



Scottish Women's Rights Centre

Response to Equalities, Human Rights and Civil Justice Committee

Non-implementation of Acts of the Scottish Parliament

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Non-Implementation of Acts of the Scottish Parliament
Written response from the Scottish Women Rights Centre

By email
December 3rd, 2024

About the Scottish Women Rights Centre

[The Scottish Women's Rights Centre](#) (SWRC) is a unique collaborative project between Rape Crisis Scotland, JustRight Scotland and the University of Strathclyde Law Clinic that provides free legal information, advice and representation to women affected by violence and abuse.

We recognise that people of any gender can be affected by abuse and violence. However, statistics¹ show that that these crimes are predominantly committed by men against women. Also, as the SWRC specifically supports women aged 16 and over, when we talk about survivor/survivors in this response, we will generally refer to women. Despite this, we are aware – and do acknowledge – any person can be subjected to these crimes.

Our response

We welcome the opportunity to provide our response to the Committee on the impact of the non-implementation of the following Acts of the Scottish Parliament:

- Domestic Abuse Protection (Scotland) Act 2021
- The Children (Scotland) Act 2020

We are taking the opportunity to comment on the implementation of these particular Acts as we have previously responded to consultations on these issues.

¹ <https://www.gov.scot/publications/women-justice-system/pages/7/>



The Domestic Abuse (Protection) (Scotland) Act 2021

The Domestic Abuse (Protection) (Scotland) Act 2021 (hereinafter referred to as the 2021 Act), received Royal Assent on 05 May 2021 but is not yet in force. The 2021 Act allows the police to make a domestic abuse protection notice (DAPN) and the court to make a domestic abuse protection order (DAPO), for the purpose of protecting a person from abusive behaviour by their partner or ex-partner. Such orders are necessary for the interim protection of victims/survivors and specifically in bridging the gap for protection to remove the perpetrator from the family home. This will support victims/survivors to remain in the family home and may reduce the economic burden which follows separation in abuse situations.

The introduction of the 2021 Act was a welcome protective remedy which would be available for victims/survivors. The delay in implementation of these remedies has a significant impact on the availability of protection for victims/survivors.

The Scottish Government recently released statistics on domestic abuse rates from 2023-2024. The statistics show a 3% rise in domestic abuse incidents reported in Scotland, with 63,867 cases recorded in 2023-24². The report states:

“Of the 63,867 incidents of domestic abuse recorded by the police in 2023-24, 38% (24,144) included the recording of at least one crime or offence. This is a lower proportion than in previous years (Table 1). The remaining 62% (39,723) did not include the recording of a crime or offence.”

This means that around two thirds of the reports of domestic abuse do not result in the recording of a crime or offence. The impact of this for victims/survivors is that, not only are they not receiving justice for their experiences of domestic abuse, but they are also left without protection from the criminal justice system in the form of bail conditions and criminal Non-Harassment Orders. We hear from our service users that they are often told by Police Scotland that they should seek civil protective remedies such as interdicts, Non-Harassment Orders and Exclusion Orders. We submit that this demonstrates that there is a gap in the protection available to victims/survivors and therefore DAPN's being available for enforcement by the police are necessary. The failure to implement the 2021 Act since its introduction in 2021 has meant that this gap continues, and victims/survivors continue to be left without adequate protection from their abuser.

The impact of the delay:

- There remains a gap in the protection available to victims/survivors and therefore they, and their children, remain at serious risk of further abuse and harm;

² [Incidents of domestic abuse - Domestic abuse: statistics recorded by the police in Scotland, 2023 to 2024 - gov.scot](https://www.gov.scot) This is the first increase in three years, though the number remains below the peak of 2020-21



- Victims/survivors are being forced to seek their own protective orders through the civil legal system. We submit that there is currently a legal aid crisis³ and that this signifies a change in the legal landscape since the 2021 Act was introduced. We have heard from our service users that they are having to contact anywhere between 30-50 solicitors to seek legal representation. We have seen a steady increase in the number of victim/survivors self-representing in civil cases due to the legal aid crisis and a decrease in solicitors willing and able to provide legal aid funded work⁴. Victims/survivors at risk should not face any barriers in accessing this important protection through the civil court system. Yet, in our experience many victims/survivors contacting our services in desperate need of a protective order, will be unable to raise a court action if they do not qualify for legal aid and additionally may be unable to pursue such an action if they require to pay a contribution. This means that the gap in protection between seeking protection from the criminal justice system and thereafter the civil justice system is growing. Victims/survivors are being left without protection and are at serious risk of harm to them and their children. We are calling on the Scottish Government to reform the legal aid system to ensure that no victims/survivors are required to pay for their own protection or go unprotected.
- It is our opinion that protective orders, and particularly, exclusion orders are underused. Furthermore, there is a period of time between the reporting of a crime and then a civil protective order being granted which leaves victims/survivors unprotected and impacts the effectiveness of any protective measures. The Scottish Law Commission Discussion Paper on Civil Remedies for Domestic Abuse⁵ highlights the issues faced by victims/survivors when seeking protective orders. At Chapter 4 of the Discussion Paper Exclusion Orders are explored and it is commented that:

“We have heard from practitioners, stakeholders, and our Advisory Group members that the requirement of necessity for obtaining an exclusion order sets a “high and severe test” and makes it very difficult to obtain a final order⁶.”

