Rt Hon Harriet Harman MP
Chair, Joint Committee on Human Rights
House of Commons
London
SW1A 0AA

20 May 2019

Dear Harriet,

DRAFT DOMESTIC ABUSE BILL

Thank you for your letter of 10 April seeking clarification of a number of issues in relation to the draft Domestic Abuse Bill.

We welcome the Joint Committee on Human Rights’ (JCHR) contribution to the scrutiny of the draft Bill. As you know, the draft Bill is undergoing formal pre-legislative scrutiny by a Joint Committee chaired by Maria Miller MP which is now due to report by 14 June. The Government will want to consider carefully the conclusions and recommendations of that Committee, including any on the issues addressed in your letter. That being the case what follows is our current position on these issues, but we shall of course want to reflect further on our position in the light of the report from the Committee.

Protections for women in Northern Ireland

As you note, the draft Bill extends and applies to England and Wales only. This is simply a reflection of the fact that the subject matter of the Bill is devolved in Scotland and Northern Ireland. That said, we have made it clear that we are ready, in principle, to include in the Bill as introduced equivalent provisions for Scotland and Northern Ireland and we are in discussions with the Scottish Government and Northern Ireland Department of Justice to that end. It is, of course, the case that the law in each part of the UK must be compliant with the requirements of the Istanbul Convention before the UK Government is in a position to ratify it (the provisions in the draft Bill relating to extraterritorial jurisdiction will ensure that the law in England and Wales is compliant with Article 44 of the Convention). This consideration is

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1 See, for example, my (Victoria Atkins) response to Stella Creasy’s Urgent Question on the territorial extent of the draft Bill (Official Report, 30 January 2019, col. 827)
certainly germane to the current discussions, but we must at all times respect the devolution settlement in each part of the UK.

**Protects for migrant women**

The Government is clear that all victims of domestic abuse are treated first and foremost as victims regardless of their immigration status; we can confirm therefore that all the measures in the draft Bill apply equally to all victims of domestic abuse in England and Wales.

On the issue of data-sharing, it is important to note that when working with vulnerable groups, the sharing of information is often the safest way to get them the support they need, and the police are confident that current arrangements can do this. Guidance has been issued by the National Police Chiefs' Council (NPCC) on supporting victims with insecure immigration status to help them overcome barriers to reporting and accessing protection and support. Immigration Enforcement is also working with the NPCC lead on domestic abuse to ensure that police and immigration officers work collaboratively to quickly recognise victims and ensure that immigration status is not used by perpetrators to coerce or control those who may be vulnerable migrants. This is an issue the Government takes very seriously, and which we raised with the National Police Lead for domestic abuse at a recent meeting of the National Oversight Group on domestic abuse. We will continue to ensure that this issue is prioritised, that current arrangements are working, and guidance is being applied correctly.

Turning to the Destitute Domestic Violence Concession (DDVC), as you say this is currently open to partners of British citizens and settled persons where such partners are on a spouse, civil partner, unmarried partner or same-sex partner visa. We indicated in our response to the consultation on domestic abuse that we will consider the argument for widening the cohort of individuals eligible under the concession. As part of that consideration, it was helpful to see the views of stakeholders who submitted written evidence to the JCHR. We will also want to take into account the evidence – both written and oral – submitted to the Joint Committee on the Draft Domestic Abuse Bill and any recommendations made by that Committee (or, indeed, by the JCHR). In addition, on 15 May we hosted a round table with stakeholders to discuss how we can best support migrant women who are victims of domestic abuse. In reviewing all these sources of evidence and coming to a view on whether to extend eligibility of the DDVC, we will of course also take into account the provisions of the Istanbul Convention.

You pointed to the fact that some stakeholders have suggested that the three-month period of leave under the DDVC is an insufficient amount of time to enable victims to reestablish themselves. However, when reviewing the policy, we found that most individuals who decide to apply for permanent settlement do so within three months. Where an individual has an outstanding application, they can remain in the UK pending a decision with the original visa conditions intact. We remain of the view that three months is the appropriate duration for leave under the DDVC given that the intention is to allow time for the individual to reflect on what they want to do in a safe environment. Should those who apply for permanent settlement have their applications approved, they will be able, subject to meeting the Department for Work
and Pensions (DWP) eligibility criteria, to continue making claims for benefits. We will continue to monitor the policy and keep it under review.

