

Criminal Justice Committee

**8th Meeting, 2023 (Session 6), Wednesday 8
March 2023**

Post-legislative scrutiny of the Domestic Abuse (Scotland) Act 2018

Note by the clerk

Background

1. The [Domestic Abuse \(Scotland\) Bill](#) (now 2018 Act) was passed by the Scottish Parliament in February 2018.
2. The Bill created a new offence of engaging in an abusive course of conduct against a current partner or an ex-partner. Changes were also made to the creation of a domestic abuse case. The Bill also made any "associated statutory aggravation", where children are involved or affected, an offence. For example, when a child sees, hears or is present during a domestic abuse incident. Finally, further changes included:
 - banning a person accused of a domestic abuse offence from contacting the complainer (other than through a solicitor);
 - banning an accused person in a domestic abuse case from conducting their own defence in court;
 - allowing certain expert evidence relating to the behaviour of the complainer in domestic abuse cases;
 - applying the same rules for vulnerable witnesses as apply to other serious offences, such as not having to face the accused in court;
 - making sure that the victim is not subject to further abuse by the offender after passing sentence; and,
 - telling the court to always consider making a non-harassment order against a person convicted of a domestic abuse offence.
3. The Criminal Justice Committee is to hold a one-off evidence session to review how the 2018 Act has been implemented and if any issues have arisen. This is part of the Committee's efforts to conduct post-legislative scrutiny of criminal justice legislation.

Reviews of the Act and the prosecution of domestic abuse

4. The Committee's decision to review the Act's implementation was influenced by several factors. One of these was the publication of a series of studies and reviews on how the Act was working in practice and domestic abuse more generally. These included:

- [Scottish Government](#), *Domestic Abuse (Scotland) Act 2018 – Interim Reporting Requirement*, January 2023

This report sets out the information that has been gathered by the Scottish Government to meet the statutory Reporting Requirement of the Domestic Abuse (Scotland) Act 2018 as set out Section 14 of the Act. The Reporting Requirement requires the publication of both statistical information relating to the progress and outcomes of domestic abuse cases in court and information about the experiences of witnesses in domestic abuse cases, including child witnesses, as well as information about court business. The Reporting Requirement period covers the first three years of operation of the Act which is the period 1 April 2019 to 31 March 2022.

There is an overview of key findings from the report at page 2.

- [HM Inspectorate of Constabulary in Scotland \(HMICS\)](#), *Thematic Review of Domestic Abuse, Phase 1*, January 2023

The first Phase of this work by HMICS was to assess the state, efficiency and effectiveness of Police Scotland's response to domestic abuse, with a focus on the victim's experience from report, during investigation and up to conclusion of police investigations, and to include cases where serious sexual offences have also been reported for investigation.

There is a set of key findings and recommendations from this report at pages 8 and 13 respectively.

- [Scottish Civil Justice Hub and the Scottish Centre for Crime and Justice Research \(SCCJR\)](#), *Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings*, December 2022

This project aimed to examine the processes of child contact proceedings, particularly child welfare hearings, and their interaction with criminal proceedings in the context of domestic abuse. The information collected and analysed would provide high quality evidence about the current justice system and produce policy and practice recommendations to inform debates about how to address child contact when there has been domestic abuse in Scotland and more widely.

There is a list of recommendations on page 55 of the report.

- [Research commissioned by the Scottish Government](#), *Domestic Abuse Court Experiences Research: the perspectives of victims and witnesses in Scotland*, by Houghton, C., Morrison, F., Warrington, C. and Tisdall, E.K.M. September 2022

This research reported on 22 victims' and witnesses' experiences of court (including children and young people) since the introduction of the Domestic Abuse (Scotland) Act 2018 in April 2019.

There is an Executive Summary of this report at page 6.