³ The Scottish Legal Aid Board's (SLAB) 2023-24 report highlights significant declines in legal aid support. The total number of cases funded dropped to 134,900, a 1% decrease from last year and a sharp 29% decline from 191,256 cases in 2016-17. <https://www.slab.org.uk/app/uploads/2024/11/SLAB-Annual-Report-2023-24-news-release.pdf>

⁴ Please see [Legal aid reform - briefing - FINAL \(July\)](#) for JustRight Scotland's legal aid reform briefing. The Scottish Women's Rights Centre is due to publish its own report on the impact of the legal aid crisis on protective orders during 16 Days of Action. Said report can be shared with the Committee once published.

⁵ [Discussion Paper on Civil Remedies for Domestic Abuse \(DP No. 178\)](#)

⁶ [Discussion Paper on Civil Remedies for Domestic Abuse \(DP No. 178\)](#) at para 4.45



“Some stakeholders consider that exclusion orders under the 1981 Act are now rarely sought, because it takes too long to obtain them and they are expensive. However other stakeholders have commented that they are often sought in interim, either alone or as part of a divorce action, and if granted in interim, there may be no need or incentive to obtain a final exclusion order⁷”

This therefore places a greater need on protection through the criminal justice system and highlights the urgent need for further protection for victims/survivors.

The Children (Scotland) Act 2020

The failure to implement all provisions of the Children (Scotland) Act 2020 (hereinafter referred to as the 2020 Act) has left a further gap in protection for victims/survivors and their children. The impact of domestic abuse upon children is often overlooked through the civil justice system. There is a perception that children aren't really affected by domestic abuse if they don't witness the abuse or unless they are direct victims of abuse. However, the impact of domestic abuse happening within the household upon a child is profound and therefore there is a need for further recognition of this impact and protections for children and young people within the civil justice system⁸.

Furthermore, it has led to a potential overlap in legislation which is being proposed and passed which may cause confusion to victims/survivors, and those providing services. For example, the Victims, Witnesses and Justice Reform Bill is proposing measures for vulnerable witnesses and parties in civil proceedings⁹ and the Scottish Law Commission Discussion Paper on civil remedies in domestic abuse is proposing measures in relation to children. All of which are of course welcome recommendations to strengthen protections for victims/survivors and their children. However, it is important that the 2020 Act is fully implemented to allow further protection for victims/survivors and their children, and to ensure that any future legislation is complementary to its provisions.

The impact of the delay:

There are important measures proposed in the 2020 Act which will strengthen the protections available to victims/survivors and their children when dealing with child contact proceedings:

⁷ Discussion Paper on Civil Remedies for Domestic Abuse (DP No. 178) [at para 1.38](#)

⁸ See <https://womensaid.scot/information-support/children-young-people/>

⁹ <https://www.parliament.scot/Bills-and-Laws/Bills/S6/victims-witnesses-and-justice-reform-scotland-bill>



- The strengthening of the section 11 domestic abuse provisions¹⁰ will require the court to have further consideration to the impact of domestic abuse, not only on the child but also on the victim/survivor. We hear through our outreach that these provisions are underused and often disregarded. The emphasis of the impact of domestic abuse on the whole family is crucial and it is hoped that the provisions in the 2020 Act will further highlight the requirement for the court to consider this.
- The amendment to the Vulnerable Witnesses (Scotland) Act 2004 for Vulnerable Witnesses and Parties¹¹ is a significant step to recognising the impact of abuse and the need to protect victims/survivors. The failure to implement this important measure has meant that victims/survivors are once again being left unprotected and forced to face their abuser during intense and challenging legal proceedings. These measures should be implemented urgently to allow fair access to justice for victims/survivors and to avoid any further traumatisation through the legal process.
- The 2020 Act also introduces provisions to deal with delays in child contact proceedings¹². We are aware from our work with victims/survivors that perpetrators often use the legal system to continue their abuse. Victims/survivors are often faced with mounting legal fees, and in the backdrop of the legal aid crisis, may be unable to source a solicitor under legal aid. Where a perpetrator is abusing legal processes by acting unreasonably and unduly delaying proceedings, the victim/survivor may face continued economic and psychological abuse¹³. Furthermore, the impact of delays in these proceedings can have a significant impact on the welfare and psychological health of the child.
- Finally, we are aware that the Scottish Government has established a Working Group to consult on the implementation of the provisions¹⁴ around the establishment of a Register for Child Welfare Reporters. We are aware of the issues faced by victims/survivors when dealing with Child Welfare Reports and

¹⁰ <https://www.legislation.gov.uk/asp/2020/16/section/1>

¹¹ <https://www.legislation.gov.uk/asp/2020/16/crossheading/vulnerable-witnesses-and-parties>

¹² <https://www.legislation.gov.uk/asp/2020/16/section/30>

¹³ See <https://survivingeconomicabuse.org/wp-content/uploads/2024/11/Measuring-economic-abuse-preliminary-findings-Nov-2024.pdf>

¹⁴ <https://www.legislation.gov.uk/asp/2020/16/crossheading/register-for-child-welfare-reporters>



the need for regulation of this system to ensure that appropriate protections are in place for vulnerable parties¹⁵.

We call on the Scottish Government to implement the important provisions of the Domestic Abuse (Protection) (Scotland) Act and the Children (Scotland) Act for the urgent protection of victims/survivors and their children.

¹⁵ See our guest blog by Richard Whitecross on this issue:
<https://www.scottishwomensrightscentre.org.uk/news/news/child-welfare-reports-what-are-they-and-why-do-they-matter-in-domestic-abuse-cases/>