



**Domestic Abuse
(Scotland) Bill:
Stage 3**

 scottish
women's
aid

DOMESTIC ABUSE (SCOTLAND) BILL: STAGE 3

Scottish Women's Aid is deeply delighted to welcome the Stage 3 debate and vote on the new Domestic Abuse (Scotland) Bill. As we have said elsewhere, the Bill is not perfect in our view. It is, however, what one legal expert has called a "stratospheric leap" in concept and drafting of domestic abuse legislation.

We are so grateful for the cross-party support not just on this Bill but on domestic abuse policy over the years. Our parliamentarians and officials have steadfastly refused to play party politics when dealing with domestic abuse policy, and we cannot but be proud. The most credit goes, of course, to the survivors of domestic abuse and the workers who serve them across Scotland. Their voices and stories, so evident in this bill, have led the way.

Below is a short briefing on issues likely to arise in Stage 3 and after. As always, we are happy to answer any queries (louise.johnson@womensaid.scot or marsha.scott@womensaid.scot).

A few general comments. We support the Bill's gendered analysis and consider it a critical element to moving forward in law and in other areas on implementing Equally Safe, Scotland's strategy to end violence against women and girls.

The further associated reforms to criminal procedure, evidence and sentencing introduced by the Schedule to the Bill are particularly welcome and demonstrate the Scottish Government and Parliament's recognition and understanding that improvements to court procedures and sentencing are crucial to support the operation of the offence.

AMENDMENTS

The Stage Two amendments strengthened the Bill's initial provisions, not only in terms of children and non-harassment orders, but also by introducing a formal reporting process on the operation of the offence, extending the extra-territorial reach of the offence (an important amendment in securing the Bill's compliance with the Istanbul Convention) and extending existing legislative restrictions on the use of bail under solemn procedure to now include domestic abuse.

As the Bill moves through Stage Three, Parliament has the opportunity to consider final amendments:

i

The creation of a rebuttable presumption toward the granting of non-harassment orders on conviction unless the court specifically concludes that the victim of the offence does not need the protection such an order would provide. SWA very much support this refinement of the Bill's provisions. The amendment will provide a robust process to support the courts in their decision making and use of sentencing powers to protect women, children and young people from further domestic abuse.

ii

It is crucial that the collection and scrutiny of useful and relevant statistics is undertaken to monitor the provisions of the Bill. While this should, indeed, cover the number of prosecutions, convictions, NHOs granted under the Act and the operation of both the "child" aggravation and the general aggravation, there is a gap in our knowledge. The Stage Three amendments do not add police data on the number of reports to them which include behaviours covered by the new offence, crime detection and "clear up" rates and reports to Fiscal. We must be able to determine whether women are aware of the new provisions, and that police procedure has, indeed, positively adapted to address abusive behaviours against which they were previously unable to respond. These statistics should be reported on, initially, within 2 years from the commencement of the offence.

iii

In addition, we are specifically interested in our requirements for data that are only obtainable at the moment by FOI: sentencing, disaggregated by gender, age, and geography. We would therefore ask that the Scottish Government commit to formally discussing the necessary parameters of information gathering with Scottish Women's Aid, perhaps in relation to our engagement in the forthcoming Implementation Group.

CHILDREN

Women's and children's experiences are inextricably linked in the context of domestic abuse. If a woman is subjected to abuse, where there is a child involved, that child will inevitably be harmed too. Children live with "coercive control" when there is coercive control in their family and are inevitably harmed by it. In addition, children almost always experience 'indirect' abuse, for instance having no access to support networks, such as family or friends, because the abuser has restricted their mother's movements outside the family home. Children do not have to witness abuse to be negatively affected by it; the nature of coercive control pervades all aspects of women's and children's lives.

We therefore firmly support the strengthened amendments on the aggravation in relation to a child incorporated at stage 2 of the Bill. Through an explicit acknowledgement that domestic abuse puts a child at risk of harm, without imposing the burden on the child of having to specifically witness individual incidents of abuse, these provisions much more accurately reflect the lived experience of children and the non-abusing parent, and the existence of domestic abuse in their daily lives.

