



Law Society  
of Scotland

# Consultation Response

## Proposed Domestic Abuse (Prevention) (Scotland) Bill

November 2022



## Introduction

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The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee and the Mental Health and Disability sub-committee welcomes the opportunity to consider and respond to the consultation: Proposed Domestic Abuse (Prevention) (Scotland) Bill (the Bill). The committee has the following comments to put forward for consideration.

## General comments on the Bill

Over the last 15 years, the number of cases of domestic abuse dealt with by the Courts has increased significantly<sup>1</sup>. Since 2010 a number of statutory provisions have specifically dealt with domestic abuse cases. These are:

- Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010<sup>2</sup>.
- Abusive Behaviour and Sexual Harm (Scotland) Act 2016<sup>3</sup>.
- Domestic Abuse (Scotland) Act 2018<sup>4</sup>.
- Domestic Abuse (Protection) (Scotland) Act 2021<sup>5</sup>.

Each piece of legislation has attempted to define what constitutes domestic abuse in the eyes of the law and has, in its own way, attempted to discourage domestic abuse in Scotland by outlining the penalties for such behaviour.

There has been a significant impetus, from groups such as the First Minister's National Advisory Council on Women and Girls<sup>6</sup>, and from policy focuses such as on violence against women and girls<sup>7</sup>. We have participated in and support this work. Scottish Government research for 2010-21 shows that 80% of reported domestic abuse incidents to the police involved a female victim and a male accused; 16% of incidents involved a male victim and a female accused and in the remaining 3% of cases, the victim and accused were the same gender<sup>8</sup>. It is important that the proposed Bill is holistic in its approach, recognises

<sup>1</sup> [Domestic abuse in Scotland statistics - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/domestic-abuse-in-scotland-statistics-2020-21/pages/10-12.aspx)

<sup>2</sup> [Criminal Justice and Licensing \(Scotland\) Act 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2010/22/section/38)

<sup>3</sup> [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2016/17)

<sup>4</sup> [Domestic Abuse \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/1)

<sup>5</sup> [Domestic Abuse \(Protection\) \(Scotland\) Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2021/1)

<sup>6</sup> [National Advisory Council on Women and Girls report: Scottish Government response - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/national-advisory-council-on-women-and-girls-report-2020-21/pages/10-12.aspx)

<sup>7</sup> [Violence against women and girls \(VAWG\) - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/violence-against-women-and-girls-2020-21/pages/10-12.aspx)

<sup>8</sup> [Domestic abuse: statistics recorded by the Police in Scotland - 2020/21 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/domestic-abuse-statistics-recorded-by-the-police-in-scotland-2020-21/pages/10-12.aspx)

under-represented groups<sup>9</sup>, and looks to use the law to make sure that nobody is unsafe in their own home.

The Scottish Sentencing Council<sup>10</sup> (SSC), issue guidelines on sentencing in relation to a variety of criminal offences within our justice system. We understand that the SSC intend to issue guidelines insofar as domestic abuse cases are concerned<sup>11</sup>. We welcome this development. Nevertheless, as matters currently stand, Judges and Sheriffs take account of all the legislation in force and spend a great deal of time on deciding the most appropriate sentence in the specific facts and circumstances of each case.

In our view, the sentencing process is a key factor in relation to domestic abuse cases in Scotland and we consider it important to outline how that presently operates.

### **The offence**

Much will depend on the offence itself. This includes the seriousness of that offence, the background of the accused and, in particular, whether he or she has any previous convictions. Where an offender has previous domestic abuse convictions, then he or she can expect to receive a more severe sentence.

### **Considerations by a Sheriff or Judge in sentencing**

In most cases, prior to a hearing on sentencing, the Court will call for background reports. In domestic abuse cases these reports could be,

- a Criminal Justice Social Work Report,
- a Restriction of Liberty Order,
- an assessment for the Caledonian System (a court ordered programme for men which aims to change their behaviour<sup>12</sup>) and
- in certain cases where necessary and/or appropriate, a Psychiatric Assessment.

These assessments are designed to elicit as much background information about the accused and the offence as possible. It is worthy of note however that the author of a Criminal Justice Social Work Report will carry out a full risk assessment on the individual. This assessment follows a set formula<sup>13</sup> and will indicate to the Court whether there is a risk to the public, it will detail the level of that risk, and will also set out the risk of the accused reoffending at some future date. That risk will be assessed as being high, medium, or low.