Recent statistics

5. According to official statistics¹, Police Scotland recorded 64,807 incidents of domestic abuse in 2021-22, a decrease of 1% compared to the previous year. This is the first year this figure has shown a decrease since 2015-16. In 2021-22, 39% of incidents of domestic abuse recorded by the police in Scotland included the recording of at least one crime or offence.
6. The type of crime or offence that was most frequently recorded as part of a domestic abuse incident in 2021-22 was common assault, accounting for 32% of all crimes and offences recorded. This was followed by threatening and abusive behaviour accounting for 21% of crimes and offences.
7. There were 118 incidents of domestic abuse recorded by the police in Scotland per 10,000 population in 2021-22. At a local authority level, Dundee City (172), West Dunbartonshire (161) and Glasgow City (147) recorded the highest incident rates per 10,000 population.
8. Where gender information was recorded, around four-in-five (81%) incidents of domestic abuse in 2021-22 involved a female victim and a male suspected perpetrator.
9. In 2021-22, the 31 to 35 years old age group had the highest incident rate for both victims (261 incidents recorded per 10,000 population) and suspected perpetrators (243 incidents recorded per 10,000 population).
10. In 2021-22, just under nine-in-ten (89%) of all domestic abuse incidents occurred in a home or dwelling.
11. Finally, according to media reports citing Police Scotland statistics, there were 30 deaths between 2018 and 2022 blamed on domestic abusers, although some academics believe the figure to be around 4 times higher².

¹ Scottish Government, Domestic abuse: statistics recorded by the police in Scotland - 2021/22. <https://www.gov.scot/publications/domestic-abuse-recorded-police-scotland-2021-22/pages/2/>

² *Sunday Post*, 19 February 2023. <https://www.sundaypost.com/fp/the-hiddenrevealed-30-scots-women-have-been-killed-by-their-partners-in-four-years-but-experts-warn-official-toll-is-only-tip-of-the-iceberg/>

Written submission

12. In addition to the above cited studies, which involved some of the witnesses at today's meeting, Police Scotland has provided the Committee with a written submission (see Annex).

Actions

13. Members are asked to consider the findings of the above studies when discussing the implementation of the Domestic Abuse (Scotland) Act 2018 at today's meeting and to decide what, if any, follow-up action is required.

**Clerks to the Committee
March 2023**

ANNEX

Written submission from Police Scotland

1. Purpose

To provide written evidence for the Scottish Parliament's Criminal Justice Committee Evidence to review the implementation of the Domestic Abuse (Scotland) Act 2018.

The Domestic Abuse (Scotland) Act 2018 came into force on 1 April 2019. This Act created a new statutory offence of engaging in a course of behaviour which is abusive of a partner or ex-partner.

The Scottish Parliament's Criminal Justice Committee is planning a one-off evidence session on the morning of Wednesday 8 March to review the implementation of the Domestic Abuse (Scotland) Act 2018. This Act, amongst other provisions, created a new offence of engaging in an abusive course of conduct against a current partner or an ex-partner.

The Committee is keen to look at how the Act is functioning and if there are areas for improvement. This work is against the backdrop of two studies into relevant matters:

[Domestic Abuse \(Scotland\) Act 2018: interim reporting requirement](#)
[HMICS Thematic Inspection of Domestic Abuse Phase 1](#)

2. Domestic Abuse in Scotland - Context

Police Scotland utilises the following definition of domestic abuse, as set out in the Joint Protocol between Police Scotland and the Crown Office & Procurator Fiscal Service.

"Any form of physical, verbal, sexual, psychological or financial abuse which might amount to criminal conduct and which takes place within the context of a relationship. The relationship will be between partners (married, cohabiting, civil partnership or otherwise) or ex-partners. The abuse can be committed in the home or elsewhere including online"

It is essential to highlight that different definitions are used by countries within the United Kingdom (UK). The definitions used in England and Wales, and Northern Ireland include 'familial relationships' and 'family members' respectively.