Similarly, we firmly support provisions incorporated at stage 2 which extend the availability and coverage of NHOs to not only the non-abusing parent, but also children usually residing with either and/or both the victim and perpetrator, and children to whom an aggravation relates. This is an important protection for women and children experiencing domestic abuse and will operate to ensure that the perpetrator cannot, after conviction, continue to exercise control over his partner by strategically choosing to direct abuse through and/or at the children.

SWA also maintain our position that development of an analogous offence, acknowledging children as both separate, but also conjoined, victims of domestic abuse perpetrated by a partner/ex-partner, is crucial and necessary and we look forward to working with the Scottish Government and Parliament to progress this.

EMERGENCY BARRING ORDERS (EBOs)

Every year thousands of women and children are forced to leave their home because they are experiencing domestic abuse. It is the third most common reason for a homeless application in Scotland and results in women and children spending months in refuges and unsuitable temporary accommodation. Homelessness has an enormous impact on their health and wellbeing, disrupts children's education and compounds the trauma of domestic abuse¹.

SWA's supplementary evidence to the Justice Committee set out the need for legislation to ensure immediate protection for victims of domestic abuse without them having to leave their homes. The existing protective civil orders, both statutory and common law, offer protections that enable women to exclude abusive partners from the home. However all require women to take action themselves and, further, to fund such applications either from their own money or via civil legal aid, increasingly difficult for women to access.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)² requires states to provide emergency barring orders that affords all women and children experiencing domestic abuse equal and immediate protection for specific, determinate period and is not aligned with property tenure rights. As the UK Government progresses ratification of the Istanbul Convention the lack of EBOs in Scotland is a critical gap in compliance with our international treaty obligations.

We welcome the commitment made by the Government in November 2017 to conduct a consultation on Emergency Barring Orders in early 2018³. We are keen to work with the Scottish Government to progress this in the near future.

1. <http://womensaid.scot/wp-content/uploads/2017/07/Change-Justice-Fairness.pdf>

2. <https://rm.coe.int/168046031c>

3. www.parliament.scot/S5_JusticeCommittee/Inquiries/20171107CSfJtoMM.pdf

THE ELEPHANT IN THE ROOM: FUNDING FOR LOCAL SERVICES

This new legislation cannot and will not improve the lives of those living with domestic abuse if the services that support them gradually disappear as the new law is implemented. SWA cannot stress too strongly our concerns about the local cuts to funding reported by our network of Women's Aid services across the country. The number of Women's Aid groups working with a budget from their local authority that was the same or less than the previous year rose to an all-time high of 97% in 2015/16.

The findings from our 2015/16 Women's Aid Funding Survey demonstrate that, compared to previous years, many Women's more groups have had to reduce staffing levels and groups have made more significant reductions to their support services. (In previous years, many groups reported having to use reserves to maintain staffing and service levels; groups are not able to continue doing so.) Since 2009 the percentage of Women's Aid groups that have had to make changes to their services because of funding cuts has increased year on year from 14% to 41% in 2015/16. Changes reported for the year 2015/16 as a result of cuts to funding include:

- Reductions in refuge provision
- Cut backs to visiting support for women, children and young people living in the community
- Reduced contact time for individual women and children
- Increased waiting lists for both refuge and outreach services
- A cut back on counselling services for women
- Reductions in therapeutic activities and support for children
- Fewer hours for on-call workers and drop-in support
- Reductions in the provision of training for other agencies and workers

All of this is set within a context of rising demand – in 2015/16, over 50% of groups reported greater demand for their services. Scottish Women's Aid recommends that the Scottish Parliament engage with us and local authorities to find ways to protect these critical services. Every local authority has suffered significant budget cuts in the last years. Not every local authority has made sizable cuts to local services. These are political choices as much as financial ones, and SWA urges the Scottish Parliament to consider options as implementation of this so-vital legislation commences.