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Joint Committee on the Draft Domestic Abuse Bill

Report Summary

Summary of Committee Recommendations

- The report recommends that ministers consider that advanced payments from the Job Centre in cases of financial hardship are converted into grants.
- The Government must review the impact of its welfare reform programme on victims, specifically on how splitting the single payment of universal credit might mitigate the effects of DA.
- Behaviours defined as domestic abuse should include cultural-specific abuses – such as matrimonial abandonment and stranding
- One of incidents or single occurrences should be included in the definition of domestic abuse to address cases of matrimonial abandonment etc.
- The report recommends that the age limit (of 16) should remain due to the concern of young perpetrators being criminalised.
- It recommends the Government conduct a specific review on how to address domestic abuse in relationships between under- 16 year olds including age appropriate consequences for perpetrators.
- The report recommends amendments to the Children's Act definition of harm to explicitly include the trauma caused to children by witnessing coercive control.
- The Government should include the same household criterion in its definitions of domestic abuse and amend the personally connected clause to include paid and unpaid carers.
- The gendered context of domestic abuse should be recognised on the face of the Bill.
- Government's statutory guidance should require public authorities to acknowledge the disproportionate impact of domestic abuse on women and girls when developing strategies and policies in this area.
- Funding is needed for training/an infrastructure for monitoring of the new DAPOs
- DAPOs should be free to the police, with appropriate funding to HM Court and Tribunal Service.
- Government should carry out a review of the protective measures within the new DAPO before going ahead with its suggested proposals.
- Government to bring forward legislation to increase the length of time before suspects can be released on pre-charge bail in DA cases.
- Amendments should be made to the Policing and Crime Act 2017 to create the presumption that suspects under investigation for domestic abuse, sexual assault or other safeguarding issues are only released from custody on bail.
- Special measures to be extended to the family and other civil courts and that this is put on a statutory basis.
- A mandatory ban on cross-examination should be extended so that it applies where there are other forms of domestic abuse and it is not at the courts discretion.



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- A statutory defence should be created for women whose offending is driven by DA.
- Government must ensure provision of specialist interventions for the full spectrum of perpetrators, backed up with funding and cooperation with expert providers.
- A firewall should be established to separate reporting a crime and access to support services from immigration control.
- The report recommends the time-limit for the DDVC is extended to 6 months, the concession is extended and an additional clause in the Bill is included to ensure public bodies have due regard for the need to access protection without discrimination.
- The report recommends UK Government consider how there might be greater consistency in approach across the UK in terms of Wales' approach to prevention, training and strategies.
- Greater integration between VAWG and DA policies is needed and this should be integrated into the remit given to the Domestic Abuse Commissioner.
- The report recommends the Commissioner should be fulltime and that within a year of office produce an assessment of the financial and personnel resources required to carry out the role.
- The Commissioner should be responsible to the Cabinet Office to provide them with extra authority in relation to the wide range of Ministers and government departments which interact with the office.
- It recommends the Commissioner is given the duty to consult with partners and agencies in Wales and the National Assembly is enabled to undertake scrutiny.

Multi-agency working

More active participation policy and legislative change is needed from across various Government departments to realise the plans laid out in the draft Bill. In addition a far more vigorous multi-agency response from those providing frontline public services is needed.

Universal Credit

The Committee is encouraged that the Job Centre has put in place training for staff to identify signs of domestic abuse and make advanced payments in cases of financial hardship. ***The report recommends however that ministers should consider that these payments are converted into grants.***

The Government must review the impact of its welfare reform programme on victims, specifically on how splitting the single payment might mitigate the effects of DA.

The Violence against Women and Girls Strategy

Greater integrations of domestic abuse and VAWG are needed to reflect the realities of women and girl's experiences. It names Wales as an example of where this has been done.

Territorial extent

The report highlights the challenges of the draft Bill and devolution. For example the role of the Domestic Abuse Commissioner covering some areas that are devolved to Welsh Government and how this will interact with the National Advisors.

Statutory Definition

There has been criticism of the non-gendered nature of the new definition. But on the whole the Bill introducing a statutory definition has been welcomed, particularly the inclusion of economic abuse as a broader term than financial.

Witnesses from Resolution (national organisation of family lawyers) highlighted that the Bill includes an exhaustive list of behaviours defined as 'domestic abuse' and does not for example include examples of cultural-specific domestic abuse, such as stranding, matrimonial abandonment. ***It is recommended that the list includes 'not limited to' to ensure these types of abuses are recognised.*** A lack of understanding of domestic abuse experienced by BAME women was highlighted and a call for these specific abuses to be addressed in the bill was made. The absence of abuses particularly experienced by BAME women was a missed opportunity to raise awareness of the issues as well as coercive control related to immigration status.

