

Criminal Justice Committee

**22nd Meeting, 2023 (Session 6), Wednesday 20
September 2023**

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

Response from the Scottish Government

Introduction

1. The Domestic Abuse (Scotland) Bill (now 2018 Act) was passed by the Scottish Parliament in February 2018.
2. The 2018 Act created a new offence of engaging in an abusive course of conduct against a current partner or an ex-partner. It also provided that the new offence may be aggravated where a child is involved. For example, when a child sees, hears or is present during a domestic abuse incident.
3. Further changes included-
 - creating a standard condition of bail for domestic abuse cases prohibiting an accused from obtaining a statement from a complainer other than through a solicitor;
 - placing a restriction on granting bail in some domestic abuse cases;
 - 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 victims of domestic abuse;
 - applying certain special measures aimed at protecting child witnesses during trials;
 - requiring the court to consider the future protection of the victim when sentencing an offender in a domestic abuse case; and
 - telling the court to always consider making a non-harassment order (NHO) against a person convicted of a domestic abuse offence.
4. The Committee agreed to review how the 2018 Act has been implemented, to determine whether any issues have arisen and, if so, how these might be resolved.
5. The Committee published its [report](#) on 4 May 2023.

6. The Scottish Government has now responded to the Committee's report (see **Annex**).
7. In addition, Members may wish to be aware that report on [Domestic Abuse and Stalking charges in Scotland 2022-23](#) was published by the COPFS on 12 September. This provides information on charges reported to the Procurator Fiscal and identified as relating to Domestic Abuse. It includes information on charges under section 1 of the Domestic Abuse (Scotland) Act 2018, following the implementation of this legislation on 1 April 2019.
8. The main findings are
 - In 2022-23, 30,139 charges were reported to COPFS with a domestic abuse identifier. This is a decrease of 8% compared to the 2021-22 total of 32,776.
 - The vast majority of charges identified as relating to domestic abuse are prosecuted. An initial decision was made to proceed to court with 94% of charges in 2022-23.
 - The most common types of offences reported in 2022-23 with a domestic abuse identifier were threatening and abusive behaviour offences (27%), common assault (24%) and crimes against public justice (23%, includes bail offences).
 - The Domestic Abuse (Scotland) Act 2018 came into force on 1st April 2019, creating a new statutory offence of engaging in a course of behaviour which is abusive of a partner or ex-partner. In 2022-23, 1,753 charges were reported under this legislation, accounting for 5.8% of all domestic abuse charges reported.
 - In 2022-23, 921 stalking charges under section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 were reported to COPFS. Of these, 485 (53 percent) were identified as domestic abuse.

Action

9. Members are invited to discuss the response to the Committee's report from the Scottish Government at today's meeting.

**Clerks to the Committee
September 2023**

Scottish Government response

Dear Convener

I would like to thank the Committee and those who gave evidence as part of your post legislative scrutiny of the Domestic Abuse (Scotland) Act 2018 (DASA). I welcome the Committee's report and recommendations on this matter.

Tackling domestic abuse, and more generally violence against women and girls (VAWG), is a priority shared by us all and the Scottish Government is open to constructive dialogue which supports our aim of challenging VAWG in all its forms as well as improving women's experiences within the justice system.

Our [Vision for Justice in Scotland](#) aims to have a justice system which prioritises the experience of victims of crime and places women and children at the heart of service delivery.

Last month, Parliament debated and discussed the publication of the [Knowledge and Skills Framework](#). It sets a robust and evidence-based Framework to recognise the impact of trauma for victims and witnesses of crime and provides a road map for those working within the system to implement trauma informed practice. It is my hope that a range of benefits will flow from this, and particularly for cases involving domestic abuse and VAWG, by supporting staff throughout the justice system to identify and understand psychological trauma, its impacts, and the interaction with the investigation and reporting of crime.

In terms of the recommendations made in the Committee's report, I was reassured to read, from the evidence heard, that the legislation has been welcomed, including the recognition of psychological, on-going, and coercive abuse. I note the comments relating to implementation, and those relating to the understanding and identification of the 'subtle' and 'nuanced' elements of domestic abuse.

The series of recent research/reports, including the Committee's report, have highlighted that there is more that needs to be done to improve the justice response to domestic abuse. These include our Interim Report on the operation of DASA, which found that the legislation better reflects how adult victims experience domestic abuse, and the findings of the HMICS thematic review of domestic abuse highlights improvements which are required around, for example, the awareness of DASA and improving the experience of victims.

We will publish a final report later this year with more detailed statistical information about the operation of the legislation throughout the first three years it has been in effect. This additional information will further inform our response and next steps.