In addition, Scotland places no age limit on domestic abuse, unlike the rest of the UK where domestic abuse can only occur '*between those aged 16 or over*'.

It is acknowledged that domestic abuse as a form of gender-based violence is predominately perpetrated by men against women. This definition also acknowledges and includes abuse of male victims by female perpetrators and includes abuse of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people within relationships

This definition of domestic abuse encompasses the entire spectrum of behaviour by perpetrators where this amounts to criminal conduct. This includes cases which involve

isolated incidents as well as cases involving a course of conduct and includes both violent and non-violent abusive behaviour. Some cases will involve elements and tactics of coercive control, which can involve a range of behaviours designed to control and harm a victim, while others will involve isolated incidents of conflict provoked by situational factors.

In terms of recorded crime, statistics on domestic abuse in Scotland reveal that just under 65,000 (64,807) incidents of domestic abuse were recorded by Police Scotland in 2021-22, a 1% decrease from 2020-21 and the first year this figure has shown a decrease since 2015-16.

3. Introduction of the Domestic Abuse (Scotland) Act 2018

Police Scotland recognised that the domestic abuse legislation, 'Domestic Abuse (Scotland) Act 2018' which came into force on 1st April 2019, represented the most significant legal change to the policing of domestic abuse in decades.

As our collective knowledge of domestic abuse developed over the years, what has been evident is that the most devastating forms of abuse was often being left unaddressed in law, with the victim, and often officers, left feeling helpless.

This Act created a statutory offence of engaging in a course of behaviour which is abusive of a partner or ex-partner. The Act covers not only physical abuse but other forms of psychological harm and coercive and controlling behaviour.

The Act defines 'abusive behaviour' as behaviour that is violent, threatening or intimidating and 'relevant effects' as including "controlling, frightening, humiliating, degrading or punishing" someone.

Coercive control denies victims their right to feel safe in their personal relationships and restricts their freedom to make their own decisions. Victims may lose their autonomy and become isolated, controlled or manipulated and will often live in fear. It can have a devastating effect on every aspect of a victim's life.

We continually hear directly from victims about the behaviours that amount to abuse of power and control. A challenge previously existed whereby the legislation limited our ability to address the full range of behaviours and as such incidents were dealt with in an episodic manner, whereby discrete and isolated incidents of assault or threats were recorded but not the 'bigger picture' nor the continuing pattern of cumulative abuse to which people are subjected.

The Domestic Abuse (Scotland) Act 2018 affords an opportunity to lay out before the court the full spectrum of domestic abuse by a perpetrator, whether in a single relationship, or spanning multiple relationships.

The legislation draws on the lived experience of survivors of domestic abuse and recognises that coercive control is just as damaging as physical attacks (if not more so) and can destroy a victim's autonomy. Importantly, the legislation includes a statutory aggravation which recognises the impact domestic abuse has on children.

4. What is Domestic Abuse Matters Scotland (DAMS)

The Domestic Abuse Matters Change Programme was developed as a result of the College of Policing, on the instructions of His Majesty's Inspectorate of Constabulary (HMIC), reviewing what it provided to forces by way of domestic abuse training to frontline responders. The College of Policing consequently approached SafeLives to provide an expert and external view. As a result of this consultation, the Domestic Abuse Matters Change Programme was written for the College of Policing to offer a programme for change and includes interactive training products that provided a consistency of training and addressed negative attitudes to domestic abuse.

The training element of the Domestic Abuse Matters Change Programme employs the notion of "critical mass theory". A minimum of 75% of all police officers and staff across a wide range of roles are trained to effect mass behavioural change. Domestic Abuse Matters Champions then maintain the change and support their colleagues.

In 2018, the Scottish Government awarded funding to Police Scotland to prepare their officers and staff for the forthcoming implementation of the Domestic Abuse (Scotland) Act 2018. Following a tendering process, SafeLives was awarded the contract to support Police Scotland with this task by building a tailored Change Programme based on the structure and format of Domestic Abuse Matters.

