

Ryan McAdam submission of 6 June 2022

PE1887/I: Create an Unborn Victims of Violence Act

The Petitioner's viewpoint is that, as the law currently stands in Scotland, partners or ex-partners who cause a miscarriage or stillbirth within the context of domestic violence cannot be adequately prosecuted, leading to lenient sentences being imposed in these cases.¹ Nicola Murray's viewpoint can be supported by comparing the different sentencing outcomes between Scotland and other jurisdictions within the United Kingdom in similar circumstances. In the reported case of Stephen Ramsay, a 36-year-old male from Fife stabbed his partner in the neck, who was thirty-two weeks pregnant with twins at the time.² The personal injuries sustained by Ms Donaldson were extensive, consisting of twenty-two separate injuries to her torso, a significant spinal injury and brain damage, and both twins died as a result of blood supply deprivation. The punishment proportion of Ramsay's sentence was five years imprisonment.³ The sentence imposed in Ramsay's case is lenient when compared to the approach in other jurisdictions in the United Kingdom. In England, in the case of *Wilson* the appellant was sentenced to life imprisonment for causing grievous bodily harm with intent and child destruction with the minimum term being set to fourteen years.⁴ A similar approach was taken in the case of *Virgo* in which the appellant was convicted of causing grievous bodily harm with intent, malicious wounding and child destruction. The offence of child destruction was considered to be the most serious offence of the three and a sentence of

¹ The Scottish Government, 'Scottish Government submission of 23 August 2021 – PE1887/A: Create an Unborn Victims of Violence Act' (Citizen Participation and Public Petitions Committee, 23 August 2021) <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-citizen-participation-and-public-petitions-committee/correspondence/2021/pe1887_a-scottish-government-submission-of-23-august-2021> accessed 21 October 2021.

² BBC News, 'Man jailed for stabbing Glenrothes woman pregnant with twins' (BBC News, 17 January 2020) <<https://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-51148810>> accessed 19 October 2021.

³ Katherine Hay, 'Man jailed for life' after stabbing pregnant woman in attempted murder' (The Scotsman, 17 January 2020) <<https://www.scotsman.com/news/crime/man-jailed-life-after-stabbing-pregnant-woman-attempted-murder-1368551>> accessed 19 March 2022.

⁴ R. v Wilson (Kevin) [2017] 1 Cr. App. R. (S.) 7.

life imprisonment was attributable to it alone.⁵ In Northern Ireland, in the case of *McDonald*, twenty-two years of the offender's sentence was attributed to the count of child destruction.⁶ The approach towards acts of domestic violence which result in the death of a foetus differs greatly between Scotland and the other jurisdictions within the United Kingdom in terms of sentencing, the distinctive factor being that the latter have a statutory offence of child destruction which addresses this problem.

In its written submission, the Scottish Government referred to two different criminal offences which could be applicable in the event that a partner or ex-partner causes the death of a foetus through domestic violence.⁷ These include the common law offence of assault and the course of conduct offence introduced by the Domestic Abuse (Scotland) Act 2018 (DA(S)A).⁸ With respect, it is important to recognise that the central focus of these offences is to address the harm which has been caused to the pregnant woman herself, not to address the killing of the foetus. Nicola Murray's petition is centred around a desire for the Scottish legal system, in future cases which are similar to her own, to recognise the loss of said foetus and to administer appropriately weighted sentences.⁹ Such offences are inappropriate vehicles for addressing the death of the foetus or for recognising the pregnant woman's interest in protecting the life of her unborn child. As stated by Robert by subsuming the death of the foetus into offences which concern harm caused to the mother the law can be:

⁵ R. v Virgo (Trevor) 1988 10 Cr. App. R. (S.) 427 [428].

⁶ R. v McDonald (Colin Victor) [2002] N.I. 54.

⁷ The Scottish Government, 'Scottish Government submission of 23 August 2021 – PE1887/A: Create an Unborn Victims of Violence Act' (Citizen Participation and Public Petitions Committee, 23 August 2021) <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-citizen-participation-and-public-petitions-committee/correspondence/2021/pe1887_a-scottish-government-submission-of-23-august-2021> accessed 21 October 2021.

