

EQUALITY IMPACT ASSESSMENT – DOMESTIC ABUSE (PROTECTION) (SCOTLAND) BILL

October 2020



Scottish Government
Riaghaltas na h-Alba
gov.scot

**EQUALITY IMPACT ASSESSMENT – DOMESTIC ABUSE (PROTECTION)
(SCOTLAND) BILL**

| | |
|---|--|
| Title of Policy | Domestic Abuse (Protection) (Scotland) Bill |
| Summary of aims and desired outcomes of Policy | <p>The Bill makes provision in two areas:</p> <p>To provide police and courts with new powers to make orders which can impose requirements and prohibitions on a suspected perpetrator of domestic abuse, including removing them from a home they share with the person at risk and prohibiting them from contacting or otherwise abusing the person at risk while the order is in effect. This is intended to provide space for the person at risk to engage with support services to address their longer-term housing needs which is intended both to provide an additional means by which they can be protected from harm caused by domestic abuse and reduce the likelihood that a victim of domestic abuse is required to make themselves homeless in order to escape an abusive partner or ex-partner; and</p> <p>To provide social landlords with a new power to apply to the court to end the tenancy of a perpetrator with a view to transferring it to the victim of domestic abuse or end the perpetrator’s interest in the tenancy where the perpetrator and victim are joint tenants, and enable the victim to remain in the family home.</p> |
| Directorate: Division: Team | Justice Directorate: Criminal Justice Division: Criminal Law & Practice Team |

Executive Summary

The EQIA demonstrates that there are no potentially negative impacts to equality groups resulting from the creation of protective orders for people at risk of domestic abuse, or from providing social landlords with a power to apply to a court to end the tenancy of a perpetrator of domestic abuse to enable it to be transferred to the victim of domestic abuse, or end the perpetrator’s interest in the tenancy where they are joint tenants.

The findings of this EQIA highlight that members of certain equality groups are at greater risk of experiencing domestic abuse, and that there are particular forms of abuse that are either specific to, or more likely to be experienced by, people with certain protected characteristics. There is some limited evidence that members of certain equality groups may be at greater risk of experiencing homelessness as a result of domestic abuse.

Background

The Bill is intended to provide the courts with a new power to impose protective orders (“domestic abuse protection orders” or DAPOs) which can impose requirements and prohibitions on a suspected perpetrator of domestic abuse, including removing them from a home they share with a person at risk and prohibiting them from contacting or otherwise abusing the person at risk while the order is in effect. The Bill provides a power for the police to impose a very short-term administrative notice (a “domestic abuse protection notice” or DAPN) ahead of applying to the court for a DAPO in circumstances where such a notice is necessary for protecting person B from abusive behaviour by person A before an interim or full DAPO can be made. The Bill requires the police to apply to a court for a DAPO no later than the next court day after giving a DAPN.

The orders are intended to fill the gap that exists in that where someone is experiencing domestic abuse, they are likely to lack the freedom of action to pursue other longer term remedies to address their situation such as seeking a civil order through the courts themselves, and the police and criminal courts would only have powers to impose restrictions where the alleged perpetrator has been arrested on suspicion of having committed a criminal offence or convicted of a criminal offence. The orders will provide the person at risk with some certainty about their protection which is immediate, does not require any action to be taken by the person at risk and is independent of any criminal investigation.

The police notices and court-issued orders are intended to provide another means by which action can be taken to protect someone who is at risk of abuse from their partner or ex-partner. The intention is that during the time in which the police and court-imposed protection orders are in place, the person at risk would be protected from harm and would have time and space to consider their long-term housing options and take steps to secure their safety. Depending on the circumstances, this could involve moving home, pursuit of an exclusion order, non-harassment order or interdict or steps to remove a person from shared tenancy.

The Bill will also create a new ground on which a social landlord can apply to the court for recovery of possession of a house from a perpetrator of domestic abuse with a view to transferring it to the victim or, where the perpetrator and victim are joint tenants, to end the perpetrator’s interest in the tenancy and enable the victim to remain in the family home.

The Scope of the EQIA

The likely effects of the policy were informed by a range of evidence, including public consultation and stakeholder engagement on the content of the Domestic Abuse (Protection) (Scotland) Bill. A variety of sources of information were used, including:

The Scottish Crime and Justice Survey: Partner Abuse 2017-18

Domestic Abuse Recorded by the Police in Scotland 2019-20

Domestic Abuse and Stalking charges in Scotland, 2019-20 - COPFS

Responses to the consultation on protective orders for people at risk of domestic abuse and associated consultation analysis

Inclusion Scotland: Briefing for MSPs for the Scottish Government Debate on Violence Against Women, 4 December 2014

Equally Safe: Scotland's Strategy to prevent and eradicate violence against women and girls – March 2016.