A Reference Group of consortium partners was created, with representatives from Crown Office and Procurator Fiscal Service, Advocacy, Support, Safety, Information Services Together (ASSIST), Caledonian System, Safeguarding Communities, Reducing Offending (SACRO), FearFree (formerly Fearless) and Safer Borders alongside Police Scotland and SafeLives. This group oversaw the development of the programme by SafeLives and provided a 'critical friend' approach to ensure the materials were accurate and relevant.

In recognition of the size and scale of the face-to-face programme, a bespoke e-learning package was created upfront to give officers and staff a baseline understanding of the legislation ahead of implementation. This included interactive sessions about domestic abuse, coercive control, perpetrator tactics and the legislation itself. The package was launched in December 2018. To date, 18,496 officers and staff have completed the e-learning.

Train-the-trainer events began in November 2018. These provided delivery skills and knowledge to a large number of trainers, some from within Police Scotland, some external police experts, and the rest from a wide range of domestic abuse services across Scotland. A 'dual-trainer' approach is adopted in every training room, whereby participants have the benefit of being trained by one domestic abuse expert and one police expert. This approach reflects a collaborative style, bringing together two voices and perspectives to maximise the impact and relevance of the training. Face-to-face delivery began in December 2018.

To date, 13,510 officers and staff from a wide range of roles relevant to domestic abuse resources have attended this one-day 'core' training. This includes members of the senior leadership and executive team at Police Scotland, including the Chief Constable.

Domestic Abuse Champions are given additional skills via a second day-long training event to sustain the change in skills, behaviour and attitudes of their peers; challenging inappropriate language and behaviour, checking service delivery, giving constructive feedback and congratulating good practice. Domestic Abuse Matters Champions also identify and act on compassion fatigue, burnout and vicarious trauma for staff members, in addition to responding to abuse within their colleague's personal lives. Champions training began in August 2019 and to date over 600 Champions have been trained.

In December 2019, a Sustaining the Change Workshop was delivered with members of Police Scotland's senior leadership team.

Feedback forms were completed by 13,049 police officers and staff attending the core training, and by 469 attending the Champions training.

- 95% of participants had a strong understanding of the tactics perpetrators use to coercively control victims.
- 94% had a strong understanding of stages of coercive controlling behaviour
- 85% of participants had a strong understanding of the Domestic Abuse Scotland Act 2018
- 94% of participants understood the impact of domestic abuse and coercive control on children
- 96% of Champions felt the training would enable them to offer support and development opportunities to colleagues

The training elements of Domestic Abuse Matters Scotland appear to have had a very positive effect on participants' knowledge and ability to respond to domestic incidents. Core training participants consistently reported an increase in knowledge and awareness with regards the key learning outcomes, primarily understanding the stages victims of coercive and controlling behaviour experience, victim questioning, evidence gathering, and perpetrator behaviour and manipulation.

For Champions, overall feedback was also very positive. Champions reported high levels of skills and knowledge that can now equip them, with the right support, to benefit themselves and their colleagues through their roles as Domestic Abuse Matters Champions.

5. Reporting / Investigation of Domestic Abuse (Scotland) Act 2018 (DASA) Crimes

Police Scotland recorded statistics, which should be treated as management information as it may differ slightly from *Recorded Crime National Statistics*, show that there were 1,760 crimes recorded under the Act in 2021-22 – the third year this legislation has been in place.

| Year | DASA Crimes Recorded under the Act | DASA Charges Reported by Police to COPFS |
|---------|------------------------------------|------------------------------------------|
| 2019-20 | 1683 | 1154 |
| 2020-21 | 1661 | 1205 |

| | | |
|---------|------|------|
| 2021-22 | 1760 | 1304 |
|---------|------|------|

In 2021-22, 1,304 charges were reported under the Domestic Abuse (Scotland) Act 2018. There has been a demonstrable year on year detection rate across 2019 – 2022.

