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Welsh Women's Aid

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Putting Women & Children First

Domestic Abuse Bill Passed: Welsh Women's Aid Briefing

Introduction

On 29 April 2021, the Domestic Abuse Bill received Royal Assent, following a lengthy process which began over four years ago, and has become the [Domestic Abuse Act \(DA Act\)](#). We warmly welcome the passing of the Bill and a number of the amendments which were passed in the final reading in the House of Commons.

A Welsh perspective

Wales has its own legislation in the form of the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015. There are already duties in Wales to prevent, protect and support on devolved public bodies. However, the DA Act covers both England and Wales and does impact some non-devolved areas, particularly around criminal justice.

A key priority for us throughout the development of the DA Act has been alignment with existing Welsh legislation and a recognition that the contents of the Act must be of benefit to survivors in Wales. We welcome the statutory definition of domestic abuse, however, for the purpose of Welsh briefings will continue to use the UN definition of VAWG to align with the VAWDASV (Wales) Act acknowledgement of all forms of violence against women and girls. Welsh MPs and specialist services continued to highlight throughout debates that Wales has existing legislation and that the new Domestic Abuse Act must be complimentary not contradictory.

With the passing of the Bill in its final form we do not foresee any substantial complications between the two Acts, however we will continue to represent Welsh survivors and specialist services throughout the consultation and implementation of the statutory guidance.

Positives of the Act

Throughout the development of the DA Act there were several opportunities to affect change. Survivors, specialist organisations and grassroots campaigners made the very most of these opportunities and as a result, several remarkable additions have been made to the Act, which makes it almost unrecognisable from its original draft.

Key wins:

- *Strengthening rules on controlling or coercive behaviour.*
 - The DA Act will ensure it is no longer to be a requirement for abusers and victims to live together in order for behaviour to be viewed as coercive control. The change follows a government review which highlighted that those who



leave abusive ex-partners can often be subjected to sustained or increased controlling or coercive behaviour post-separation.

- *Criminalising threats to share intimate images without consent.*
 - Original legislation around intimate image based abuse (often referred to as ‘revenge porn’) has been widened to include threats to disclose intimate images with the intention to cause distress.
- *An end the "rough sex defence" in court.*
 - Technically speaking the so called ‘rough sex defence’ should not have been admissible in court even before the Bill was passed into law. Legal precedent says a person cannot consent to serious bodily harm. However, survivor and families experiences show that the CPS has been ignoring this legal precedent and have taken the decision to dismiss rather than prosecute cases on these grounds. If correctly enforced this clarification outlawing the defence is greatly welcomed.
- *Making non-fatal strangulation a standalone offence.*
 - Non-fatal strangulation is now punishable by up to five years in prison.
- *Progress on ensuring victims’ details are not shared with immigration control.*
 - Although ultimately the DA Act does not go far enough in offering equal protection for migrant women, small progress has been made on ensuring victims’ details are not shared with immigration control, this will remove one of the many barriers migrant women face on disclosing abuse and seeking support.
- *Children being recognised as victims of domestic abuse in their own right.*
 - The DA Act now recognises that a child who sees or hears, or experiences the effects of, domestic abuse and is related to the person being abused or the perpetrator is also to be regarded as a victim of domestic abuse in their own right. Our hope is this will lead to better support options for children and an earlier response in reducing further trauma.
- *Ban on cross examination and access to special measures extended across the civil court system.*
 - The Act improves the access to special measures for survivors, particularly in family court settings and a ban on direct cross-examination which offer some increased protections inside the civil and family courts.

The DA Act provides real opportunity for a step change in the national response to domestic abuse and other forms of violence against women and girls (VAWG). This was only possible through listening to the expertise of survivors and the wider specialist sector and this engagement must continue into actioning these progressive measures.

The [Home Office Domestic Abuse Act Fact Sheet](#) sets out all significant changes.

Where is the Act still lacking?

We do however stand by our view that the DA Act does not fully protect and support all survivors and, therefore, fails to be the landmark piece of legislation it could have been. Despite efforts from the House of Lords, backing from a number of MPs and tireless campaigning from specialist by and for services and survivors, the amendments to ensure protection and support for migrant women were voted down. We are deeply saddened by this missed opportunity to create routes to safety for all survivors and fully comply with the ratification of the Istanbul Convention.¹ There is also significant work still to be done to ensure the family courts do not continue to cause harm and retraumatise victims of abuse.

Things we will continue to campaign for:

- *Equal Support for migrant women with no recourse to public funds.*
 - The DA Act has failed to deliver on equal protection and support for migrant women, despite consistent campaigning efforts from survivors, by and for services and the wider specialist sector. Southall Black Sisters, the Step Up Migrant Women campaign led by the Latin American Women’s Rights Service and the End Violence Against Women Coalition put forward a series of amendments which were widely supported by MPs, Lords and across the specialist sector. Despite the House of Lords putting forward several key amendments they were ultimately voted down when the Bill went back to the House of Commons for a final time.
- *Family Court.*
 - Campaigners tried extremely hard to pass amendments on ending the assumption of contact in cases where children are at risk of harm from domestic abuse and prohibiting unsupervised contact for a parent waiting for trial, or on bail for, a domestic abuse related offence, but were met with opposition. Despite the inclusion of some special measures for survivors in family court settings and a ban on direct cross-examination which offer some protections inside the courtroom, not enough has been done to ensure full protection or challenge the current ‘pro-contact culture’. There a significant body of evidence demonstrating the harm caused to children, young people and their non-abusive parents/carers (survivors of domestic abuse) by the family justice system.²

¹ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

² <https://www.welshwomensaid.org.uk/wp-content/uploads/2019/09/WWA-response-to-MOJ-inquiry-into-family-courts.pdf>



Next Steps

Welsh Women's Aid will be monitoring, scrutinising and engaging within the processes of implementing the Act.

Strategies:

The UK Government is currently looking at producing a VAWG and a DA strategy, despite strong recommendations from the sector that they should not be siloed. This is also occurring at a time when the Welsh Government is working on their new National VAWDASV Strategy. The need for synergy and alignment has been expressed to both governmental teams and Welsh Women's Aid is engaging with both to provide input that is aligned across all from the Welsh VAWG sector and survivors. Current expectations are that the VAWG strategy will be published in the 'summer'. The DA strategy is about 6-8 weeks behind that.

Strategic Guidance:

UK Government has been carrying out consultation on the development of statutory guidance and Welsh Women's Aid has provided written feedback on draft versions. Similarly to the strategies, the need for alignment and an understanding of how devolved and non-devolved duties can be facilitated across multi-agency working will be critical to ensuring that the guidance enables effective implementation in Wales.

Equitable investment:

To ensure that the Act achieves its ambition, there will need to be sustainable investment to support its delivery. Vital to this will be the sustainable funding of specialist services, as set out in [Time to Act on Sustainability](#), this will require collaborative approach to a sustainable funding model across devolved and non-devolved funding streams. Critically, increased investment must include equivalent uplifts in the settlement for Welsh Government to ensure there is equitable opportunity for implementation of the Act in Wales.

Conclusion

As previously stated, we broadly welcome the Domestic Abuse Act and the positive changes it has the potential to bring to survivors in Wales. We were pleased to be a part of the Bill's development since its inception and will continue to monitor and engage to progress of its implementation to ensure maximum benefit for survivors in Wales. The work to ensure safety for all survivors will continue.

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