

Karen Adam MSP
Convener, Equalities, Human Rights and Civil Justice Committee
The Scottish Parliament

BY EMAIL ONLY: EHRCJ.committee@parliament.scot

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Dear Convener

Non-implementation of Acts of the Scottish Parliament

Thank you for your letter of 8 December regarding the Equalities, Human Rights and Civil Justice Committee's plans to explore the implications of delays in implementing provisions from the Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020, Domestic Abuse Protection (Scotland) Act 2021, and The Children (Scotland) Act 2020. Thank you for giving the Law Society of Scotland the opportunity to provide additional insights to the Committee in advance of the Committee's session with the Scottish Government.

In general terms, we consider that timescales for implementation of Acts of the Scottish Parliament are a matter for the Scottish Government and we note that there may be many factors which influence these timescales.

Non-implementation and a lack of clarity around when relevant provisions will be implemented can, however, create issues with legal certainty and subsequent related law reform. For example, we note the recently-published Scottish Law Commission Discussion Paper – [Changes to the civil remedies available to victims of domestic abuse](#) – which examines the legal protection for victims of domestic abuse in the context of civil remedies. The Discussion Paper refers to the Domestic Abuse Protection (Scotland) Act 2021 throughout, although notes that the Act is not yet in force (see for example the discussion of the Act on page 82 of the Discussion Paper).

It should be noted that when dealing with UK Acts of Parliament there is no legal obligation for a minister to commence an act but there is an implied duty. In the case of [R v Secretary of State for the Home Department, ex p Fire Brigades Union \[1995\] UKHL 3](#) it was decided that a formal decision never to bring the provisions into force would be unlawful.

I hope that the above is helpful to the Committee. Please do not hesitate to contact us if we can be of further assistance.

Yours sincerely

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