More broadly, to support those who fall outside of the scope of the DDVC, we are continuing our work to help build long-term capacity, support and expertise about immigration rights for those working to combat domestic abuse. We have already provided £400,000 through the Tampon Tax in 2017 and in March 2019, we committed a further £1,090,000 to Southall Black Sisters. This money will fund safe accommodation, subsistence and help including counselling, therapy, immigration advice and community awareness-raising to domestic abuse victims in London, the North-East and Manchester with the aim of improving our understanding about the needs and numbers of migrants who claim urgent crisis support.

The Government recognises the vital importance of providing refuge accommodation to all victims of domestic abuse that is based on need and not dependent on immigration status. The Ministry of Housing, Communities and Local Government (MHCLG) published its Priorities for Domestic Abuse Services in 2016 and updated these in 2018. These make clear that local authorities should respond to the needs of all domestic abuse victims, including from isolated and/or marginalised communities, BME, LGBT, older people and victims with complex needs. Moreover, on 13 May, MHCLG launched a consultation on the introduction of new local authority-led arrangements for delivering support to all victims of domestic abuse and their children in accommodation-based services in England.

MHCLG also funded the No Women Turned Away project which provides additional support to victims who face barriers to accessing support services. In 2015 MHCLG commissioned and funded Women’s Aid to provide additional support to women, facing difficulties accessing a refuge space through the No Women Turned Away Project. Since 2016, 668 women have been supported, of which 171 had no recourse to public funds. Where individuals may be ineligible for social welfare payments, there are often statutory requirements laid on local authorities to provide emergency support, especially where children are involved.

**Statutory definition of “domestic abuse”**

The proposed new statutory definition of domestic abuse in clauses 1 and 2 of the draft Bill was the subject of extensive consultation. Over 85% of the responses to the consultation strongly agreed or agreed with the proposed definition. We believe that the definition of "personally connected" is sufficiently broad to cover a range of relationships. This includes intimate partners, a wide range of family members and also ex-partners. If the abuse is being perpetrated by someone who is not personally connected to the victim, it would not count as domestic abuse. This is intentional. Our focus here is domestic abuse as it is generally understood; a personal connection between the perpetrator and victim being central to the nature of this form of abuse. Of course, all forms of abuse, whether it takes place in a domestic setting or otherwise, is to be abhorred and there are other existing remedies available to help protect victims (including criminal offences, for example those under the Protection from Harassment Act 1997, and civil remedies, such as a restraining order).
Prohibition of cross-examination in family proceedings

Our intention is that the clause prohibiting cross-examination in-person of a victim by their abuser will protect every victim of abuse who is a party to family proceedings. We recognise that some victims might not benefit from the absolute prohibition, as many victims may not have reported their abuse to the police before they come to the family court. This is why the provisions also give courts the power to prohibit cross-examination in-person where the court considers that the evidence given is likely to be diminished in quality, or where giving evidence may cause a party significant distress and that distress is likely to be more significant than if the party were cross-examined by someone else. This discretion is framed to focus on the potential impact on the party involved, in order that the court can make directions as appropriate for those most in need of this protection.

We are determined that the family court should never be used to further or perpetrate abuse, and it is our view that the proposed measures will enable the court to protect victims and ensure they are not subjected to cross-examination in-person by their abuser. A blanket automatic prohibition against cross-examination in-person where domestic abuse is alleged risks extending the provision further than where it is needed.

Regarding the suggestion that this prohibition is extended to the civil courts, we have drafted the provisions currently to apply to family courts in response to the overwhelming call for this protection from our stakeholders. Civil courts cover a diverse range of matters, and we would need to establish an evidence base as to whether equivalent protections are required in civil courts. Before legislating for equivalent provisions, we would look to first learn lessons from the application of these new measures in family proceedings once the provisions in the Bill come into force.

Domestic Violence Disclosure Scheme

The number of disclosures made under the scheme has been rising sharply. In the year ending March 2018, there were a total of 5,649 disclosures made under the Domestic Violence Disclosure Scheme (DVDS), which is an increase of 66% on the previous year. Applications under the “Right to Know” element of the scheme increased by 47% and “Right to Ask” applications increased by 111%. But we know that there is more to do to raise awareness of the scheme, increase the number of disclosures made and make that that the scheme is used and applied consistently across all police forces.

The operation of the DVDS has been examined by HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) as part of their 2017 thematic report on domestic abuse. Amongst other things, the Inspectorate identified inconsistencies surrounding the use of the scheme by police forces, noted the low volume of disclosures and discrepancies between the use of “Right to Know” and “Right to Ask” disclosures. It was in response to these findings, as a result of discussions with the police and responses received to our public consultation that we proposed putting the guidance supporting the DVDS on a statutory footing, with a duty on chief officers to have regard to the guidance. We believe that this approach will help drive greater use and consistent application of the scheme across all police forces. We
have also committed in the Government response to the consultation that we will work with the police to enable online applications under the scheme to make it more accessible and easier to use.

