the Parole Board. It is expected that the report on an offender's suitability for rehabilitation would be included as part of this information.

Choice of procedure

26. This power is subject to negative procedure. This is the procedure that applies to the existing rule-making powers in section 20(4), (4A) and (4B) of the Prisoner and Criminal Proceedings (Scotland) Act 1993 to which this section adds. It is considered this procedure remains appropriate.

Section 20(2): Relevant personal data

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

27. Part 3 of the Bill provides for the collection of certain data about victims of domestic abuse, to inform reports by the Scottish Ministers which are to be published and laid before the Scottish Parliament. Section 20(1) defines "relevant personal data". These are the categories of data about victims of domestic abuse to be collected by the police, the Crown Office and Procurator Fiscal Service and charities. Victims may decline to provide this data. Subsection (2) provides that the Scottish Ministers may, by regulations, amend the definition of relevant personal data, for example, by adding or removing categories.

Reason for taking power

28. The purpose of the data collection and related reporting under Part 3 of the Bill is to better understand the level of domestic abuse services available and the access and

⁸ [Parole Board \(Scotland\) Rules 2022/385 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2022/0003/eng/1).

uptake for different groups in society including BAME people and individuals with disabilities. Therefore, the Member considers it important that the Scottish Ministers have the flexibility to add or remove categories over time to reflect what data is useful for this purpose.

Choice of procedure

29. Section 33(2)(e) provides that any regulations made under section 20(2) would be subject to the affirmative procedure. Given these regulations could authorise the collection of further personal data from individuals, particularly at a difficult and traumatic time in their lives, it is considered that the level of scrutiny afforded by the affirmative procedure is appropriate.

Section 24: Collection of data in relation to victims under the age of 16

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

30. Section 24 provides that the Scottish Ministers may by regulations modify the application of sections 21, 22 and 23 (which all relate to data collection by Police Scotland, the Crown Office and Procurator Fiscal Service and domestic abuse charities) for cases where the victims of domestic abuse or alleged offences involving domestic abuse are under the age of 16.

Reason for taking power

31. The Member considers it appropriate to allow the Scottish Ministers to make bespoke provision, with appropriate safeguards built in, for any data collection from those victims under 16. The Member has not included these on the face of the Bill as she considers the Scottish Government will be best placed to provide detailed consideration of how data collection should operate in such cases. The Member acknowledges that given the nature of the offences covered by the Bill, which recognise victims as being those subjected to abuse by their partner or ex-partner, the number of children under 16 whose data is collected may be fairly small. However, given the vulnerable position of these children, considers it important to enable specific provision to be made.

Choice of procedure

32. Section 33(2)(f) provides that any regulations made under section 24 would be subject to the affirmative procedure. Given that the regulations have the power to govern the handling of information about children at a vulnerable period the Member considers the affirmative procedure to be appropriate.

Section 25(1): Submission of collected data to the Scottish Ministers

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

33. Section 25(1) provides the Scottish Ministers with a regulation-making power to specify the form, manner and timing of the submission of relevant personal data by the chief constable, the Lord Advocate (through the Crown Office and Procurator Fiscal Service) and charities. Under section 25(2) the relevant personal data submitted to the Scottish Ministers must not disclose the identity of the person to whom it relates.

Reason for taking power

34. The Member considers that as the Scottish Ministers are responsible for reporting to the Scottish Parliament on the data collected, they will be best placed to direct the form, manner and timing of receipt of the relevant data. This includes ensuring that those submitting the data adhere to the requirement in section 25(2) that victims not be identifiable.

Choice of procedure

35. Section 33(2)(g) provides that any regulations made under section 25(1) would be subject to the affirmative procedure. Whilst the submission of the data is to a large extent an administrative matter, given the vulnerable position of those providing the data, the sensitive nature of the data itself and the requirement that the identity of victims is not disclosed, the Member considers the affirmative procedure to be appropriate.

Section 29: Guidance to education authorities relating to domestic abuse education

Power conferred on: the Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: No procedure

Provision

36. Under section 28 of the Bill, the Scottish Ministers must promote, facilitate and support domestic abuse education in schools. Education authorities (councils) must do the same in schools under their management. Section 29(1) requires the Scottish Ministers to issue guidance to education authorities about domestic abuse education in schools. In turn, under subsection (3), education authorities are under a duty to have

regard to this guidance. Subsection (2) requires Scottish Ministers to keep the guidance under review and allows them to issue revised guidance from time to time. Under subsection (4) in preparing the guidance the Scottish Ministers must consult charities or other bodies that provide support for those who have suffered from or are suffering from domestic abuse along with any other persons that the Scottish Ministers think appropriate. This could include, for example, education authorities, representatives of teachers and parents, and academics working in this field. Subsection (5) requires the guidance be published.

