



Joint Committee on Human Rights

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From Rt Hon Harriet Harman MP, Chair

Victoria Atkins MP

Parliamentary Under
Secretary of State for Crime,
Safeguarding and
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Home Office

Edward Argar MP

Parliamentary Under
Secretary of State
Ministry of Justice

10 April 2019

Dear Victoria and Edward,

Draft Domestic Abuse Bill

Thank you for your letter inviting the JCHR's views on the draft Domestic Abuse Bill. As you noted, the draft Bill was identified as one of the Committee's priority Bills for this Parliamentary session. We have been greatly assisted by the written submissions from over seventy stakeholders who responded to our call for evidence.

This draft Bill is intended to enhance protections for victims of abuse, in compliance with the UK's positive obligations under Articles 2 and 3 of the European Convention on Human Rights. We understand that the draft Bill is intended as a final step towards the UK's ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women ("the Istanbul Convention").

It is important that rights issues are considered thoroughly and there are a number of matters raised in our evidence that we wish to draw to the attention of the Government and the Joint Bill Committee for their consideration.

Protections for women in Northern Ireland

The draft Bill extends and applies to England and Wales only. Given the protracted absence of the Northern Ireland Assembly, there are concerns amongst stakeholders that the exclusion of Northern Ireland would result in unequal and inadequate protections for victims of domestic abuse in Northern Ireland.

Northern Ireland would not have a statutory definition of domestic abuse and would be excluded from the remit of the Domestic Abuse Commissioner. Further, victims in Northern Ireland would not be eligible to apply for Domestic Abuse Protection Notices and Orders and could still be cross-examined by their abusers in family proceedings. We also note that Northern Ireland has not yet criminalised “coercive or controlling” behaviour and has no legal definition of “stalking”, which is specifically required by Article 34 of the Istanbul Convention.

Article 4(3) of the Istanbul Convention places an obligation on the UK to “*protect the rights of victims... without discrimination on any ground such as... national or social origin.*” The Explanatory Notes to the Istanbul Convention state that “*it is incompatible with the object and purpose of the Convention for state Parties to exclude parts of their territory from application of the Convention without valid reason*”. To the extent that the Istanbul Convention obligations are not met, the UK is not able to ratify the Convention. In these highly unusual circumstances, where the Assembly has been dissolved for a period of two years, there are concerns that the women of Northern Ireland may not be granted adequate and equal protections.

We would be grateful if the Government could provide the Committee with a ‘valid reason’ for excluding Northern Ireland from the draft Bill. We would also be grateful if the Government could provide a fully reasoned view on whether the draft Bill ensures full compliance by the UK with Istanbul Convention.

Protections for migrant women

Article 4(3) of the Istanbul Convention requires States to protect the rights of victims without discrimination as to migrant or refugee status. Numerous stakeholders have expressed concern that migrant women are not afforded the same protection as non-migrant women and that this draft Bill fails to address this discrimination.

Those giving evidence consider that data-sharing agreements between public services and the Home Office perpetuate underreporting of domestic abuse by migrant women for fear of deportation. Due to fears of deportation and lack of access to support, migrant women are discouraged from reporting domestic abuse and are therefore at a heightened risk of continued abuse. Various stakeholders have therefore criticised the draft Bill for failing to address the Government’s hostile environment policy which prevents migrant women from accessing protection and support.

We would be grateful if the Government could clarify whether it has considered the need for safe reporting mechanisms for migrant women and the possibility of a firewall between frontline services and the Home Office in respect of domestic abuse cases, so that women with unsettled immigration status are able to access protection and support on an equal basis with non-migrant women.

We note that even if migrant women do report, they have no recourse to public funds. The Destitute Domestic Violence Concession (DDVC), which supports some migrant survivors of domestic abuse to apply for indefinite leave to remain and grants them funds for three months, is only available to partners of British citizens and settled persons where those partners are on a spouse, civil partner, unmarried partner or

same-sex partner visa. The DDVC therefore only supports some migrant survivors of domestic abuse, whilst others are left destitute.

A number of stakeholders have argued for an extension of the DDVC to apply to survivors of domestic abuse regardless of their visa. Some stakeholders have also argued that three months of financial support is an inadequate period of time and that this should be extended to at least six months. To date, the Government has committed to “consider the argument for widening the cohort of individuals eligible under the destitute domestic violence concession” but has stated that “it will take time to build an evidence base on which to base any decisions.”

