



Scottish Government

A Criminal Offence of Domestic Abuse

Consultation Paper

April 2016

Introduction

The Scottish Women's Convention (SWC) is funded to engage with women throughout Scotland in order that their views might influence public policy.

The SWC uses the views of women to respond to Scottish and UK Government consultation papers.

SWC Evidence Source

The Scottish Women's Convention engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission paper provides the views of women and reflects their opinions and experiences in a number of key areas relevant to domestic abuse in Scotland.

Purpose of the Consultation

The previous Scottish Government consultation, *Equally Safe: Reforming the law to address domestic abuse and sexual offences*, sought views on whether the existing law provided the police and prosecutors with sufficient powers to investigate and prosecute perpetrators of domestic abuse. If not, the consultation asked whether the creation of a specific offence of domestic abuse would improve the ability of the justice system to respond to this form of criminality. The clear majority of respondents thought that the existing criminal law does not provide the police and prosecutors with sufficient powers to investigate and prosecute domestic abuse.

The Scottish Government have been engaging with stakeholders to develop a specific offence of domestic abuse which is intended to improve how Scotland's justice system responds to this kind of offending. They wish to seek views on a draft offence through this consultation in order to enable the views of respondents to inform the development of this offence before it is introduced into the Scottish Parliament.

Are you content that any specific offence of domestic or partner abuse should be drawn so as to encompass both conduct, such as threats or physical abuse, which is currently criminal, and psychological abuse and coercive control?

YES

The Scottish Government's commitment to tackling and eliminating violence against women and girls (VAWG) is clear; however this is not adequately reflected in the justice system's approach to prosecuting those who perpetuate these crimes. The SWC therefore wholeheartedly supports the creation of a specific criminal offence of domestic abuse. This would provide fewer opportunities for loopholes and would ensure that the aspects of domestic abuse not currently punishable through the courts – such as emotional abuse and financial control – would be taken into consideration.

At present, offences relating to domestic abuse are considered separately. Anything which takes place outwith an assault or a breach of the peace, for example, are not taken into account by the courts. There is no recognition that coercion and control can be the most significant characteristics of domestic abuse. This effectively means that women experiencing abuse are only able to seek redress for part of what they have gone through.

“My ex-partner was eventually charged with a breach of the peace for the abuse he carried out against me, which I was relieved about. However, the judge couldn't take into account the fact he had chosen my clothes every day for the previous three months, or that I wasn't allowed to take my own bank card anywhere.”

It is vital that these behaviours are included within the scope of a specific offence. In order for this to be useful in the prosecution of cases of domestic abuse, women must be afforded support from services, the police and the courts in order to effectively document what they have been through. This must be done sensitively, so as to ensure that victims are not further traumatised.

Do you have any comments on the general structure of the offence, in particular:

- **The requirement that a reasonable person would consider the accused's behaviour would be likely to cause the victim to suffer physical or psychological harm;**
- **The requirement for a course of behaviour consisting of behaviour on at least two occasions;**
- **The mental element of the offence to be the intention to cause harm or recklessness as to the harm being caused.**

Overall, the structure of the offence is positive. In particular, there is seen to be a victim-centred approach with the requirement that a reasonable person would think that the victim would suffer physical or psychological harm as a result of the accused's behaviour. However, in order for the intent behind this to be fully realised, it must be accompanied by more public information.

Despite legislation, policies and practice, too many people in Scotland still hold outdated, unrealistic attitudes around domestic abuse, and VAWG in general. More must be done to raise awareness amongst the general public, who will make up juries, as well as police, the judiciary and other services such as the NHS and Local Authorities. This must centre around what constitutes domestic abuse, why patterns of physical and psychological harm in relationships are detrimental to women and their children, and what support and redress is available to those who experience and live with such behaviours. Unless this is carried out in conjunction with the introduction of legislation, societal attitudes will continue to prevail and this new offence will not fulfill the purpose for which it was created.

It is also positive that there only needs to be an intention to cause harm by the accused. Abusers often use coercion and intimidation to instill fear and assert control over their victims. Under existing domestic abuse policies, this type of behaviour would rarely be able to be taken into consideration. It would be difficult to prove that actual harm was caused in these circumstances. By requiring only intention, the new offence of domestic abuse has the potential to afford access to justice to more women, which is welcomed.

Do you have any comments on the definition of 'abusive behaviour' contained in the draft offence?

The SWC supports the definition of abusive behaviour contained in the draft offence. The recognition of the coercive and controlling aspect of domestic abuse, which for some women can occur more frequently than physical threats or violence, is long overdue.

"I'm frightened to tell him that I've spent more than I was supposed to on the weekly shop. When he finds out he'll call me awful, horrible names in front of the kids and they'll think that's normal. I'm scared he will take that job away from me, because it's one of the only times in the week that I get to go out on my own."

It is also positive that there is no prescriptive definition of what will constitute abusive behaviour. Members of the judiciary, the police and jurors may, as has been previously outlined, hold outdated or stereotypical views as to what constitutes abusive behaviour. It is, therefore, important that they are provided with information and training on behaviour which can be considered abusive, as well as being advised of the numerous ways in which this can manifest itself.

The SWC welcomes and fully supports the introduction of a specific criminal offence of domestic abuse. This proposal, which has the potential to afford not only justice to more women, but also safety and security for them and their families, is extremely positive. It demonstrates the commitment of the Scottish Government to tackle and eradicate violence against women and girls (VAWG).

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