It has also been raised that the definition is at odds with the definition used by the family courts, which includes forced marriage, dowry-related abuse etc.

The Committee heard evidence that public bodies are not recognising some forms of abuse particularly experienced by BAME people. **They therefore recommend that the following types of abuse are always treated as domestic abuse;**

- **Female Genital Mutilation;**
- **forced marriage;**
- **honour-based crimes;**
- **coercive control related to immigration status;**
- **and modern slavery and exploitation.**

It also recommends that one-off incidents or single occurrences must also be included in the statutory definition and that a course of behaviour should not have to be proved – for example the act of abandonment of a wife or partner in another country without papers.

Age Limit

The committee heard arguments for both lowering and raising the 16 years age limit in the statutory definition. Those in favour of lowering argued it would encompass all teenagers experiencing abuse in their own peer relationships, while those in favour of retaining felt it was important to ensure that abuse under 16 would always be recognised as child abuse and that child perpetrators could be criminalised. All witnesses however called for improved services for child victims.

The report recommends that the age limit should remain due to the concern of perpetrators being criminalised.

It recommends the government conduct specific review on how to address domestic abuse in relationships between under- 16 year olds including age appropriate consequences for perpetrators.

It also notes the inadequacy of the CJS in dealing with these cases and ***recommend this is considered.***

It agrees that harm caused to children by adults must be treated as child abuse and to reduce the age limit runs the risk of confusing the approach of public authorities.



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The report highlights its concern that there is an absence from the definition of children as victims of abuse and that the Children's Act 1989 does not protect children affected by coercive control within their household. ***It recommends the bill be amended so the status of children as victims of domestic abuse that occurs in their household is recognised. It recommends amendments to the Children's Act definition of harm to explicitly include the trauma caused to children by witnessing coercive control.***

Personally Connected

The report highlights that the definition does not include 'same household' when setting out the relationship between victim and perpetrator. The Committee heard evidence in relation to disabled people and 'carers' who are coercively controlling and violent who may be missed out of the definition. ***It therefore recommends the Government include the same household criterion in its definitions of domestic abuse and the personally connected clause is amended to include paid and unpaid carers.***

A gendered understanding of domestic abuse

The report points out that a gender-neutral approach and 'one size fits all' fails to meet the needs of any person suffering DA. And to recognise the gendered nature of domestic abuse is to acknowledge that the socially attributed norms, roles and expectations of men and women are integral to the use and experience of violence and abuse.

The Home Office Minister said in evidence that they would make clear in statutory guidance that it is a gendered crime. She also explained that 'the problem with the commissioning of generic services and policies for domestic abuse would be tackled by the Domestic Abuse Commissioner'.

The committee acknowledges the challenge of a gendered definition in legislation without excluding any victim. However goes on to highlight the VAWDASV (Wales) Act which does not exclude anyone from its protection but seeks to ensure approaches acknowledge the reality of the gendered context of domestic abuse.

The report therefore recommends that the gendered context of domestic abuse is recognised on the face of the Bill. It also recommends that they embed a nuanced approach to the most effective response to domestic abuse for everyone, without excluding male victims or holding female perpetrators to account. Incorporating a gendered definition also ensures compliance with the Istanbul Convention.

It recommends the Government's statutory guidance should require public authorities to acknowledge the disproportionate impact of domestic abuse on women and girls when developing strategies and policies in this area.

Policing

DAPN and DAPOS

Witness responses were on the whole negative, with concerns that the difficulties seen in the operation of the DVPN/Os had not been rectified and the practical workings of the scheme had not been funded sufficiently.



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However, the move from violence to abuse within the statute on issuing a DVPN is a welcome move, as witnesses felt there was confusion in some police forces and with judges on whether an order could be served if there was abusive rather than violent behaviour.

The report welcomes the explicit inclusion of abuse other than violence or the threat of violence.

Witnesses generally welcomed that orders can be made without consent of the victim, which can take the onus off on the victim to report, apply etc. However concerns have been raised about 'third parties' as applicants and the risk of possible abuse.

The report concludes that it is a strength of the orders that others can apply for the order on behalf of the victim but notes the concern about it being open to abuse. It feels instances of abuse will be prevented as an application is at the discretion of the court.

