

EQUALITY IMPACT ASSESSMENT – DOMESTIC ABUSE (SCOTLAND) BILL

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| Title of Policy | Domestic Abuse (Scotland) Bill |
| Summary of aims and desired outcomes of Policy | To create a new specific offence of domestic abuse that makes it an offence for a person to engage in a course of behaviour that it is abusive of their partner or ex-partner, and to put in place rules of criminal procedure, evidence and sentencing for that offence, and for offences subject to the statutory aggravation involving partner abuse to reflect the particular nature of this kind of offending. |
| Directorate: Division: Team | Justice Directorate: Criminal Justice Division: Criminal Law & Practice Team |

Executive Summary

The EQIA demonstrates that there are no potentially negative impacts to equality groups resulting from the creation of a specific criminal offence of domestic abuse.

The findings of this EQIA highlight that members of certain equality groups are at greater risk of experiencing domestic abuse, and that there are particular forms of abuse that are either specific to, or more likely to be experienced by, people with certain protected characteristics.

Background

The Domestic Abuse (Scotland) Bill will introduce an offence of ‘Abusive behaviour towards a partner or ex-partner’. It also provides for an associated statutory aggravation that the perpetrator, in committing the new offence, involved or affected a child.

The offence is intended to ensure that the criminal law reflects that domestic abuse can often be a course of conduct which takes place over a sustained period of time. In addition, the course of conduct can consist of both physical violence and threats which can be prosecuted under existing laws, and psychological and emotional abuse which can be difficult to prosecute under existing laws.

By enabling abuse of various types which takes place over a period of time to be prosecuted as a single course of conduct within the new offence, the criminal law will better reflect how victims actually experience such abuse. The Bill will also ensure that a course of conduct of entirely non-physical abuse of a person’s partner or ex-partner is a criminal offence.

The Bill provides for a statutory aggravation to the offence that the offender, in committing the offence, directed behaviour at a child, or that the person, through whose behaviour the perpetrator directs behaviour at their partner or ex-partner, is a child, or where a child sees, hears or is present during an incident of the perpetrator's behaviour that happens as part of the course of abusive behaviour amounting to the offence.

The Bill also makes a number of associated reforms to criminal procedure, evidence and sentencing relating to the creation of an offence of domestic abuse. These reforms are:

- Creating a standard bail condition prohibiting a person accused of a domestic abuse offence from conducting precognition of the complainer other than through a solicitor;
- Prohibiting an accused person in a domestic abuse case from conducting his own defence in court;
- Permitting expert evidence relating to the behaviour of the complainer in domestic abuse cases;
- Applying the same rules about when a child witness under 12 may give evidence in a court room as are applied to other serious offences;
- Placing a requirement on the court that a particular factor when sentencing for a domestic abuse offence is the safety of the victim; and
- Placing a duty on the court to consider in every domestic abuse offence case whether to make a non-harassment order against a person.

The Scope of the EQIA

The likely effects of the policy were informed by a range of evidence, including public consultation and stakeholder engagement on the content of the Domestic Abuse (Scotland) Bill. A variety of sources of information were used, including:

The Scottish Crime and Justice Survey: Partner Abuse 2014-15

Domestic Abuse Recorded by the Police in Scotland 2015-16

Responses to consultation: Equally Safe: Reforming the Law to Address Domestic Abuse and Sexual Offences – 2015 and associated independent analysis

Responses to consultation: A Criminal Offence of Domestic Abuse – 2016 and associated independent analysis

Inclusion Scotland: Briefing for MSPs for the Scottish Government Debate on Violence Against Women, 4 December 2014

Equally Safe: Scotland's Strategy to prevent and eradicate violence against women and girls – March 2016.

Disability and Domestic Abuse: Risks, Impact and Response – Public Health England

Stonewall Health Briefing: Domestic abuse

Out of Sight, Out of Mind: Transgender People's Experiences of Domestic Abuse – LGBT Youth Scotland, 2010.

Trans and Intersex Survivors of Domestic Violence: Defining Terms, Barriers, & Responsibilities: Diana Courvant and Loree Cook-Daniels – 2003.

Scottish Government Equality Outcomes: Pregnancy and Maternity Evidence Review – April 2013

Key Findings

Age

The Scottish Crime and Justice Survey 2014/15 Partner Abuse Module shows that younger people appear to be at the greatest risk of experiencing partner abuse and that the risk appears to decline with age: 6.9% of those aged between 16-24 had experienced partner abuse in the previous 12 months, compared to 3.2% of those aged between 35-44 and just 0.4% of those aged over 65. This is in line with the pattern found in previous survey years.

However, it should be noted that the UK-wide charity, *Action on Elder Abuse* highlighted concerns in a consultation response that older people are at increased risk of being victims of abuse or neglect by other family members or by people working in institutional settings such as care homes.

