



FACULTY OF ADVOCATES

Response to Scottish Parliament's Criminal Justice Committee

Call for views on the Prevention of Domestic Abuse (Scotland) Bill

The Faculty of Advocates welcomes the opportunity to respond to the consultation on the Prevention of Domestic Abuse (Scotland) Bill. The Faculty agrees with the Bill's aim to reduce the incidences of domestic abuse, particularly the rates of re-offending.

The measures proposed in the Bill amount to a significant interference with the Article 8 rights of the person to whom the proposed notification requirements may apply as well as their partner or ex-partner, and their children. Parliament must therefore be satisfied that the measures in the Bill are justified on the basis of evidence of a pressing social need and that they go no further than is necessary to achieve the intended aim.

1. Notification requirements and monitoring of Domestic Abuse Offenders

1.1. What are your views on this proposal?

1.1.1. Faculty considers that the proposal is a policy matter and is for Parliament to decide. Faculty notes, however, that police are already in possession of powers via the Disclosure Scheme for Domestic Abuse Scotland (DSDAS) to maintain records in relation to those with a history of domestic abuse and take steps to intervene when they believe a 3rd party is at risk. DSDAS permits, where requested, or proactively in the case of someone deemed 'at risk', disclosure of that information if it is "lawful and necessary". Faculty is not aware of any evidence showing that police, with the powers they currently have, have been unable to maintain a record of those 'with a history of domestic abuse' or proactively disclose this information to persons deemed 'at risk' under DSDAS. It could be a concern if, in the absence of such evidence, there is simply a presumption that this Bill will lead to more disclosures to members of the public,¹ which would, in turn, reduce instances of domestic abuse.

¹ Paragraph 50 of the Bill's accompanying Policy Memorandum states, "adding more domestic abuse offenders to MAPPA through this Bill would presumably lead to an increase in the number of proactive disclosures to

1.2. Is this definition of a domestic abuse offender in Part 1 of the Bill the right one?

1.2.1. Faculty agrees with the definition as set out in the Bill.

1.3. Do you think these notification and monitoring requirements would help improve safety for victim-survivors?

1.3.1. This is not a matter upon which Faculty can comment. Faculty notes that under the existing DSDAS, police are already required to meet with partner agencies, such as Social Work Services, to decide whether to disclose information to someone deemed 'at risk.' Under DSDAS, police currently gather information from various sources, including MAPPA, to determine 'risk' prior to making any interventions.

1.4. Are there any risk or unintended consequences that you think need to be considered?

1.4.1. The Bill introduces notification requirements for individuals convicted of serious domestic offences. The DSDAS currently allows recording of information, and disclosure of that information, in respect of individuals who have been convicted of lower-level domestic offences and those who have not been convicted at all. If the Bill is necessary, guidance on how the DSDAS and notification requirements under the bill will operate in tandem may be necessary.

1.4.2. Faculty notes that the Bill is intended to apply to individuals who are under 18 at the time of their conviction. Faculty notes that consideration may need to be given to whether the terms of the Bill would interfere with that individual's UNCRC rights.

1.5. Do you think there is other information that domestic abuse offenders should be required to notify the police of that isn't included in the Bill?

1.5.1. This is not a matter on which Faculty can comment.

1.6. Do you agree with the notification periods included in the Bill or should these be different?

members of the public..." <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/prevention-of-domestic-abuse-scotland-bill/introduced/spbill67pms062025accessible.pdf>. This Bill would only allow monitoring of serious Domestic Offenders (i.e. those convicted on indictment) while DSDAS currently allows recording and disclosure of non-convictions to parties at risk. Therefore, the proactive disclosures under this Bill do not seem to expand existing police powers.

1.6.1.Faculty considers that the length of any notification period is a policy matter for Parliament to consider.

1.7. Do you agree with the penalties for failing to comply with the notification requirements?

1.7.1.Faculty considers that any penalties for failing to comply with notification requirements are a matter for Parliament to consider.

2. Risk Notifications

2.1. Do you think the provisions in the Bill will mean that more disclosures will be made under the scheme?

2.1.1.Faculty does not and cannot know whether the provisions in the Bill will mean that more disclosures will be made under the scheme.

2.2. Could the Bill do more in terms of enabling disclosure of someone's history of domestic abuse?

2.2.1.This is not a matter on which Faculty can comment.

3. Rehabilitation and Behaviour Change Programmes

3.1. What are your views on this proposal?

3.1.1.Faculty is supportive of any steps which will allow for the rehabilitation of offenders. It is the experience of Faculty, however, that many prisoners who have been convicted of sexual offences, or made subject to Orders for Lifelong Restriction, have difficulty in accessing such programmes. If this clause is to have any impact, sufficient resources must be devoted to allow the programmes to be made available.

3.2. Can these types of programmes be effective in reducing harm?

3.2.1.Faculty considers that rehabilitation and behaviour change programmes can be effective in reducing harm and preventing re-offending.