Disability and Domestic Abuse: Risks, Impact and Response – Public Health England

Stonewall Health Briefing: Domestic abuse

Out of Sight, Out of Mind: Transgender People's Experiences of Domestic Abuse – LGBT Youth Scotland, 2010.

Trans and Intersex Survivors of Domestic Violence: Defining Terms, Barriers, & Responsibilities: Diana Courvant and Loree Cook-Daniels – 2003.

Scottish Government Equality Outcomes: Pregnancy and Maternity Evidence Review – April 2013

Scottish Government Statistical Publication: Homeless applications from women due to domestic violence or abuse: statistics – 29 July 2019

Scottish Women's Aid report on homelessness as a result of domestic or sexual abuse "Change Justice, Fairness" - 2017

The Homelessness and Rough Sleeping Action Group¹ (HARSAG) ,set up in 2017 to make recommendations to Ministers about transforming temporary accommodation and ending homelessness in Scotland made recommendations on the actions needed to improve the housing outcomes of women and children experiencing domestic abuse. This included taking steps to ensure victims of domestic abuse are able to remain in the family home rather than the perpetrator, if this is their choice.

¹ <https://www.gov.scot/groups/homelessness-and-rough-sleeping-action-group/>

The Chartered Institute of Housing (Scotland), in partnership with Scottish Women's Aid "Make a Stand Campaign" - 2018/19 highlighting the role that social housing landlords could play in supporting victims of domestic abuse.

Key Findings

Age

The Scottish Crime and Justice Survey 2017/18 Partner Abuse Module shows that younger people appear to be at the greatest risk of experiencing partner abuse and that the risk appears to decline with age: 8.5% of those aged between 16-24 had experienced partner abuse in the previous 12 months, compared to 3.8% of those aged between 35-44 and just 0.4% of those aged over 65. This is in line with the pattern found in previous survey years.

The UK-wide charity, *Action on Elder Abuse* highlighted concerns in a consultation response that older people are at increased risk of being victims of abuse or neglect by other family members or by people working in institutional settings such as care homes.

The impact of the proposed legislation with regards children who experience domestic abuse is considered in a separate Children's Wellbeing and Rights Impact Assessment.

Disability

The Scottish Crime and Justice Survey 2017/18 found that people who said they had at least one disability were significantly more likely to report having experienced abuse by a partner or ex-partner since the age of 16 than people who had no disability. 22.7% of respondents with at least one disability reported having experienced domestic abuse since the age of 16, compared with 13.7% of people who did not report having any disability.

As the survey was asking about experience of abuse since the age of 16, in and of itself, it does not necessarily show that people with a disability are at increased risk of domestic abuse as it is also possible that people who experience domestic abuse may be at increased risk of developing a disability. However, the findings are in accordance with a number of other studies that have found that people with disabilities are at increased risk of experiencing domestic abuse.

In 2015, Public Health England published a report on disabled people's experiences of domestic abuse. It noted that "Disabled people experience disproportionately higher rates of domestic abuse. They also experience domestic abuse for longer periods of time, and more severe and frequent abuse than non-disabled people."

This report quotes a finding from the Office of National Statistics 'Focus on Violent Crime and Sexual Offences. Chapter 4 - Intimate Personal Violence and Partner

Abuse' from 2014 which found that 15.7% of disabled women and 8% of disabled men reported having experienced domestic abuse in the previous year, compared with 7.1% of non-disabled women and 4% of disabled men. Taking this information together, it is reasonable to assume that people with disabilities in Scotland are at considerably greater risk of experiencing domestic abuse.

A briefing prepared by Inclusion Scotland for MSPs ahead of a Parliamentary debate on violence against women in 2014 also highlighted evidence that disabled women are at greater risk of experiencing partner abuse and noted that studies had identified “a number of disability-specific types of physical, sexual, emotional and financial abuse that are not experienced by non-disabled women.”

While there is no specific data on disability and the risk of homelessness as a result of domestic abuse in Scotland, the publication *Homelessness In Scotland 2018-19* found that 49% of all homeless applicants had at least one 'support need' – defined as either a physical disability, learning disability, medical condition, mental health problem, alcohol or drug dependency or need for support with basic household management.

The Public Health England report noted that reliance on an abusive partner to meet housing needs can be a particular barrier for people experiencing domestic abuse who have a disability.

Sex

The Scottish Crime and Justice Survey 2017-18 found that the overall risk of partner abuse for women since the age of 16 was around two times the level reported by men, at 20% and 10.9% respectively. The same pattern is apparent in the proportion of men and women who report having experienced partner abuse in the previous 12 months (3.5% of women and 1.8% of men report having experienced partner abuse in the previous 12 months).