The Criminal Justice Social Work Reports will also, depending on the outcome of that risk assessment, suggest various sentencing options in order to assist the Court. The author of the report will consider all factors in determining which sentence would be appropriate in the particular facts and circumstances of

<sup>9</sup> For instance, in Wales: <https://gov.wales/sites/default/files/statistics-and-research/2021-09/research-under-represented-survivor-groups-violence-against-women-domestic-abuse-sexual-violence-inform-survivor-engagement-framework-phase-1.pdf>

<sup>10</sup> [Scottish Sentencing Council](https://www.scottishsentencingcouncil.org.uk/)

<sup>11</sup> [Sentencing guidelines in development \(scottishsentencingcouncil.org.uk\)](https://www.scottishsentencingcouncil.org.uk/)

<sup>12</sup> [Caledonian System Evaluation: Analysis of a programme for tackling domestic abuse in Scotland - research findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/research-findings/2021-09/analysis-of-a-programme-for-tackling-domestic-abuse-in-scotland-research-findings-2021-09-15/pages/10-12-caledonian-system-evaluation-analysis-of-a-programme-for-tackling-domestic-abuse-in-scotland-research-findings-2021-09-15.pdf) and [Strengthening the law \(VAWG\) - Violence against women and girls \(VAWG\) - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/research-findings/2021-09/strengthening-the-law-against-women-and-girls-2021-09-15/pages/1-3-strengthening-the-law-against-women-and-girls-2021-09-15.pdf) and [Caledonian System \(scottishsentencingcouncil.org.uk\)](https://www.scottishsentencingcouncil.org.uk/)

<sup>13</sup> [Criminal Justice Social Work Reports and Court Based Services Practice Guidance](https://www.scottishsentencingcouncil.org.uk/publications/practice-guidance/2021-09/criminal-justice-social-work-reports-and-court-based-services-practice-guidance-2021-09-15/)

this case. Reports are provided to the Court in advance of the sentencing hearing for consideration. When the sentencing hearing calls in Court, the presiding Sheriff or Judge will be addressed by the defence solicitor in respect of the Criminal Justice Social Work Report (or any other reports the court has requested). The defence solicitor will also detail their client's circumstances in relation to mitigation. Thereafter, a sentence will be passed.

Sentencing is a complex matter. In order to assist Sheriffs and Judges in doing so, the SSC issued detailed guidelines in respect of general sentencing procedure in July 2021<sup>14</sup>. The type of sentence imposed will follow the framework set out in the guidelines as well as any particular local variations in sentencing options. As the consultation document indicates, that can vary from local authority area to area, for example, the Caledonian System is not available in all local authority areas across Scotland<sup>15</sup> and is therefore not an available disposal for Sheriffs or Judges across the board. We consider that this shows a clear need for a consistent approach nationally which will require sufficient resources. In addition, only those who are assessed as being a suitable candidate and willing to engage will be referred to the Caledonian System. This situation is reflected in other sentencing disposals available to the Courts<sup>16</sup> including, supervision and treatment orders, alcohol/drug addiction counselling, psychiatric counselling etc. all of which are subject to resource limitations.

In addition, the response to domestic abuse must be proportionate, must reflect the individual circumstances in each case and must be relevant to the degree of risk of reoffending. The need for risk management, treatment of offenders, support and recovery for those affected by domestic abuse should be supported, but only where this is underpinned by appropriate expert assessment and guidance.

Whilst we support the proposed Bill's aim to reduce the prevalence of domestic abuse in Scotland, we do express concern about the efficacy of these proposals and whether these would be worth the substantial investment particularly in light of the current financial climate and current budgetary restraints for the Scottish Government and third sector resources.

