

Scottish Women's Convention response to:
The Scottish Parliament Justice Committee Call for Views:
Domestic Abuse (Protection) (Scotland) Bill
December 2020

Introduction

According to the Scottish Government the provisions of the Domestic Abuse (Protection) (Scotland) Bill are intended to improve the protections available for people who are at risk of domestic abuse, particularly where they are living with the perpetrator of the abuse. The Bill will do this by providing courts with a new power to make a Domestic Abuse Protection Order ("DAPO") which can impose requirements and prohibitions on a suspected perpetrator of domestic abuse, including removing them from a home they share with a person at risk and prohibiting them from contacting or otherwise abusing the person at risk while the order is in effect.

The Bill will also provide a power for the police, where necessary, to impose a very short-term Domestic Abuse Protection Notice ("DAPN") ahead of applying to the court for a full order. The Justice Committee will scrutinise the Domestic Abuse (Protection) (Scotland) Bill in the coming months. The Committee is therefore asking for views.

The Scottish Women's Convention (SWC)

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 a variety of Parliamentary, Governmental and organisational consultation papers at both a Scottish and UK level.

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

The SWC is currently engaging with women through digital roadshows, online surveys, asking women to comment by email and by telephoning those who want to talk. We are also using our wide network to ask women to collate views in their local communities and forward these to us on a regular basis. We are continuing to review innovative ways of engaging with women throughout Scotland using whichever medium is appropriate to them.

Do you agree that a senior police officer should be able to impose a short-term Domestic Abuse Protection Notice (DAPN), without first seeking court approval, as proposed in sections 4-7 of the Bill? If so, what advantages would a DAPN have over the existing police and court powers?

Women who have consulted with the SWC are overwhelmingly in favour of implementing a process by which notices can be served as soon as is possible for their safety. This is of particular importance to ensure a woman can remain in her own home and be given the time needed to fully consider all options without the fear of the perpetrator getting in contact. All orders issued should be time efficient to ensure immediate support for victims.

One of the potential problems, however, is where police may issue such a notice, despite the victim not wanting one imposed due to fear the perpetrator will use it against them. In such situations, careful consideration is required as to the victim's thinking as well as signposting to relevant organisations. This should include multi-agency approaches and collaborative working between all relevant parties including domestic abuse support services and social services, where appropriate. Other stakeholders must be notified where a DAPN is put in place, such as a child's school, for instance, to ensure full enforcement and effectiveness. Other notes that came across for the imposition of a DAPN included:

- Issuance of such notices must be communicated in the strongest terms that they do not refute the need for criminal prosecution but are an additional measure.
- There must be assurances that a senior police officer with the authority to impose such a notice is always on call to offset any delays in the process.
- Ensure police and all relevant stakeholders are given full and frequent training in the use of such measures to make sure they are fully utilised for the victim's protection.
- The severity of breaching such a notice must be fully communicated to ensure they are fully adhered to.

Do you agree that the civil courts should be given powers to make a Domestic Abuse Protection Order (DAPO), as proposed in section 8-16 of the Bill? If so, what advantages would a DAPO have over the existing police and court powers?

Women are in agreement that civil courts should be given such powers so long as this is understood as not being a substitute for more serious criminal charges. This was seen to be a potentially difficult issue at the present time given the backlog of court cases during the Covid-19 pandemic.

A main issue is that a significant number of women may be barred from using such powers due a lack of financial means. This may see women lower down the income scale being unable to pursue a protective order where they do not qualify for legal aid.

It must also be ensured that civil courts are fully aware of the many forms domestic abuse can take out with wholly physical abuse. This may be especially off putting for women who

do not feel they can pursue civil means due to fears over what may happen to them if a DAPO is not granted. Thus, giving civil courts the power to grant such an order must be done in a way that is tailored to a woman's individual circumstances, including ensuring those granting such means have undergone rigorous domestic abuse and equalities training. Other thoughts raised included:

- Issues with accessibility for women who may stay some distance from a court building. It is hoped that electronic and other means are considered to allow these women to obtain such orders efficiently.
- It must be communicated as to how a breach is prosecuted when a civil court issues such an order and that is in no way less serious than one issued by the police.
- Worries over the cutting of local authority and third sector organisation budgets which may see women having less accessibility to essential services and advice at a time when this is needed most.

Section 1 of the Bill requires the two people covered by the DAPN or DAPO to be spouses, civil partners or in an “intimate personal relationship” with each other. In addition, the suspected perpetrator must be aged 18 or over and the person at risk must be 16 or over. Do you agree with this overall approach or do you wish to suggest any changes? In the Domestic Abuse Bill, that is currently making its way through the UK Parliament, a broader approach is proposed for England and Wales, extending to other family relationships and people sharing a house in other circumstances.