With regards cases which are reported to COPFS for consideration of prosecution, the difference is still more significant. In 2019-20, 26,914 (88%) of the charges reported with a domestic abuse identifier were in cases where the accused was male and 96% of charges reported for the offence of 'abuse of a partner or ex-partner' at section 1 of the Domestic Abuse (Scotland) Act 2018 involved a male accused.

The gendered nature of domestic abuse is reflected in the Scottish Government's *Equally Safe* Strategy, which was developed in partnership with CoSLA and in association with a wide range of partners including Scottish Women's Aid and Rape Crisis Scotland alongside Police Scotland and NHS Health Scotland. It emphasises that violence against women and children, including domestic abuse, is linked with systematic gender inequality.

Equally Safe, Scotland's Strategy for Preventing and Eradicating Violence Against Women and Girls, identified tackling homelessness as one of the specific areas which is linked to work to prevent and eradicate violence against women and girls.

Statistics collected by the Scottish Government in the reasons for homelessness applications made to local authorities show that in 2018/19, a 'violent or abusive dispute within the household' was given as the main reason for the application by 22% of applications from female main applicants, compared to 5% of applications from male main applicants. This increased to 27% of applications from single female main applicants with children. (this compares with, 6% of applications from single male main applicants with children). In total, 77.8% of applicants who stated that their main reason for making a homelessness application was a violent or abusive dispute within the household were female.

While not all of these cases will relate to abuse by partners/ex-partners, as the phrase 'violent or abusive dispute within the household' is wide enough to encompass abuse by or a violent dispute with, any member of a household, this does indicate that homelessness caused by domestic abuse affects around three times as many women as it does men. This appears to suggest that measures intended to protect people who are at risk of domestic abuse and provide them with an opportunity to address their longer-term housing situation free from the risk of abuse by a partner or ex-partner will be of particular benefit to women.

Pregnancy and maternity

As noted above, women are at considerably greater risk of being victims of domestic abuse than men, and younger people are at greater risk than older people.

There is limited evidence concerning the extent to which pregnant women and new mothers experience domestic abuse in Scotland. However, research quoted in the 2013 publication *Scottish Government Equality Outcomes: Pregnancy and Maternity Evidence Review* found that "research highlights that pregnant women face an "increased risk of domestic abuse, with domestic abuse 'estimated to occur in 5% to 21% of pre-birth cases and in 13% to 21% of post-birth cases'" and that "evidence from Scotland and across the UK indicates that 'abuse often starts in pregnancy and gets worse when the first child is new-born."

While there is no specific data on homelessness, pregnancy and domestic abuse, single parents made up 51% of single female homeless applicants where the main reason was a violent or abusive dispute within the household in 2018/19, as against 45% of all single female homeless applicants².

² See <https://www.gov.scot/publications/homelessness-scotland-2018-19-equalities-breakdowns/>

Gender reassignment

There is limited evidence concerning transgender people's experience of domestic abuse.

In 2010, LGBT Youth Scotland and the Equality Network carried out research into transgender people's experiences of domestic abuse. This was a small study of 60 people whose main focus was to determine the specific needs of the transgender community when accessing services which provide support and advice to those experiencing domestic abuse. However, that study found that 80% of those surveyed had experienced emotional, physical or sexual abusive behaviour by a partner or ex-partner. It is not clear if this study can be regarded as representative given the low numbers of the sample but if it is, it would indicate that transgender people are at much greater risk of partner abuse.

That study also found that "seventy-three per cent of the respondents experienced abusive behaviours from partners or ex-partners which specifically aimed to oppress or invalidate the transgender person's gender identity, undermine their ability to transition, or to influence their decision about coming out to others." Forty-two per cent of respondents stated they had felt insecure about their gender identity as a result of a partner's behaviour. The study noted that "Both transgender specific emotionally abusive behaviours and the negative impacts which result are often not fully understood or acknowledged by service providers."

There is still less evidence specifically concerning the extent to which transgender people are differentially affected by homelessness connected to domestic abuse. A study published by Stonewall and Yougov in 2018 "LGBT In Britain – Trans Report" found that 28% of respondents who had been in a relationship in the previous year said they had experienced domestic abuse, and 25% of respondents had experienced homelessness, but the study did not specifically consider the extent to which trans people's experience of homelessness was linked to domestic abuse.

Sexual orientation

Information on domestic abuse incidents recorded by the police in 2018-19 shows that 1% of incidents involved a male perpetrator and male victim, and 1% of incidents involved a female perpetrator and female victim. While there is a lack of robust Scottish data regarding the extent to which lesbian, gay and bisexual people are at risk from domestic abuse, a survey undertaken by Stonewall, covering the UK including Scotland, reported in their Briefing on Domestic Abuse found that one in four lesbian and bisexual women and 37% of gay and bisexual men report having experienced partner abuse. If these figures accurately reflect the direct experience of lesbian, gay and bisexual people in Scotland, it suggests that they may be at greater risk of experiencing partner abuse than the general population.