The Istanbul Convention requires victims of domestic abuse to be protected, regardless of their immigration status. We would be grateful if the Government could clarify what evidence is required for extending the DDVC to other migrant women. We would also be grateful if the Government could set out how the differential treatment of migrant women is compliant with Article 4(3) of the Istanbul Convention.

Statutory definition of ‘domestic abuse’

We note that the draft Bill introduces a statutory definition of domestic abuse, which includes physical or sexual abuse, coercive behaviour, economic abuse and indirect abuse through third parties. However, there are some concerns amongst certain stakeholders that the definition excludes some forms of domestic abuse. In particular, the definition of ‘personally connected’ may leave gaps in protection, as there may be some cases where individuals are living with their abuser and suffering the same type of abuse as that listed in the proposed definition, but cannot access the same remedies due to the lack of an intimate partnership or family connection. There is, therefore, some support for an expanded definition to ensure protections for individuals suffering from different forms domestic abuse.

We would be grateful if the Government could set out whether it believes there would be gaps in protection based on the current drafting of the statutory definition and, if so, the justification for these gaps.

Prohibition of cross-examination in family proceedings

The draft Bill provides for an absolute prohibition on cross-examination of a victim by a party (and vice versa) who has been convicted, cautioned or charged with a “specified offence” (to be defined in secondary legislation), or where there is a with-notice protective injunction in place. Where the absolute prohibition does not apply, the draft Bill provides for the courts to exercise a discretion to prohibit cross-examination if the quality of the evidence would be likely to be diminished by direct cross-examination, or the witness is likely to experience “significant distress” if directly cross-examined, more so than if cross-examined by a different person, and it would not be contrary to the interests of justice.

Whilst these provisions are a step towards protecting victims from further abuse during family proceedings, some of those making submissions are concerned that these protections are too narrow. The Government is under a duty to prevent continued exposure to domestic abuse that reaches the threshold of severity required by Article 3 where they have notice that the individual is vulnerable to such abuse. It has been recognised by the courts that cross-examination of victims of abuse by perpetrators can be a way in which perpetrators can continue their abuse. If the courts have knowledge of the abuse, they must seek to protect the victim. This duty to protect may apply beyond cases where there is a conviction, charge, caution or an injunction against the perpetrator.

We would be grateful if the Government could consider whether the scope for judicial discretion for prohibiting cross-examination should be reduced and whether the circumstances in which cross-examination is automatically prohibited should be expanded to extend this protective measure to all cases involving domestic abuse irrespective of whether there is a conviction, charge, caution, or injunction. We would also be grateful if the Government could clarify whether it has given consideration to extending these protections to the civil courts, in order to protect victims no matter where they are involved in litigation.

Domestic Violence Disclosure Scheme

The Domestic Violence Disclosure Scheme (a.k.a “Clare’s Law”) is designed to enhance the protection of potential victims of abuse. The scheme must balance the state’s obligation to protect life and prevent harm, the potential victim’s right to ask/right to know under the scheme, and the perpetrator’s right to privacy protected by Article 8 ECHR. Any disclosure must be necessary to protect life or prevent harm and must be proportionate to that aim.

The draft Bill provides for the creation of statutory guidance regarding the DVDS scheme. Putting guidance on a statutory footing may enhance protection of potential victims who receive vital information regarding their partner’s violent history. However, there are some concerns amongst stakeholders that this scheme is not operating effectively at present, and that putting it on a statutory footing without proper review may perpetuate the inefficiency of the current system.

We would be grateful if the Government could clarify whether it plans to review the efficacy of the scheme to assess (a) whether it is effective in protecting partners of known abusers and (b) whether it strikes the right balance between the right to know/ask and the right to privacy.

Domestic Abuse Protection Notices and Orders

We note that the draft Bill introduces a new civil order regime: Domestic Abuse Protection Notices (“DAPN”) and Domestic Abuse Protection Orders (“DAPO”). A DAPO may prohibit the perpetrator from doing certain things as set out in the Order and may also impose positive requirements on the perpetrator. Breach of a DAPO,

without reasonable excuse, is a criminal offence. It may be punished, in the alternative, as a contempt of court.

We would be grateful if the Government could clarify how the proposed new regime will be more effective in protecting victims than the existing civil order regime.

We note that a Joint Bill Committee has been established to undertake pre-legislative scrutiny of this draft Bill. We have therefore sent a copy of this letter to the Chair of the Committee in the hope that this will assist with their wider pre-legislative scrutiny process.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Harriet Harman', written in a cursive style.

Rt Hon Harriet Harman MP, Chair