Reason for taking power

37. Given the Bill imposes new obligations on education authorities in relation to domestic abuse education, the Member considers that guidance is necessary to set out, for example, how domestic abuse education should be provided, ensuring it fits within existing education frameworks. Guidance will also support consistency of delivery across Scotland. The Member believes that the Scottish Ministers, supported by consultation, are in the best position to provide such guidance. The Scottish Ministers are already responsible for guidance in other areas of education, such as education about sexual matters and for which they have published guidance on the delivery of relationships, sexual health and parenthood education. Guidance can provide examples which can draw from practice and also enables content to be detailed and easily updated without the need for primary legislation. The requirements that this guidance be reviewed and published, will ensure that it is open to scrutiny and can be adapted overtime to ensure it is relevant and effective in supporting domestic abuse education.

Choice of procedure

38. Given this section makes provision for guidance and not regulations, no procedure is considered necessary. Guidance does not have the force of law and requires to be kept under review and revised from time to time, so requiring the Parliament to scrutinise this particular guidance would not, in the Member's view, be an effective use of parliamentary time.

Section 30(1): Standards relating to domestic abuse education

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

39. Section 30(1) provides that the Scottish Ministers may by regulations specify the standards and requirements to which an education authority must conform in promoting, facilitating and supporting domestic abuse education in the schools under its management. Under subsection (2) these regulations may provide for exemptions from any requirement to provide or participate in this education and impose requirements to make reasonable adjustments. Under subsection (3), Scottish Ministers must consult education authorities, charities or other bodies providing support or people who have

suffered or are suffering domestic abuse and such other persons they consider appropriate.

Reason for taking power

40. The Scottish Ministers already have a general power under section 2 of the Education (Scotland) Act 1980 to prescribe the standards and requirements to which every education authority shall conform in discharging their functions to provide education, which has been used for example to make provision for limits on lower primary class sizes. The Member considers it important that the Scottish Ministers have a specific power in relation to domestic abuse education so that where they consider it necessary they can specify relevant standards and requirements, which among other things: could provide for appropriate exemptions to domestic abuse education, for example, where it would be distressing for a pupil with direct experience of domestic abuse; and cover the requirement to make reasonable adjustments within the meaning of the Equality Act 2010 in the specific context of domestic abuse education. Unlike the standards under section 2 of the Education (Scotland) Act 1980, any such standards under this Bill are subject to a specific detailed consultation requirement. The Member considers this to be particularly important given the specialist nature of domestic abuse education and the benefit of seeking input from stakeholders with relevant expertise. The power to make these regulations is optional, as the Member considers that the Scottish Ministers will be best placed to determine, in the context of the wider education framework, the elements of domestic abuse education best dealt with in guidance (under section 29) and whether any specific areas should be prescribed by standards using this power.

Choice of procedure

41. Section 33(2)(h) provides that any regulations made under section 30(1) would be subject to the affirmative procedure. Given that these regulations could prescribe standards for education authorities across Scotland including exemptions to the requirement to provide or participate in domestic abuse education, the Member considers the affirmative procedure to be appropriate.

Section 34(1): Ancillary provision

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative procedure if adding to, replacing or omitting any part of the text of an Act, otherwise negative procedure

Provision

42. Section 34(1) enables the Scottish Ministers by regulations to make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate (including modifying any enactment and making different provision for different purposes) so as to give full effect to the Bill.

Reason for taking power

43. As with any new body of law, the Bill may give rise to a need for ancillary provision. The Bill does amend existing legislation. While the Member has given careful consideration to the provisions of the Bill, she recognised that, for example, transitory arrangements might be considered necessary to provide for some flexibility with implementation of the various Parts of the Bill. There may be some need for incidental, consequential and supplementary changes. This power ensures that issues of an ancillary nature clearly within the scope and policy intention of the Bill, which may arise, can be dealt with effectively by the Scottish Ministers. Without such a power it would be necessary to return to the Parliament with another Bill to deal with any minor matters to properly give effect to a Bill already passed by the Parliament.

Choice of procedure

44. Under section 33(2)(i) regulations made under section 34(1) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure. Otherwise, regulations made under this section are subject to the negative procedure (section 33(3)(b)). This approach is typical for ancillary powers of this type and reflects the fact that the Parliament should be able to carefully scrutinise any amendments to primary legislation, while ancillary changes to subordinate legislation are likely to be of a more technical nature and so merit a lesser degree of parliamentary scrutiny.

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