<sup>14</sup> [Scottish Sentencing Council, guidelines](#)

<sup>15</sup> [Caledonian System Evaluation: Analysis of a programme for tackling domestic abuse in Scotland - research findings - gov.scot \(www.gov.scot\)](#) and [Strengthening the law \(VAWG\) - Violence against women and girls \(VAWG\) - gov.scot \(www.gov.scot\)](#) and [Caledonian System \(scottishsentencingcouncil.org.uk\)](#)

<sup>16</sup> [Criminal Procedure \(Scotland\) Act 1995 \(legislation.gov.uk\)](#) at Schedule 4

## Consultation Questions

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### Question 1 - Which of the following best expresses your view of the proposed Bill?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

Fully supportive - We support the proposed Bill's aim to reduce the prevalence of domestic abuse in Scotland. We support a requirement to identify a range of evidence based rehabilitation options as well as a focus on using risk and need assessments of accused persons to guide interventions and make the best use of limited resources particularly in light of the current financial climate.

### Question 2 - Do you think legislation is required, or are there are other ways in which the proposed Bill's aims could be achieved more effectively?

Please explain the reasons for your response.

As stated in our general comments set out above, since 2010 a number of statutory provisions have specifically dealt with domestic abuse cases. These are:

- Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010<sup>17</sup>.
- Abusive Behaviour and Sexual Harm (Scotland) Act 2016<sup>18</sup>.
- Domestic Abuse (Scotland) Act 2018<sup>19</sup>.
- Domestic Abuse (Protection) (Scotland) Act 2021<sup>20</sup>.

Each piece of legislation has attempted to define what constitutes domestic abuse in the eyes of the law and has, in its own way, attempted to discourage domestic abuse in Scotland by outlining the penalties for such behaviour. We note that none of the existing legislation has thus far acted as a panacea and query whether the proposals in this bill will act as a "silver bullet". We are of the view that there are larger societal

<sup>17</sup> [Criminal Justice and Licensing \(Scotland\) Act 2010 \(legislation.gov.uk\)](#)

<sup>18</sup> [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016 \(legislation.gov.uk\)](#)

<sup>19</sup> [Domestic Abuse \(Scotland\) Act 2018 \(legislation.gov.uk\)](#)

<sup>20</sup> [Domestic Abuse \(Protection\) \(Scotland\) Act 2021 \(legislation.gov.uk\)](#)

issues at play in preventing domestic abuse in Scotland and that legislation and criminalisation of offences is just one small part of tackling this complex subject.

One area which may benefit from further legislation is widening the scope of domestic abuse beyond that which relates solely to partner abuse so as to include abuse towards relatives. We note that this approach has been taken in England and Wales in the Domestic Abuse Act 2021<sup>21</sup>. This legislation adopts the wider definition of “relative” taken from section 63(1) of the Family Law Act 1996<sup>22</sup> and sets out a list of family relations also covered by the act.

Rather than widening and potentially diluting the focus of current legislation, we suggest that any potential legislation in this sphere be underpinned by evidence. We note that research is currently being undertaken at the University of Strathclyde to explore a potential need for wider legislation to address ‘honour-based abuse’ where abuse is perpetrated by wider range of family members<sup>23</sup>. We are of the view that the findings of this study will offer valuable insight into the scope of the current legislation and may provide some direction or insight into whether there is a need for honour or family violence legislation for Scotland.

### **Question 3 - Which of the following best expresses your view on creating a register of those convicted of domestic abuse related offences?**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

#### **Please explain the reasons for your response.**

Partially opposed - The Bill proposes that those convicted of domestic abuse, would become subject to registration on the domestic abuse register. The Bill makes it clear that there is “an obligation on the police to monitor and manage those with a domestic abuse conviction”. The consultation makes frequent reference to and comparisons with The Sexual Offences Act 2003 and the registration requirements of the Sex Offenders Register. Whilst we understand the intent behind the proposals and the comparisons that have been drawn, we would caution that Police Scotland manage a growing number of responsibilities with even tighter restraints upon their time, resources and capacity. Further, we note that existing legislation provides a scheme for those in relationships to ask about previous convictions in relation to relationship abuse<sup>24</sup>.

<sup>21</sup> [Domestic Abuse Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2021/51/contents)

<sup>22</sup> [Family Law Act 1996 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1996/26/contents)

<sup>23</sup> [Dr Rhonda Wheate Wins Bid to Tackle Honour-Based Abuse | University of Strathclyde](https://www.strath.ac.uk/news/2022/dr-rhonda-wheate-wins-bid-to-tackle-honour-based-abuse/)

<sup>24</sup> [Disclosure Scheme for Domestic Abuse Scotland - Police Scotland](https://www.policescotland.gov.uk/news/2022/disclosure-scheme-for-domestic-abuse-scotland)

In our view, were a register to be created, it should initially be implemented for the most serious offences. As indicated earlier in our response, in terms of sentencing, variation is considerable. This is to reflect the facts and circumstances of each case and the different degrees of domestic abuse that occur. As such, “a one size fits all approach” is restrictive and could result in unforeseen circumstances. It is, in our view more important that resources are targeted towards repeat offenders and those who commit the most serious offences.