The impact of the proposed legislation with regards children who experience domestic abuse, is considered in a separate Children's Wellbeing and Rights Impact Assessment.

Disability

There is limited Scotland-specific evidence on the extent to which people with disabilities are affected by domestic abuse. However, a number of studies have found that people with disabilities are at increased risk of experiencing domestic abuse. In 2015, Public Health England published a report on disabled people's experiences of domestic abuse. It noted that "Disabled people experience disproportionately higher rates of domestic abuse. They also experience domestic abuse for longer periods of time, and more severe and frequent abuse than non-disabled people."

This report quotes a finding from the 'Office of National Statistics. Focus on Violent Crime and Sexual Offences. Chapter 4 - Intimate Personal Violence and Partner Abuse'. 2014 which found that 15.7% of disabled women and 8% of disabled men

reported having experienced domestic abuse in the previous year, compared with 7.1% of non-disabled women and 4% of disabled men. While we are not aware of similar studies looking specifically at people with disabilities' risk of domestic abuse in Scotland, we consider that the pattern identified by Public Health England is likely to be replicated in Scotland and it is reasonable to assume that people with disabilities in Scotland are at considerably greater risk of experiencing domestic abuse.

A briefing prepared by Inclusion Scotland for MSPs ahead of a Parliamentary debate on violence against women in 2014 also highlighted evidence that disabled women are at greater risk of experiencing partner abuse and noted that studies had identified “a number disability specific types of physical, sexual, emotional and financial abuse that are not experienced by non-disabled women. Much of this kind of abuse is about coercion and control on the part of the abuser. Examples given include, but are not limited to, ‘the misuse of medication, isolating individuals from family and friends, removing the battery from the woman’s power wheelchair’.”

Sex

The Scottish Crime and Justice Survey 2014-15 found that the overall risk of partner abuse for women since the age of 16 was around two times the level reported by men, at 18.5% and 9.2% respectively. There is less difference in the proportion of men and women who report having experienced partner abuse in the previous 12 months (3.4% of women and 2.4% of men report having experienced partner abuse in the previous 12 months) though this also shows women as being at greater risk of having experienced partner abuse than men.

That survey found that the proportion of women reporting having experienced *both* psychological *and* physical abuse since the age of 16 was proportionately higher, with 10.9% of women and 4.2% of men reporting having experienced this. It notes that there is a body of academic research that distinguishes between what is described as ‘situational’ couple violence, which is not connected to general control behaviour, but arises in a single argument where one or both partners physically lash out at the other, and coercive partner abuse and that coercive partner abuse is disproportionately more likely to be experienced by women (Johnson, 2001, 2006). For example, analysis of data from the Crime Survey of England and Wales (Measuring Coercive Control: What Can We Learn From National Population Surveys, Andy Myhill, 2015) states that “coercive control is highly gendered and is significantly more damaging to its primarily female victims than is situational violence”.

The gendered nature of domestic abuse is reflected in the Scottish Government’s *Equally Safe* Strategy, which was developed in partnership with CoSLA and in association with a wide range of partners including Scottish Women’s Aid and Rape Crisis Scotland alongside Police Scotland and NHS Health Scotland. It emphasises

that violence against women and children, including domestic abuse, is linked with systematic gender inequality.

Pregnancy and maternity

As noted above, women are at considerably greater risk of being victims of domestic abuse than men, and younger people are at greater risk than older people.

There is limited evidence concerning the extent to which pregnant women and new mother experience domestic abuse in Scotland. However, research quoted in the 2013 publication *Scottish Government Equality Outcomes: Pregnancy and Maternity Evidence Review* found that “research highlights that pregnant women face an "increased risk" of domestic abuse, with domestic abuse 'estimated to occur in 5% to 21% of pre-birth cases and in 13% to 21% of post-birth cases'" and that “evidence from Scotland and across the UK indicates that 'abuse often starts in pregnancy and gets worse when the first child is new-born.”

Gender identity/ Transgender people

There is limited evidence concerning transgender or intersex peoples' experience of domestic abuse.

In 2010, LGBT Youth Scotland and the Equality Network carried out research into transgender people's experiences of domestic abuse. This was a small study of 60 people whose main focus was to determine the specific needs of the transgender community when accessing services which provide support and advice to those experiencing domestic abuse. However, that study found that 80% of those surveyed had experienced emotional, physical or sexual abusive behaviour by a partner or ex-partner. It is not clear if this study can be regarded as representative given the low numbers of the sample but if it is, it would indicate that transgender people are at much greater risk of partner abuse.

That study also found that “seventy-three per cent of the respondents experienced abusive behaviours from partners or ex-partners which specifically aimed to oppress or invalidate the transgender person's gender identity, undermine their ability to transition, or to influence their decision about coming out to others.” Forty-two per cent of respondents stated they had felt insecure about their gender identity as a result of a partner's behaviour. The study noted that “Both transgender specific emotionally abusive behaviours and the negative impacts which result are often not fully understood or acknowledged by service providers.”