⁸ Domestic Abuse (Scotland) Act 2018, s 1(1).

⁹ The Scottish Government, 'Scottish Government submission of 23 August 2021 – PE1887/A: Create an Unborn Victims of Violence Act' (Citizen Participation and Public Petitions Committee, 23 August 2021) <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-citizen-participation-and-public-petitions-committee/correspondence/2021/pe1887_a-scottish-government-submission-of-23-august-2021> accessed 21 October 2021.

“ . . . at odds with the experience of grieving families, who generally feel strongly that they have lost a child, and not just experienced an injury.”¹⁰

In England the Infant Life (Preservation) Act 1929 (IL(P)A) is applied in conjunction with other offences, such as assault,¹¹ causing grievous bodily harm¹² and murder.¹³ A strong illustration of this point can be shown in the case of *Whant* in which a 19 year old pregnant woman was stabbed in the neck and once to the abdomen.¹⁴ The applicant was convicted of both murder (in recognition of the death of the pregnant woman herself) and child destruction (in recognition of the death of the foetus), amongst other offences including rape and arson.¹⁵ By taking this approach, England can recognise the harm caused to the pregnant woman, whilst also being able to acknowledge the loss of the foetus, giving the jurisdiction the capacity to take a multifaceted approach to acts of violence against pregnant women. It is for this reason primarily that a comparable statutory offence should be introduced in Scotland. It is the author's view that Scotland should adopt a statutory offence which endeavours to hold partners or ex-partners accountable for causing the stillbirth or miscarriage of a foetus within the context of domestic violence and that Dr Neal's proposed offence should be considered as a potential framework for this legislative reform.¹⁶ Being applicable at any stage of the pregnancy¹⁷ and capable of being constituted by recklessness as well as intent¹⁸ means that it would likely be more effective from a prosecutorial perspective than the IL(P)A in England and Wales¹⁹ and the inclusion of pregnancy being an aggravated factor for

¹⁰ Hannah Robert, 'The bereavement gap: Grief, human dignity and legal personhood in the debate over Zoe's Law' (2014) 22 J Law Med 319, 323.

¹¹ *R. v Johnson (Lisa Jane)* (1990-91) 12 Cr. App. R. (S.) 219.

¹² *R. v Wilson (Kevin)* [2017] 1 Cr. App. R. (S.) 7.

¹³ *R. v Campeanu (Ioan)* [2020] EWCA Crim 362.

¹⁴ *R. v Whant (Carl)* [2012] EWCA Crim 2457.

¹⁵ *ibid.*

¹⁶ Dr Mary Neal, 'Domestic Abuse (Scotland) Bill – Written submission from Dr Mary Neal' (Justice Committee, 1 May 2017

<https://archive2021.parliament.scot/S5_JusticeCommittee/Inquiries/DA-Neal.pdf> accessed 15 October 2021.

¹⁷ Dr Mary Neal, 'Domestic Abuse (Scotland) Bill – Written submission from Dr Mary Neal' (Justice Committee, 1 May 2017) 3

<https://archive2021.parliament.scot/S5_JusticeCommittee/Inquiries/DA-Neal.pdf> accessed 15 October 2021.

¹⁸ Dr Mary Neal, 'Domestic Abuse (Scotland) Bill – Written submission from Dr Mary Neal' (Justice Committee, 1 May 2017) 4

<https://archive2021.parliament.scot/S5_JusticeCommittee/Inquiries/DA-Neal.pdf> accessed 15 October 2021.

¹⁹ Jane E. S. Fortin, 'Legal Protection for the Unborn Child' (1988) 51 Mod L Rev 54, 65.

Section 1(1) of the DA(S)A would give Scotland the ability to take a proportional approach based on the evidence which is available on a case by case basis.

If the Committee would like to consider my dissertation in greater detail a copy can be found at the following link:

<https://docs.google.com/document/d/1Adzg3IWtPFimHqMj2stHwDggySEM5Jc/edit?usp=sharing&oid=109364637488194308549&rtpof=true&sd=true>