Alternative to DAPOs

Concerns were raised about the apparent lack of statutory time limit on DAPOs as opposed to the expected 14 – 28 days. The clause attached requires any electronic tag monitoring attached to the order to be reviewed every 12 months, which would imply the Government intends DAPOs to be imposed for significantly longer periods than the 14-28 days under DVPOs.

The report is therefore concerned that the potentially indefinite nature of DAPOs will result in courts granting less of them than time limited DVPOs.

Positive Requirements

Rights of Women have highlighted that it was unconvincing positive requirements would significantly enhance the protection given to individuals by DAPOs as family and criminal courts can already add positive requirements to currently available orders.

While others felt there is an onus on multi-agency working to 'close down a perpetrator's space for action'. While others felt it should be a single agency that oversees compliance.

Breaches of orders not being taken seriously by the police was also highlighted as a concern as well as the police not having the capacity to pursue all breaches. The requirement for electronic monitoring could give survivors a false sense of protection.

The report feels the positive requirements of the DAPO has the potential to enhance protection but the practicalities do not appear to have been thought through. **Funding is needed for training/an infrastructure for monitoring.** The report highlights that the Bill does not confirm which organisation is to be responsible for monitoring.

Criminal Sanctions

A breach of a DAPO may lead to arrest and criminal sanctions, this was welcomed on the whole. However the threat of criminal sanctions might act as a deterrent for victims who do not want to see the perpetrator criminalised.

As the order can be imposed by both criminal and civil courts, concerns were raised that it might lead to a difference in approach and that the order be applied in different ways.

The report recommends detailed guidance for applicants, defendants and the judiciary be introduced – with consideration given to the evidence required and the assessment of risk posed.

Cost

Concern was raised that the cost of DVPOs and contested hearings is prohibitive to the police using them as they seek the costs of the order from the respondent, but are not always successful. The Impact Assessment attached to the Bill did not allow for additional costs to the Police. The Home Office witness explained ‘the Police would continue to pay for DAPO applications at a fee determined in regulations’.

The report is concerned that the current proposed process will undermine the process with police either using scarce resources or persuading the victim to apply. This takes away one of the strengths of the order that third parties can apply and the onus isn’t on the victim.

The report therefore recommends DAPOs are free to the police, with appropriate funding to HM Court and Tribunal Service.

The report welcomes The Government’s plans to broaden the qualifying abusive behaviour, not requiring consent of the victim but providing safeguards on who can make applications and the introduction of positive requirements (with significant caveats). However they are concerned about the introduction of indefinite time limits, positive requirements and criminal sanctions combined will result in the courts being reluctant to impose except in exceptional circumstances.

The report recommends the Government carry out a review of the protective measures before going ahead with proposals for the DAPO. While the review is being undertaken, they recommend additional resources are allocated to the police specifically for the training and application fees.

Bail in cases of domestic abuse and sexual assault

The Committee heard evidence from agencies concerned about the reduction in the use of pre-charge bail. Part of the problem appears to be the stringency of the test for an extension beyond 28 days.

The report recommends the Government brings forward legislation to increase the length of time before suspects can be released on pre-charge bail in DA cases. It also recommends allowing extensions to give full weight to the protection of the victim.

The Committee recommends amendments are made to the Policing and Crime Act 2017 to create the presumption that suspects under investigation for domestic abuse, sexual assault or other safeguarding issues are only released from custody on bail.

Domestic Violence Disclosure Scheme

Witness concerns about the DVDS included the need for applicants to understand that partners could still have a history of abuse even if the police hold no information. Numbers of both right to know and right to ask have been low since its creation in 2014. Explanations include concerns about data protection. Witnesses also explained there has been patchy use of the powers across forces.

Some highlighted concerns that a register of serial perpetrators was not included in the bill.



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The report recommends further multi-agency work to support an increase in 'right to know' disclosures.

Justice System

Special Measures in Courts

Witnesses called for an extension of special measures to the family courts. Despite the changes under Practice Direction 12J, it is felt these are not at a satisfactory level and witnesses called for an automatic assumption of special measures. The Minister confirmed Government is addressing the challenges by investing in the court reform programme.

The report recommends special measures be extended to the family and other civil courts and that this is put on a statutory basis.

Polygraph testing

Witnesses were concerned that testing would infringe on the perpetrator's rights, especially if conditions became more restrictive. Rights of Women were concerned it could result in a false sense of security within the probation service.

The report is clear that testing does not become a substitute for careful risk analysis or for other evidence-based interventions with perpetrators.