With HMICFRS we will continue to monitor the operation of the scheme, including the effectiveness of the refreshed statutory guidance which will be developed in consultation with, amongst others, the Domestic Abuse Commissioner. Given these developments we do not believe a bespoke review of the scheme is required at this time. We accept that the scheme engages the right to privacy under Article 8 of the ECHR. As set out in the ECHR memorandum published alongside the draft Bill, we are satisfied that the proposed statutory guidance strikes the right balance between disclosure and the right to privacy. The current guidance is clear that any disclosure must be necessary and proportionate for the prevention of crime based on a full assessment of the risk of harm posed by an individual, and states that legal advice should be sought where necessary.

**Domestic Abuse Protection Notices and Orders (DAPNs and DAPOs)**

As the Joint Committee will be aware, there are a range of existing orders that can be used in domestic abuse cases. These orders vary in terms of who can apply for them, the conditions attached to them and the consequences of breach, and there is no single order that is applicable across the criminal, family and civil court jurisdictions. This can lead to confusion for victims and practitioners in domestic abuse cases and problems with enforcement. Some police practitioners and organisations representing victims have also cited the absence of the potential for criminal sanction following breach as limiting the effectiveness of the existing Domestic Violence Protection Order (DVPO).

Our policy intention in creating new DAPNs and DAPOs is to bring together the strongest elements of the existing protective order regime into one comprehensive, flexible order which will afford more effective and longer-term protection to victims of domestic abuse and their children. It is our intention that DAPOs will become the 'go to' protective order in cases of domestic abuse.

DAPNs and DAPOs will have a number of advantages over current protective orders and will therefore, we believe, be more effective in protecting victims and their children. These advantages include:

- They can be used to protect victims from all forms of domestic abuse, unlike current DVPN s and DVPOs which can only be used in cases involving violence or the threat of violence.

- More flexible application routes: standalone applications can be made to various jurisdictions by victims and relevant third parties, not just the police, and various jurisdictions including the Family Courts can make a DAPO of their own volition during other proceedings (which do not have to be domestic abuse-related) in order to provide victims with immediate protection.

- Longer-term protection for victims: unlike current DVPOs which have a maximum duration of 28 days, DAPOs can be flexible in duration and can therefore provide victims with longer-term protection.
• More flexible requirements: DAPOs will have the ability to impose both positive requirements and prohibitions on perpetrators to help them address their abusive behaviour, such as by requiring them to attend an alcohol or substance misuse programme or attend a mental health assessment. Courts will be required to consider the specific prohibitions and requirements which may be necessary for the order to address the specific forms of abuse being used against the victim, such as economic abuse or coercive control. Unlike current DVPOs, the conditions of a DAPO can be varied by the courts so that they can respond to changes over time in the perpetrator’s abusive behaviour and the level of risk that they pose, ensuring that the victim and their children remain protected.

• Ability to impose electronic monitoring or ‘tagging’: existing legislation does not provide courts with the power to use electronic monitoring with the current range of orders. The draft Bill includes an express power to enable courts to use electronic monitoring to monitor the perpetrator’s compliance with other requirements of a DAPO.

• Mandatory notification requirements: unlike existing orders used in domestic abuse cases, all DAPOs will include mandatory requirements for perpetrators to notify their name and address to the police, and any changes to this information. The draft Bill also includes the power for further, additional notification requirements which DAPCs may impose to be specified in regulations, which the courts may consider on a case by case basis as appropriate.

• Criminal penalty for breach: under the draft Bill, breach of a DAPO can be dealt with as a criminal offence carrying a maximum penalty of five years’ imprisonment. Breach of a DAPO can also be dealt with as a contempt of court in certain circumstances, which can provide flexibility for victims who do not want their perpetrator to be criminalised.

We are committed to piloting the DAPO in a small number of police force areas to assess the effectiveness of the new order prior to any national roll out, and clause 61 of the draft Bill expressly provides for this. Clause 46 of the draft Bill also provides for the Government to issue statutory guidance on the new orders, which will help to ensure that applicants understand how to obtain a DAPO and that frontline practitioners are using them effectively and consistently in order to prevent harm to victims and their children.

We are copying this letter to Maria Miller MP, Chair of the Joint Committee on the Draft Domestic Abuse Bill.

Victoria Atkins MP  
Parliamentary Under Secretary of State for Crime, Safeguarding and Vulnerability

Edward Argar MP  
Parliamentary Under Secretary of State, Ministry of Justice