In addition, the Bill proposes the involvement of public sector agencies. It would appear from the consultation document that they would have access to the register and “have an obligation to proactively inform individuals that a person they have entered into a relationship with has a history of domestic abuse<sup>25</sup>”. This could allow information to fall into the wrong hands. We would therefore express concern about that proposal.

Similar to the regime under the Disclosure (Scotland) Act 2020, there would need to be consideration of the information held on any register, the information that might be provided to third parties by way of other relevant information by the police, the ability to challenge such information as an individual, the treatment of young people, the status of this register with the pre-employment checks and the Protecting Vulnerable Groups (PVG) checks, and the overall compliance of any scheme with the rights under the European Convention on Human Rights.

#### **Question 4 – Which of the following best expresses your view of introducing mandatory rehabilitation measures for those convicted of domestic abuse?**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

#### **Please explain the reasons for your response**

Fully opposed - The second provision of the Bill, would be to introduce a legal requirement for mandatory, Court ordered rehabilitation measures for those convicted of domestic abuse. These measures would include behavioural education, anger management treatment and, where both parties agree, restorative justice measures.

We note that anger management is not recommended to address intimate partner violence. Studies have shown that anger management<sup>26</sup> could escalate offenders behaviour<sup>26</sup>. Studies have also shown that

<sup>25</sup> [domestic-abuse-register--consultation-final.pdf \(parliament.scot\)](#) at page 21

<sup>26</sup> [THE CASE AGAINST ANGER CONTROL FOR BATTERERS \(biscmi.org\)](#)

intimate partner violence is not about anger and an inability to control their emotions<sup>27</sup> but about exhibiting power and control over a partner<sup>28</sup>. We consider that proposals should avoid specifying the nature of treatment or interventions and should alternatively identify the most appropriate form of effective, evidence based disposal based on the individual case and offender. This can only be achieved with clear and accurate risk assessment.

We have concerns about the mandatory nature of this proposal in every domestic abuse conviction unless there is some form of proportionality. There are instances, where a domestic abuse conviction can result in either an absolute discharge or sentence deferred for good behaviour and then an admonition by the courts. Courts will only adopt that type of sentence, where it appears that the domestic abuse that occurred was out of character, in a set of particular circumstances and is not something that is likely to be repeated.

With regard to the costs, the consultation indicated “it is expected that, if a perpetrator were to be sentenced to a programme of anger management classes, the costs for the classes would fall on the perpetrator in the same way that drivers are expected to pay for speed awareness courses if caught speeding by various police forces in England and Wales<sup>29</sup>.” It should be noted, these speed awareness courses are not currently available in Scotland<sup>30</sup>. There are drink driving awareness courses where those convicted of drink driving, can have their disqualification reduced on completing the appropriate course. The offender is required and able to meet the costs of this course. In our experience, a substantial majority of those convicted of domestic abuse offences will be on benefit income<sup>31</sup> with little prospect of being in a position to pay for any mandatory rehabilitation courses<sup>32</sup>. We note that financial problems are common issue experienced by offenders which can exacerbate the risk of reoffending. It is also worthy of note that the costs of criminal prosecution, whether financial or custodial are likely to have an impact on household income. Rehabilitation measures and their success also rely on the engagement and amenability of an offender to alter their behaviour. As a result, we do not support the implementation of mandatory anger management classes or the notion that offenders should bear the costs. In our view, the principle of individuals paying for rehabilitation risks creating a two tier punishment system<sup>33</sup>.

Mandatory rehabilitation measures will also have significant cost implications. Given the difficulty in providing the Caledonian System Nationwide<sup>34</sup> (it is only available in 19 out of 32 Local Authorities in Scotland since its inception in 2004) it is difficult to envisage how the proposed education programme suggested within the consultation could ever be met, particularly in light of the current challenging financial climate.