The majority of cases brought will more than likely be for women over the age of 16, however, such restrictions may give the idea that domestic abuse only starts at a certain age. Whilst there are other legislative mechanisms available for those under this age, it would not be strictly dealt with as domestic abuse and recognised for the gender-based violence that it is. There are also issues which younger women have raised regarding the continuous moves to digitalisation – particularly at present – and how these see a further rise in young women under sixteen being privy to such abuse and coercive control through technological means.

Under Section 8 of the Bill, police officers would be able to apply to the court for a DAPO. Do you agree with this approach or do you think the power to apply should be extended to other individuals or organisations? If the latter, who would you wish to include?

Women are of the opinion that anything which guarantees their safety should be of the utmost importance. There was agreement that the Bill was advantageous for including that a third-party representative could talk to police about making such an application, particularly in situations where women may be fearful or unsure. This is particularly apt in allowing representatives and trained professionals to be able to apply to the court on behalf of a victim, most especially where there may be additional barriers such as language difficulties.

Do you support the definition of “abusive behaviour” (in sections 2 and 3) which is a key component of those tests?

The array of forms “abusive behaviour” can take should never be limited in the scope of domestic abuse. As women have noted in previous sections, ensuring some form of protection for women whether awaiting a judicial outcome or where it allows for breathing space for the victim is of the utmost importance. It must also be stressed that victims do not face further abuse by perpetrators where notices are given. Other issues include:

- Communicating that where no physical violence occurs, emotional abuse or coercive control is in no way any less serious.
- Consideration of other ways that a perpetrator may seek to control a victim such as using children or other relatives. It must thus be communicated that any form of control or manipulation through a third party is completely unacceptable.

Under the Bill, a DAPN lasts until a DAPO (or interim DAPO) is made. A DAPO can last for a maximum of three months. Do you agree with the proposed maximum periods the DAPN and DAPO can last for?

Whilst women agree that a DAPN should be in place right up until a DAPO can be made, there should be allowances for more flexibility within the time process. Use of such orders can be a means of allowing a woman the time and space necessary to consider all her options, including staying within her current home. However, if she wishes to leave, this must also be considered. Enacting such a strict time limit may not always be a sufficient enough period for women to have fully arranged permanent settled accommodation. It is therefore imperative that this provides allowances to take the woman’s views and circumstances into account if it must be extended. It should also be noted such orders must be issued in tandem with other relevant support such as signposting, counselling and information.

Do you agree that breach of a DAPN and a breach of a DAPO should be a criminal offence, as proposed in sections 7 and 12 of the Bill? Do you support the penalties proposed for breach of a DAPN and breach of a DAPO?

Stringent penalties must be applied to ensure both types of protective measures are not breached. Not only does this give women some reassurance, it also signals to perpetrators the seriousness of their crime and sends a message to wider society about how Scotland tackles domestic abuse.

Do you agree with the approach in section 18 of the Bill, introducing an additional ground to end a social housing tenant's interest in a tenancy? If so, what benefits does this power have over and above existing statutory powers?

Whilst women are supportive of the approach to allow the end of a social housing tenant's interest, there is concern regarding the shortage of rights within the privately rented sector and what this will mean for women. This is a particular issue where removal of a perpetrator may see a loss in income or a move to social security. This could also see a delay in universal credit payments, and what this could mean for women in terms of rent arrears and eviction through no fault of their own.

If you are responding on behalf of an organisation, what impact (if any) would the Bill have on your organisation? Is there any issue associated with the Bill you wish to comment on, not already covered by questions 1-9?

One of the main issues women have commented on is the low use of DAPOs at present. Implementation of protective orders should be wholly considered at the starting point of all cases of domestic abuse and continuously monitored for their effectiveness. Such measures should always be viewed as proactive rather than reactionary means in order to protect victims from any potential issues that may occur in future if they were not to be in place. Women are in agreement that everything should be done and that extends to exhausting all protectionary legislative instruments to pre-empt outcomes that perpetrators may undertake if the order was not in place. This should also include:

- Signposting to relevant organisations both for the victim and the perpetrator.
- Ensuring accommodation is accounted for when issuing a notice.
- Accounting for cultural or other issues where intersectional characteristics play a part and may impose additional barriers on women reporting or accessing help and support.
- Ensuring continuous contact to make sure both DAPNs and DAPOs are fully effective and working for women.
- Allowing victims to have all information and an appointed person to aid them at every step in the process.

- Ensure police record all potential breaches of any order, including continuous gathering of evidence and data to monitor effectiveness.
- Implementing multiple approaches to monitoring of orders to ensure it is fully being adhered to, including electronic monitoring, and requiring communication with both perpetrator and victim to check on effectiveness.

Conclusion

The SWC is grateful for the opportunity to respond to the Scottish Parliament Justice Committee's call for evidence regarding the proposed Domestic Abuse (Protection) (Scotland) Bill. As an organisation, we will continue to work with women from across Scotland to gather voices and experiences relating to such legislation and the effect of this on women's equality.

For further information, please contact

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