3.3. What kind of support or follow-up are needed to make them meaningful?

3.3.1. This is not a matter on which Faculty can comment.

3.4. Are there currently enough programmes and services in place that if someone is assessed as suitable that they could be provided?

3.4.1. This is not a matter on which Faculty can comment.

4. Data Collection and reporting

4.1. What are your views on this proposal?

4.1.1. Faculty recognises that there is no 'typical' victim-survivor of domestic abuse. Faculty supports the collection of data to assist in the identification of trends or opportunities for more precise support. Consideration may need to be given to whether charities are sufficiently resourced to meet the onerous requirements imposed on them in clause 23 and whether a perception that they require to provide such information may discourage victim-survivors from accessing support from such charities.

4.2. Is this data the Bill required to be collected the right information that is needed?

4.2.1. This is not a matter on which Faculty can comment.

4.3. How could this help improve support for victim-survivors?

4.3.1. This is not a matter on which Faculty can comment.

5. Domestic Abuse Education in Schools

5.1. What are your views on this proposal?

5.1.1. Faculty supports the provision of domestic abuse education in Schools in Scotland.

5.2. At what age should education begin?

5.2.1. Faculty considers that others are better placed to comment on this.

5.3. What topics should be covered to make it meaningful and inclusive?

5.3.1. Faculty considers that others are better placed to comment on this.

5.4. How can we ensure this is delivered in a way that is safe and appropriate for all pupils?

5.4.1. Faculty considers that others are better placed to comment on this

6. Domestic Abuse Education in Schools

6.1. Do you think this Bill goes far enough in addressing the needs of people affected by domestic abuse?

6.1.1. This is not a matter on which Faculty can comment.

6.2. What else could be included to strengthen support for victim-survivors, children and families?

6.2.1. This is not a matter on which Faculty can comment.

7. Concerns about Privacy, Policing or Human Rights

7.1. Do you have any concerns about the human rights or equality implications of the Bill?

7.1.1. Faculty considers that an individual's Article 8 rights are required to be protected and that any data which is recorded or shared must be no more than what is strictly necessary to achieve the aims of the Bill. It is acknowledged by Faculty that the provisions proposed are in similar terms to those already in place under the notification requirements of sexual offender registration, however a balancing act requires to be struck between the need to protect the public and an individual's Article 8 rights.

7.1.2. Faculty notes the review mechanisms in relation to an indefinite notification period under Section 2(1)(b) of the Bill, which are required in light of *R (on the application of F (by his litigation friend F)) and Thompson (FC) v Secretary of State for the Home Department* [2010] UKSC 17 ("*R v Secretary of State*").

7.1.3. We are concerned by the requirement, as per Section 6(1) of the Bill, for a relevant person to either attend at a police station to fulfil their notification requirements or to give their notification orally to a police officer.

7.1.3.1. In *R v Secretary of State*, Lord Philips, sitting as a Justice in the United Kingdom Supreme Court, highlighted the inherent risk that the reason for someone's repeated visits to a police station may be discovered by a third party.² This presents as a significant risk to the Article 8 rights of those subject to notification requirements under the Bill.

7.1.3.2. It is acknowledged that this isn't a unanimous view, and the provision mirrors the equivalent position in Section 87 of the Sexual Offences Act 2003.

7.1.3.3. While it is a matter for Parliament, we would highlight that this requirement may be a significant interference with an individual's Article 8 rights and, given the availability of other methods of communication, is above what is necessary to achieve the aims of the Bill.

7.2. Are there groups of people who might be affected in ways that should be carefully considered (e.g. racialised communities, disabled people, LGBTQ+ people)?

² *R (on the application of F (by his litigation friend F)) and Thompson (FC) v Secretary of State for the Home Department* [2010] UKSC 17 per Lord Philips at paragraph 43, disagreed with by Lord Rodger at paragraph 65.

7.2.1. This is not a matter on which Faculty can comment.

8. Practical Considerations and Resources

8.1. Do you have any views on the practical challenges or resource implications of this Bill?

8.1.1. While resourcing implications are for Parliament to consider, given the reference to Rehabilitation and Behaviour Change Programmes, Faculty considers that any such programmes require to be properly resourced and actually be made available to those to whom they will apply.

8.2. Are there specific areas (e.g. rural policing, schools, the third sector) where support would be especially needed?

8.2.1. Faculty considers that others are better placed to comment on this

9. Anything Else

9.1. Do you have any other comments or concerns about the proposals in this Bill that haven't already been covered?

9.1.1. We consider that it would be appropriate, if the chief constable is serving a copy of a notification continuation order on an individual as per Sections 10(5) and 10(6) of the Bill, to require that the individual also be given notice that:

- They may appeal the decision of the chief constable within 21 days of the date of discharge as per Section 13(3) of the Bill.
- That it may be in their interests to seek independent legal advice.