<sup>27</sup> [Difference-between-Anger-Management-and-Domestic-Violence-Programs.pdf \(johnhoward.on.ca\)](#)

<sup>28</sup> [Anger, Control, and Intimate Partner Violence in Young Adulthood - PMC \(nih.gov\)](#)

<sup>29</sup> [domestic-abuse-register--consultation-final.pdf \(parliament.scot\)](#) at page 26

<sup>30</sup> [Police put brakes on plans to drop fines for speed awareness courses | HeraldScotland](#)

<sup>31</sup> [Unemployment substantially increases domestic violence, new study finds \(warwick.ac.uk\)](#)

<sup>32</sup> [improving-financial-capability-among-offenders-fullreport.pdf \(moneyandpensionservice.org.uk\)](#)

<sup>33</sup> [Human Rights Watch \(hrw.org\)](#) at page 25

<sup>34</sup> [Caledonian System Evaluation: Analysis of a programme for tackling domestic abuse in Scotland - research findings - gov.scot \(www.gov.scot\)](#) and [Strengthening the law \(VAWG\) - Violence against women and girls \(VAWG\) - gov.scot \(www.gov.scot\)](#)



**Question 5 – Which of the following best expresses your view of the proposals for data collection and reporting set out in this document in bold on pages 30 and 31?**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

**Please explain the reasons for your response including what information could usefully be collated and which groups in society could most benefit from improved information on their access to domestic abuse services and support.**

Neutral - We are of the view that a significant amount of data relating to domestic abuse offences is already collected from a variety of sources<sup>35</sup>. It may simply be that widening the parameters of the data already being collected is required in order to provide a more comprehensive picture.

We acknowledge that a recording requirement and data sharing agreements between organisations is likely to have a positive impact on monitoring domestic abuse cases and managing risk.

**Question 6 – Which of the following best expresses your view of introducing mandatory education in schools on domestic abuse?**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

**Please explain the reasons for your response**

Fully supportive - In principle, we support the provision of good quality education about healthy relationships with a view to preventing domestic abuse. We note that research has been undertaken which supports the view that education can prevent domestic abuse<sup>36</sup>.

We note that age and stage appropriate teaching on relationships is currently provided as part of the personal and social education (PSE) provision in Scottish Schools<sup>37</sup>. We are of the view that these proposals, if implemented, will require to be delivered by those suitably qualified for the purpose with a

<sup>35</sup> [3. Domestic abuse in context - Domestic abuse: statistics recorded by the Police in Scotland - 2020/21 - gov.scot \(www.gov.scot\)](#)

<sup>36</sup> [Education can prevent domestic abuse, finds research \(manchester.ac.uk\)](#)

<sup>37</sup> [Personal and social education lessons to get #MeToo makeover - BBC News](#)

proven track record in such areas. We consider that schools and educators already take such issues seriously and do as much as they can within the parameters of an already crowded curriculum and tight resources<sup>38 39</sup>.

**Question 7 – Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you think this proposal could have if it became law?**

- a significant increase in costs
- some increase in costs
- no overall change in costs
- some reduction in costs
- a significant reduction in costs
- skip to next question

**Please explain the reasons for your answer, including who you would expect to feel the financial impact of the proposal, and if there are any ways you think the proposal could be delivered more cost-effectively.**

Some increase in costs - We consider that the proposals will undoubtedly lead to an increase in costs.

If money is spent on good assessments and information is shared, this will, in our view increase the delivery of appropriate interventions and support and minimise over provision of services, or provision of generic and inappropriate services in this area. We also consider that data sharing will increase the efficiency of risk management and safety planning which could reduce reoffending and potentially lead to cost reductions in the justice system.

**Question 8 – Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. What impact could this proposal have on particular people if it became law?**

**Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.**

We have no comment to make.

<sup>38</sup> [Promoting healthy relationships in schools | NSPCC Learning](#), and [Domestic abuse information for education staff](#)

<sup>39</sup> , [Improving awareness of domestic abuse - gov.scot \(www.gov.scot\)](#) and [Part 2A: Roles and responsibilities for child protection - National guidance for child protection in Scotland 2021 - gov.scot \(www.gov.scot\)](#)

**Question 9 – Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas?**

**Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts.**

We have no comment to make.

**Question 10 – Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?**

We have no comment to make.

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