



RESPONSE FOR THE FACULTY OF ADVOCATES

ON

DOMESTIC ABUSE (SCOTLAND) BILL

[A] The Faculty of Advocates welcomes the opportunity to comment on the Domestic Abuse (Scotland) Bill and, in particular, the seven key issues identified by the Scottish Parliament's Justice Committee. The Justice Committee's attention is drawn to the Faculty's responses to (i) the Scottish Government's Consultation Paper "Equally Safe – Reforming the Criminal Law to address Domestic Abuse and Sexual Offences", (ii) the Scottish Government's Consultation on a "Criminal Offence of Domestic Abuse", and (iii) the Scottish Government's Consultation on "The Creation of a Specific Offence of Domestic Abuse – Proposed Associated Reforms to Criminal Procedure".

[B] The Key Issues

1. **Do you agree with the proposal in the Bill to create a new offence of abusive behaviour towards a person's partner or ex-partner covering both physical violence and non-physical abuse?**

The Faculty is content that a specific offence of abusive behaviour towards a person's partner or ex-partner covering both physical violence and non-physical abuse is created. However, the challenges encountered in creating such an offence have been outlined in the prior Faculty responses listed in [A].

2. **Do you consider that the proposed offence is needed to address a gap in the existing law which currently makes it difficult to prosecute some forms of domestic abuse?**

The official definition of domestic abuse in Scotland, developed by the National Strategy to Address Domestic Abuse (2000) contains behaviours that are not criminalised but are evidenced as being common in abusive relationships, for example, depriving or controlling freedom of action. The Faculty recognises that where such behaviours occur against a

background of coercive control, such behaviours can be very damaging and should, ideally, be prohibited by law.

- 3. Do you have any views on the definition of the offence, such as the requirement for a course of behaviour, the definition of abusive behaviour, or the defence that the behaviour was reasonable in all the circumstances?**

The Faculty has expressed concern in previous responses, including to “Equally Safe”, that the criminalisation of behaviours, such as those listed in section 2(3) of the Bill, requires to be contextualised if the legislation is to achieve its aim. As previously noted, to achieve this it is necessary to distinguish common couple violence from coercive control. The Faculty appreciates that to incorporate such a distinction into legislation is complex and has been attempted in this Bill by the reference to “a course of behaviour which is abusive”, which is defined as being on at least two occasions. Whilst this definition avoids criminalisation of single isolated incidents, the Faculty is of the view that it does not capture or reflect the distinction between coercive control and common couple violence. The Faculty is of the view that a defence of reasonableness should be available in respect of the offence of abusive behaviour, albeit the Bill offers a limited definition of reasonableness.

- 4. The offence is restricted to abuse between partners and ex-partners. Do you agree with this approach? For example, during the Scottish Government’s consultation on a draft offence, concerns were raised that it did not properly reflect the impact of domestic abuse on children. The Scottish Government has sought to address this concern in the Bill, primarily by providing that the offence will be aggravated where it involves a child. Do you have any views on this aspect of the Bill?**

The Faculty is of the view that the offence as defined to include partners, ex-partners and being aggravated where offending involves children, is the correct approach to be adopted.

- 5. Do you have any views on factors which might impact on the reporting, investigation and prosecution of the offence?**

The Faculty is of the view that a public education campaign will be required to highlight and educate as to the terms of the Bill and in particular the criminalisation of certain behaviours for the first time. Previous public education campaigns including “Behind Closed Doors” and “Domestic violence – end the silence” have been very effective and adapted for use in other jurisdictions. In addition to public education, training of criminal justice professionals including police, prosecutors and judges will be necessary if an effective criminal justice response is to follow the reporting of an offence.

6. **The Bill makes a number of reforms to criminal procedure, evidence and sentencing. For example, it would prohibit the accused in a domestic abuse case from personally conducting the defence. Do you agree with this prohibition?**

The Faculty has provided a response to the “Proposed Associated Reforms to Criminal Procedure” wherein the Faculty agrees with the prohibition on accused persons representing themselves to prohibit the trial process being misused to further intimidate or control the complainer.

7. **The Bill would also require the court in a domestic abuse case to consider making a non-harassment order. What are your views on this approach?**

As noted in the response by Faculty to “Proposed Associated Reforms to Criminal Procedure”, the availability of a non-harassment order to the sentencing judge is appropriate. The availability and discretionary use of such a disposal will provide protection for the complainer following charges being proven without recourse to further legal process.