I note that accountability for the recommendations does not solely sit with the Scottish Government. Therefore, please be assured that I will take forward discussions with justice partners on the issues identified within report. In line with your recommendation, I intend to reconvene the group which supported the implementation

CJ/S6/23/22/3

of DASA for a roundtable discussion. That group is made up of key justice stakeholders including Police Scotland, the Scottish Courts and Tribunal Service and Crown Office and Procurator Fiscal Service and I consider that it will provide an opportunity to reflect with these partners on where we are with our response to domestic abuse and what more is required to address the concerns raised in the reports. It also provides a platform to consider what further actions are required, including opportunities to progress a collective response to domestic abuse in a more strategic way.

I will fully consider the Committee's recommendations alongside consideration of the recommendations made in the other reports mentioned above and in conjunction with the planned refresh of our Equally Safe strategy for preventing and eradicating violence against women and girls.

I will keep the committee updated on this work and in the interim I attach a short table which outlines key actions which are being taken against each of the recommendations, and which will form the initial basis of further discussion with justice partners through the Group referred to above, as we develop our collective approach.

I hope you will find this of use.

Yours sincerely

ANGELA CONSTANCE

Justice Committee Recommendation	Scottish Government Response
That Scottish Government reviews the functioning of the use of the statutory aggravator relating to the involvement of a child in domestic abuse cases is being used in practice.	Later this year, we will publish more detailed statistical information about the operation of the legislation throughout the first three years it has been in effect. This will provide a fuller picture of how the aggravation is being used in domestic abuse cases and help inform our consideration of how it is operating.
Consider establishing a short-life implementation group for this Act to consider the issues around implementation raised in this report, and include the courts, Crown Office and the police service, as well as academics and those providing support to victims of domestic abuse.	We will reconvene the group which supported the implementation of the Domestic Abuse (Scotland) Act in 2019 for a roundtable discussion. It will be an opportunity to hear from justice partners on what actions are being taken in response to the recommendations in the report and to inform next steps with a view to advancing a strategic response to domestic abuse.
Run an updated public awareness campaign on the 2018 Act, with consideration of targeting children, as part of wider public education campaigns to tackle violence against women and girls.	<p>The Scottish Government previously ran a successful awareness raising campaign to coincide with the implementation of the Domestic Abuse Act.</p> <p>The campaign was reinvigorated during the pandemic with slightly refocussed messaging to ensure awareness amongst the public that services were still open and able to assist.</p> <p>We recognise that more needs to be done to raise awareness of gender-based violence and are currently undertaking insight gathering to inform future consideration of a campaign to address these issues.</p>
That the Cabinet secretary consider a single court/judge model when cases involve both civil and criminal matters.	The Scottish Government recognises the need to tackle domestic abuse in contact cases and the need for a joined-up

	<p>approach across criminal/civil justice systems.</p> <p>Following the Scottish Government funded research by Richard Whitecross and others on “Domestic Abuse Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings”, a series of workshops to identify and discuss the problems, and potential solutions, are planned.</p> <p>The Scottish Government carried out a literature review in 2019 on Integrated Domestic Abuse Courts/”one family; one sheriff”. We will consider Integrated Domestic Abuse Courts/ “one family; one sheriff” as part of the workshops following Richard Whitecross’ research on the criminal/civil interface.</p> <p>The Scottish Government continues work to implement the Children (Scotland) Act 2020. Our next planned step is to lay regulations later this year on the regulation of child contact centres.</p>
<p>Consider whether the current sentencing policy for offences and for breaches is providing adequate protection for victims of domestic abuse.</p>	<p>The Scottish Sentencing Council are currently in the initial stages of developing a guideline on the sentencing of offenders convicted of domestic abuse offences.</p> <p>In March 2023 the Sentencing Council commissioned Professor Nancy Lombard to examine the attitudes of survivors of domestic abuse towards the sentencing of offenders. The project is intended to help arrive at a better understanding of how survivors view the sentencing of domestic abuse cases and so contribute to the Council’s work to develop a sentencing guideline on domestic abuse.</p>

<p>For Police Scotland to consider the current training provision for police officers and the use of the DASH risk assessment</p> <p>For HMICS/Police Scotland the report notes that HMICS is seeking an update from Police Scotland on its new training plans by April 2023. Recommendation that HMICS reports to the Committee upon its consideration of this matter after receipt of the new plans from Police Scotland.</p>	<p>The Scottish Government provided funding to Police Scotland (£825k) to support training around implementation of the new legislation.</p> <p>While operational matters are for the Chief Constable, the Scottish Government remains fully committed to using available resources to support the delivery of effective and responsive policing.</p>
---	---