Cross-examination in the family courts

Prohibiting perpetrators from cross-examining in the family courts is welcome. It will also be accompanied by publicly-funded representation for perpetrators where necessary in the interests of justice. However concern remains about potential for inconsistency in application when protection is at the courts discretion.

The Bill recommends that a perpetrator will be prohibited from cross-examining if they have been convicted, cautioned or faced charges for a specified offence (including DA). Where this protection does not apply, it will be at the discretion of the court.

It recommends the mandatory ban is extended so that it applies where there are other forms of domestic abuse.

Other justice issues

Witnesses suggested a new clause should be added to the draft bill creating a statutory defence for women whose offending is driven by DA.

The Report supports this recommendation

Perpetrator Interventions

The number of people given a court order to attend a perpetrator programme has been reducing and fewer perpetrators are completing those programmes. There is also no incentive for the probation service to provide perpetrator programmes to those who do not receive a court order.

HM Chief Inspector of Probation identified several factors which were contributing to the reasons for the reducing numbers of perpetrators completing programmes. The report sets out how it plans to address those specific concerns.

Government must also ensure provision of specialist interventions for the full spectrum of perpetrators, backed up with funding and cooperation with expert providers.

Refuges and Support Services

This chapter refers to areas devolved to Welsh Government. The report makes no mention of this and focuses on the impact in England of the suggested changes.

Migrant women

Witnesses highlighted concerns that migrant women are effectively excluded from the few protective measures in the Bill and it is not compliant with the Istanbul Convention.

The committee was concerned to hear reports of the police sharing details of victims with the Home Office, it notes the changes to the NPCC guidance but is concerned about whether sufficient change will be seen.

It recommends a more robust policy is developed to determine the actions which may be taken by authorities with respect to victims. ***It supports the calls of the Step Up Migrant Women campaign to establish a firewall to separate reporting a crime and access to support.***

Economic Support

The report recommends Government ***explores ways to extend the concession available under the DVR and DDVC*** and that Governments consults on the most effective criteria to ensure it reaches the survivor. ***It also recommends the time limit is extended from 3 to 6 months.***

It recommends an additional clause in the bill to ensure public bodies have due regard for the need to access protection without discrimination.

Other issues

Wales

The report notes the divergence in legislation between England and Wales and different agencies that operate in the two countries. It urges greater collaboration between the two Governments.

While little evidence of the effectiveness of the approach laid out in the VAWDASV Act is apparent yet, those engaged are optimistic despite funding difficulties. Training programmes for the public sector and the role of schools in prevention, the report suggests, are valuable lessons for the approach to domestic abuse in England.

Prevention and early intervention

The report notes the statutory guidance in Wales on prevention, training and strategies intended to incentivise widespread work in the public sector. The report recommends UK Government consider how there might be greater consistency in approach across the UK.



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Domestic Abuse Commissioner

The report is concerned that the Commissioner's appointment had almost been completed before the opportunity for Government to hear recommended changes. The process was on hold for the committee to complete the scrutiny however.

The report is clear that there needs to be greater integration between the policies relating to domestic abuse and violence against women. ***It recommends this is reflected in the remit given to the commissioner.***

Independence

Concerns were raised by witnesses that the new Commissioner role is independent. Post legislative scrutiny of the VAWDASV Act and the Advisor roles suggested there was not enough independence from Welsh Government. The Home Officer Minister reiterated that Government wants the Commissioner to be independent and the Home Secretary will have no right of veto in terms of the reports and plans of the Commissioner.

Resources

Concerns were expressed that resources allocated to the commissioner were inadequate. Particularly the overall budget, ability to employ enough people and the intention that the post is part time.

Powers

Witnesses expressed the need additional powers to compel change in practice, suggesting local authorities had to change their approach as a result of the Commissioner's recommendations. Witnesses suggested widening the Commissioner's remit in a number of areas. They felt the Commissioner role should be more pro-active, work across government and with multiple local partners and to hold public authorities to account.

The report recommends the Commissioner should be fulltime and that within a year of office produce an assessment of the financial and personnel resources required to carry out the role.

The report is concerned about independence if the Commissioner role is responsible to the Home Office and the conflict of that office between its work on domestic abuse and its responsibility on immigration control.

It therefore recommends the Commissioner is responsible to the Cabinet Office to provide them with extra authority in relation to the wide range of Ministers and government departments which interact with the office.

It recommends the Commissioner is given the duty to consult with partners and agencies in Wales and the National Assembly is enabled to undertake scrutiny.