The Albert Kennedy Trust conducted research in 2015 and found that LGBT young people are disproportionately represented amongst the young homeless population, with as many as 24% of young homeless people aged 16-24 in the UK identifying as such. 69% of those experience violence, abuse or rejection from the family home and 77% state that their LGBT identity was a causal factor in their homelessness. However, information on the sexual orientation of people making homelessness applications to local authorities is not collected and as such, it is not possible to determine if people are at differential risk of becoming homeless as a result of a domestic abuse because of their sexual orientation.

Race

There is a lack of evidence that domestic abuse differentially affects people on the basis of race/ethnicity. The Scottish Government partner abuse module does not collect information on the race or ethnicity of survey respondents. The equivalent England and Wales study does, and shows some variation in risk of abuse on basis of ethnicity, but in view of the small numbers of non-white survey respondents, it is not possible to determine if these variations are statistically significant.

Hemat Gryffe Women's Aid, which provide specialist support to women from the Asian, Black and Minority ethnic community who experience domestic abuse influenced by culture and tradition note that members of certain ethnic communities are at greater risk of experiencing 'honour' based abuse: a form of domestic abuse and a controlling mechanism which is perpetrated by immediate and extended family members mainly, but not exclusively, on women who are considered to have brought shame on themselves, their family and the community. They note that women will often experience isolation, threats, physical violence, extreme emotional pressure and may even be murdered in order to protect so called cultural and religious beliefs.

There is limited information available concerning how homelessness arising from domestic abuse affects people on the basis of race/ethnicity. Data on homelessness applications made to local authorities does collect information on applicants' ethnicity and this shows that applicants of Asian, Asian Scottish or Asian British ethnicity are most likely to state the reason for their homelessness application as a 'violent or abusive dispute within the household'. This accounts for 23% of all applications from Asian, Asian Scottish or Asian British applicants (and 41% of female Asian, Asian Scottish or Asian British applicants) and compares to 13% of all applications in total³.

Religion and belief

There is a lack of evidence that domestic abuse differentially affects people on the basis of their religion or belief. However, an Improvement Service briefing in July 2015 noted that "a recent study by the Equality and Human Rights Commission

³ <https://www.gov.scot/publications/homelessness-scotland-2018-19-equalities-breakdowns/>

highlights that much domestic abuse is never reported, and under-reporting is a particular issue in women from religious and ethnic minority communities.”

It is also reasonable to assume that there may be forms of psychological and emotional abuse which relate specifically to the beliefs and traditions of particular religious groups. For example, in evidence they gave on an earlier consultation on developing an offence of domestic abuse, the Scottish Council of Jewish Communities note that an abusive spouse may refuse to grant or accept a “get”, a Jewish religious divorce, granted by the Jewish religious authorities, without which a person cannot get re-married in some strands of Judaism (such as Orthodox Judaism) and that this can be used to exert control over a partner or ex-partner.

Information on the religious beliefs of people making homelessness applications to local authorities is not collected and as such, it is not possible to determine if people are at differential risk of becoming homeless as a result of a domestic abuse because of their religion.

Recommendation and Conclusions

The Scottish Government has found that none of the proposals are discriminatory and that there are no significant issues that we consider would impact negatively upon the various groups.

However, there is evidence that domestic abuse affects different protected groups in different ways and to different extents. For example, there is clear evidence that women are at greater risk of experiencing partner abuse than men, that there are particular forms of psychological abuse and coercive and controlling behaviours that lesbian, gay, bisexual and transgender people are more likely to experience and that people with a disability appear to be both at greater risk of experiencing domestic abuse and more likely to encounter difficulties with housing in connection with that abuse. There is also some evidence that Asian women are at particular risk of becoming homeless as a consequence of domestic abuse.

This highlights the importance that the definition of ‘abuse’ used in determining whether to impose a domestic abuse protection notice or order, and in establishing the new ground on which a social landlord can apply to the court for recovery of possession of a house or to end the perpetrator’s interest in the tenancy, is wide enough to cover both physical and psychological abuse and that the definition of psychological abuse is broad enough in its scope to encompass specific forms of abuse that relate to protected characteristics, such as sexual orientation, disability or religious belief.

We consider that the definition of ‘abuse’ provided for in the Bill is wide enough to encompass such forms of abuse. However, it will be important that when the new powers come into effect steps are taken to raise awareness of the particular ways in

which individuals with certain protected characteristics may be at increased risk of experiencing particular forms of abuse within a relationship.



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2020

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80004-200-1 (web only)

Published by The Scottish Government, October 2020

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS776006 (10/20)

W W W . g o v . s c o t