



Law Society
of Scotland

Stage 3 Briefing

Domestic Abuse (Scotland) Bill

30 January 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society previously responded to the Call for Evidence in relation to the Domestic Abuse (Scotland) Bill (Bill) in May 2017.¹ The Committee welcomes the opportunity to comment on a number of the amendments that were put forward at Stage 2 of the Bill.

General comments

We are supportive of the objectives of the Bill which has two main purposes:

- **Creation of a specific statutory offence of domestic abuse:**

The offence seeks to protect victims who experience coercive, controlling, psychological and emotional behaviour as well as physical abuse. We recognise that abuse is not solely confined to women and welcome the Bill and the fact it is gender neutral which offers equal protection to victims of any gender.

There is also protection for children who are caught up in the behaviour amounting to abuse. An offence also arises where the perpetrator, in committing the offence, involves or affects a child, or that a child sees, hears or is present during an incident that happens as part of the course of behaviour amounting to the offence.

¹ https://www.lawscot.org.uk/media/9815/crim_-law-society-of-scotland-response_domestic-abuse-scotland-bill-may-2017.pdf

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- **Changes to criminal procedure, evidence and sentencing associated with the creation of an offence of domestic abuse:**

Such changes are important as they are also designed to protect the victim from further abuse. These range, for instance, from prohibiting the accused himself from conducting a precognition of the victim or complainer or personally conducting his defence in court. For judges, they are required to take account in their sentencing of ensuring that the victim is not subject to further abuse.

We welcome the changes to the existing law that are made in the Bill. These reflect fully on society's better understanding of the complexities of domestic abuse.

We would comment on specific areas of amendment made at Stage 2 of the Bill:

- **Extra-territorial jurisdiction:**

We note that section 2A(1) provides the Scottish courts with the ability to try an offence of abusive behaviour towards a partner or ex-partner which has been committed where the course of behaviour occurs wholly or partly outside the UK. The accused does not require to be either a UK national or a habitual Scottish resident when the course of behaviour is alleged to have occurred.

We broadly welcome this provision as there should be ability for accused not to escape the consequences of abusive behaviour committed, for instance, while on holiday. However, we would note that there may be circumstances where this section may be hard to enforce in a Scottish court due to practical evidential difficulties in obtaining the necessary evidence. Similarly, it may well be that such conduct would separately be the subject of prosecution in the country concerned.

- **Offences involving a child:**

We note that a number of amendments were brought forward at Stage 2 relating to sections 4(2)(a) and (b) of the Bill and the presence of a child when an offence is committed.

We welcome these changes as they do take account of various points which we identified in our earlier briefing at Q3² where we said that section 4(2)(b) of the Bill (as introduced) did not make it clear whether the accused needed to be aware of the presence of the child. This has been clarified so that any perpetrator needs to be aware of the presence of a child when the abuse arises (Section 4(2A)). It also clarifies where the perpetrator uses the child to direct behaviour at the victim.

² https://www.lawscot.org.uk/media/9815/crim_-law-society-of-scotland-response_domestic-abuse-scotland-bill-may-2017.pdf

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Additionally, section 4(2B) introduces a test of the 'reasonable person' when considering the perpetrator's behaviour as adversely affecting a child residing with a victim or perpetrator. The examples provided demonstrate just how this offence may play out. It covers situations where the victim is prevented from leaving home to take the children to school, the doctor or social activities. That would clearly affect the child's health and wellbeing as well as their education.

Section 4 (2C) makes it clear that the child does not need to be aware of the perpetrator's behaviour or understand of the effect of this behaviour. Since a child in terms of the Bill may include any child up to the age of 17 years, this will cover the situation of young children who could not possibly have any understanding of the effect of the perpetrator's behaviour. It does not preclude evidence being led from such children as to their observations or feelings including any adverse effect on them. This will no doubt be subject to special measures being adopted in court if appropriate and any other requirements where such evidence is provided by a child. It does give children who may wish to give such evidence that opportunity.

We note that the Bill has been amended at stage 2 to include a non-harassment order to be made in a domestic abuse case which as well as protecting the victim can also cover children involved in the case.

Bail Restrictions:

Section 23B(1) of the Criminal Procedure (Scotland) Act 1995 provides for a presumption in favour of bail but certain circumstances require bail to be granted only in exceptional circumstances.³ These include where a person is accused in jury cases of a drugs offence, a violent or sexual offence and has a previous conviction on indictment (sheriff and jury) for such an offence. Domestic abuse offences now join that group of offence (Paragraph A1) where an accused with a relevant previous conviction for such an offence it would be exceptional for bail to be granted.

We would imagine that this would only apply in relatively few cases but is a welcome protection to ensure that the accused is not at liberty to commit further offences on the victim of abuse. Previous convictions for similar domestic abuse offences in England and Wales, Northern Ireland and in EU member states also count for these purposes. This may be relevant where the accused is a serial offender and/or has moved about within or outside the UK.

Review of the operation of Act:

³ Section 23D of the Criminal Procedure (Scotland) Act 1995

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We welcome the inclusion of Section 12A which includes provision for a report to Parliament within two years of the Act receiving Royal Assent. This Report will include categories of cases as well as the length that it takes to dispose of such cases and information to be obtained from the experiences of witnesses in respect of these cases.

The report must include a statement by the Scottish Ministers setting out whether they are planning to recommend to the Lord President that additional sheriff courts should be constituted to specialise in dealing with domestic abuse cases and, where no such recommendation is made, their reasons for not doing so.

These provisions will allow for close monitoring of the changes being introduced in the Bill and importantly too, to ascertain if justice is being obtained quickly and effectively for those caught up in such abuse. It is vital to ascertain their experiences as they come into the justice system for the first time. They need to know that they will be heard and understand how the system works. There is a need too for those accused to be treated fairly within the system. We will read the report in due course with interest.

In conclusion, we would stress that the law must be easily understood by all concerned. The public must be aware of the provisions of the Bill when it becomes legislation.

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