A comparison between year 1 statistics and year 3 statistics indicates a 4.6% increase in the number of reported Domestic Abuse (Scotland) Act 2018 offences to Police Scotland. Of note is the significant increase in the number of Domestic Abuse (Scotland) Act 2018 crimes reported to COPFS during the same time period has increased by 13%.

Court proceedings were commenced in 94% of the Domestic Abuse (Scotland) Act 2018 charges reported in 2021/2022.

The statistics highlight that our officers are becoming more confident in the identification and investigation of Domestic Abuse (Scotland) Act 2018 offences.

During the course of a case, the Procurator Fiscal may decide to amend the original charge reported by Police Scotland. The COPFS database holds details of the amended charge only. The figures may not therefore exactly match those previously published, or the number of charges initially reported by the Police.

6. Domestic Abuse (Scotland) Act 2018 – Key Milestones

At an operational level, Police Scotland utilises a ‘three tiered approach’ response to the policing of domestic abuse; local operational policing, divisional specialist domestic abuse investigation officers and national Domestic Abuse Task Force / Coordination Unit.

This established tiered approach ensures domestic abuse victims across Scotland received a police response tailored to the particular circumstances of their case.

It is widely acknowledged that ‘domestic abuse’ is an umbrella term, encompassing all forms of abuse perpetrated during or after an intimate relationship by a partner or ex-partner. Police Scotland do not separate out sexual offending, nor do colleagues in the Crown Office and Procurator Fiscal Service (COPFS). Where rape or any other serious sexual crime has occurred in the context of domestic abuse, it is investigated as part of the entire course of conduct.

The nature of domestic abuse investigations, often identifying multiple complainers, frequently results in very effective application of the Moorov Doctrine with notable increases in conviction. However, where there is a single complainer of rape, this can be challenging to evidence.

There are two recent cases in Scotland, both currently subject of appeal, whereby COPFS have successfully utilised Domestic Abuse (Scotland) Act 2018 legislation to support a single complainer’s report of serious sexual violence, where the rapes would otherwise remain uncorroborated, and achieved a conviction. (HMA v Findlay & HMA v Kirkwood).

This demonstrates the effectiveness of including the investigation of serious sexual abuse within the parameters of the broader domestic abuse investigation and embraces the principles established within the Joint Protocol between Police Scotland and the Crown Office & Procurator Fiscal Service.

The Scottish Government introduced an amendment to the legislation to provide the Scottish courts with extra-territorial jurisdiction in respect to the offence of domestic abuse, in line with the requirements of the Istanbul Convention. This provides the legislative power to exercise authority beyond our own normal boundaries for reporting of offending to the courts.

Police Scotland have been proactive in utilising the amendment to successfully investigate high risk perpetrators of domestic abuse who have continued to abuse their partners whilst out with Scotland. The investigations have resulted in successful prosecutions for Domestic Abuse (Scotland) Act 2018 offences which have included crimes which would not have historically been prosecuted in Scotland.

7. His Majesty's Inspectorate of Constabulary in Scotland (HMICS)

HMICS Thematic Review of Domestic Abuse commenced in March 2022 and concluded in June 2022. The written report was published on 12 January 2023. This comments on officers varying confidence and understanding of the DASA legislation.

Police Scotland acknowledge that we have a generation of Officers (tier 1) who have not received the Domestic Abuse Matters Training due to the impact of COVID-19, Officer retirements and the subsequent recruitment of new Officers to replace them. This has resulted in some officers lacking confidence and understanding of the legislation.