LGBT Youth Scotland noted in their response to the Scottish Government's consultation on a draft offence that there are forms of abuse that may be specific to transgender people, including threatening to out an individual as transgender, or drawing on fears of transphobia to make them think that nobody will believe, understand or support them if they report abuse. That report noted that people with a non-binary gender identity are particularly at risk of invalidation of their identity

because wider society generally insists that there are only two legitimate genders, making it very easy for partners and services to be dismissive and disrespectful.

There is very limited information concerning intersex people's experience of domestic abuse. However, a US report, *Trans and Intersex Survivors of Domestic Violence: Defining Terms, Barriers, & Responsibilities*, published in 2003, noted that lack of awareness of intersex people among support agencies can be a significant barrier to reporting.

Sexual orientation

Information on domestic abuse incidents recorded by the police in 2015-16 shows that 2% of incidents involved a male perpetrator and male victim, and 1% of incidents involved a female perpetrator and female victim. While there is a lack of robust Scottish data regarding the extent to which lesbian, gay and bisexual people are at risk from domestic abuse, a survey undertaken by Stonewall, covering the UK including Scotland, reported in their *Briefing on Domestic Abuse* found that one in four lesbian and bisexual women and 37% of gay and bisexual men report having experienced partner abuse. If these figures accurately reflect the direct experience of lesbian, gay and bisexual people in Scotland, it suggests that they may be at greater risk of experiencing partner abuse than the general population.

That report also notes that one in ten lesbian women and one in fourteen gay men report having had their sexual orientation used against them by a partner or ex-partner (e.g. threatening to reveal, or seeking to undermine, their sexual orientation). This indicates that there are particular forms of psychological abuse that gay and lesbian people may be at greater risk of experiencing. This point is also made by LGBT Youth Scotland in their response to the Scottish Government's consultation on a draft offence, which notes that perpetrators may seek to draw on homophobia or biphobia to undermine a victim's sense of identity and confidence to report abuse, or may threaten to 'out' a partner or ex-partner.

Race

There is a lack of evidence that domestic abuse differentially affects people on basis of race/ethnicity. The Scottish Government partner abuse module does not collect information on the race or ethnicity of survey respondents. The equivalent England and Wales study does, and shows some variation in risk of abuse on basis of ethnicity, but in view of the small numbers of non-white survey respondents, it is not clear that these are statistically significant variations.

Hemat Gryffe Women's Aid, which provide specialist support to women from the Asian, Black and Minority ethnic community who experience domestic abuse influenced by culture and tradition note that members of certain ethnic communities are at greater risk of experiencing 'honour' based abuse: a form of domestic abuse and a controlling mechanism which is perpetrated by immediate and extended family

members mainly, but not exclusively, on women who are considered to have brought shame on themselves, their family and the community. They note that women will often experience isolation, threats, physical violence, extreme emotional pressure and may even be murdered in order to protect so called cultural and religious beliefs.

Religion and belief

There is a lack of evidence that domestic abuse differentially affects people on the basis of their religion or belief. However, an Improvement Service briefing in July 2015 noted that “a recent study by the Equality and Human Rights Commission highlights that much domestic abuse is never reported, and under-reporting is a particular issue in women from religious and ethnic minority communities.”

It is also reasonable to assume that there may be forms of psychological and emotional abuse which relate specifically to the beliefs and traditions of particular religious groups. For example, the Scottish Council of Jewish Communities note that an abusive spouse may refuse to grant or accept a “get”, a Jewish religious divorce, granted by the Jewish religious authorities, without which a person cannot get re-married in some strands of Judaism (such as Orthodox Judaism) and that this can be used to exert control over a partner or ex-partner.

Recommendation and Conclusions

The Scottish Government has found that none of the proposals are discriminatory and that there are no significant issues that we consider would impact negatively upon the various groups.

However, there is evidence that domestic abuse affected different protected groups in different ways and to different extents. For example, there is clear evidence that women are at greater risk of experiencing partner abuse than men, and that there are particular forms of psychological abuse and coercive and controlling behaviours that lesbian, gay, bisexual and transgender people are more likely to experience.

This highlights the importance that any criminal offence concerning a course of abusive behaviour which is intended to criminalise both physical and psychological abuse is broad enough in its scope to encompass specific forms of abuse that relate to protected characteristics, such as sexual orientation, disability or religious belief. We consider that the definition of ‘abuse’ provided for in the Bill is wide enough to encompass such forms of abuse. However, it will be important that when the offence comes into force and guidance is being prepared for police, prosecutors and others within the justice system, steps are taken to raise awareness of the particular ways in which individuals with certain protected characteristics may be at increased risk of experiencing particular forms of abuse within a relationship.