In response, we have renewed our licence with the College of Policing for the Domestic Abuse Matters Change Programme and will explore training options during 2023. Additionally we continue to work with SafeLives, with contribution from other key partners, to develop the following six Continuous Professional Development (CPD) modules;

1. Domestic abuse and the effects of trauma - Responding well to people experiencing domestic abuse
2. South Asian Women - Diverse experiences of domestic abuse
3. The Domestic Abuse Scotland Act: Understanding and applying the legislation
4. Multi-agency tools for keeping people safe
5. The use of technology and social media in domestic abuse
6. Domestic abuse and children

A phased delivery and the subsequent roll out of all modules will commence in 2023 with Module 3 (The Domestic Abuse Scotland Act: Understanding and applying the legislation) due imminently.

Police Scotland, supported by SafeLives, delivered a week long *Train the Trainer* event during the annual 16 Days of Activism training officers from Local Policing Divisions (LPD), Contact, Command and Control (C3) and Partnerships, Prevention and Community Wellbeing (PPCW).

The event increased the cadre of 'Trainers' across the country, embedded within their respective business areas as Domestic Abuse Subject Matter Experts. The increased cadre of Trainers across the organisation will be used to train additional Domestic Abuse Champions during 2023. This will support the upskilling of officers and staff across various roles and departments, to recognise signs of Domestic Abuse and oversee investigations, ensuring that all reports are considered in the context of a potential course of conduct and, that the most appropriate crime is recorded.

Effective delivery of the three tiered approach is supported by a cadre of bespoke and embedded domestic abuse training and guidance to ensure domestic abuse victims across Scotland receive a police response tailored to the particular circumstances of their case. This includes but is not limited to Probationer Training, Operational Command Training for newly promoted Sergeants and training for Specialist Domestic Abuse Investigators. We ensure all our training is underpinned by Lived Experience accounts through the use of a number of case studies and input from partner agencies, which shapes the learning.

This three tiered approach cannot operate in isolation and it is held together and coordinated by the work of a small team of specialists within our Domestic Abuse Coordination Unit. Their role is to provide policy support to officers at each and every level, be it local or national to ensure that the policing of domestic abuse is delivered consistently across Scotland.

A rolling programme of Divisional Reviews, jointly conducted by the Domestic Abuse Coordination Unit and Domestic Abuse Task Force ensures that all areas are operating to the required standard. The Domestic Abuse Coordination Unit have helped establish a consistent and robust response to domestic abuse across Scotland.

Work is progressing to deliver a mechanism to capture Victim Survivor Feedback (VSF) in a timeous manner, to inform learning and improvement. We continue to engage with C3 and Criminal Justice Services Division (CJSD) to improve training and skillset in respect of Domestic Abuse and the use of Investigative Liberation.

Work continues to strengthen our partnerships with agencies working with under-represented groups such as the deaf via the Silent Harm (previously Justisign2) project, the Foreign Nationals Video, launched in partnership with Hemat Gryffe during the 16 Days of Activism and work with statutory and third sector partners in respect of Honour Based Abuse and Forced Marriage.

You, Me, Together is a resource targets domestic abuse (including themes of coercive control, inappropriate relationships and peer pressure) in young persons' relationships. The resource forms part of a national standardised interactive educational workshop delivered in schools to educate students around the issues of domestic abuse and its correlation with Violence Against Women and Girls.

In total, the resource was presented, during a pilot, to 1,100 students. The evaluation feedback was positive with 96% of students finding the input impactful, 95% left with a better understanding of domestic abuse and 92% had an improved understanding of coercive control within a relationship.

It is intended that the You, Me, Together resource, be rolled out across Scotland later this year in partnership with Education Scotland.

The Domestic Abuse Coordination Unit has developed the evidential baseline against HMICS Recommendations and Areas for Development, which will inform the improvement plan for domestic abuse. Work is ongoing to engage internal stakeholders, allocate appropriate ownership and accountability, ensuring that the necessary governance and framework is in place. The plan to drive the consistent delivery of improvements within the designated timeframe and a further report will be submitted to HMICS by 12 April 2023.

8. Conclusion

This submission is provided for information in advance of the evidence session.