

SERIES

Ensuring an inclusive & effective domestic abuse bill for all women

TOPIC

Definition of domestic abuse



KEY POINTS

- + There is currently no legal definition of domestic abuse or domestic violence and no criminal offence of domestic abuse or domestic violence in England (para 1)
- + The Government proposes to use the existing cross-government definition of domestic abuse as the basis for the new statutory definition. This definition does not recognise the gendered nature of domestic abuse or its disproportionate impact on women (para 2-5)
- + The UK has international legal obligations to eliminate discrimination against women, including gender-based violence against women, which includes domestic abuse (para 6-8)
- + The Istanbul Convention explicitly recognises that domestic abuse affects women disproportionately and requires States parties to pay particular attention to women victims of gender-based violence in implementing the Convention (para 9)
- + Implications for the Domestic Abuse Bill:
 - > The statutory definition of domestic abuse should recognise the gendered nature, causes and impacts of domestic abuse, which affects women and girls disproportionately
 - > The statutory definition of domestic abuse should ensure UK compliance with international standards on violence against women and girls (VAWG), in particular the obligation to eliminate gender-based violence against all women, including refugee women, women seeking asylum, migrant women and stateless women
 - > The Bill and the statutory guidance underpinning the new definition of domestic abuse should make clear that public authorities will be held responsible where they fail to:
 - (i) comply with their due diligence obligations to take all appropriate measures to prevent, investigate, prosecute, punish and provide reparations for gender-based violence against women and girls; and
 - (ii) act to eliminate intersecting forms of discrimination and violence (based on race, ethnicity, religion or belief, migrant or refugee status, caste, sexual orientation)

CURRENT DEFINITION OF DOMESTIC VIOLENCE AND ABUSE

1 There is currently no legal definition of domestic abuse or domestic violence and no criminal offence of domestic abuse or domestic violence in England.

2 The current cross-government definition¹ of domestic violence and abuse is:

Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to psychological, physical, sexual, financial and emotional abuse.

Controlling behaviour

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities

¹ GOV.UK, Domestic violence and abuse: <https://www.gov.uk/guidance/domestic-violence-and-abuse#domestic-violence-and-abuse-new-definition>. This new definition was introduced in March 2013.

for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour

Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.²

GOVERNMENT CONSULTATION PROPOSAL FOR DEFINITION OF DOMESTIC ABUSE

- 3** The Government proposes introducing “a statutory definition of domestic abuse which aims to affirm the current government definition of domestic abuse and links to some of the other powers that may be included in the draft bill”. Somewhat confusingly, the document also states that the new definition will not “automatically replace all other existing definitions, or apply to other legislative provisions, already set out in statute”.
- 4** The Government Consultation document proposes to use the existing cross-government definition as the basis for the new statutory definition. The current definition is gender neutral. The Government does not propose to recognise the gendered nature of domestic abuse, which affects women and girls disproportionately (95% of high risk victims of domestic abuse referred to a multi-agency risk assessment conference in 2017 were women³) and is deeply rooted in structural inequality between women and men.
- 5** In line with the existing definition, the new statutory definition would recognise abuse that happens in all relationships (i.e. intimate partner and familial settings) and include both single incidents and patterns of behaviour. Unlike the existing definition, it would include a more expansive concept of ‘economic abuse’ (rather than simply financial abuse) and would be accompanied by underpinning statutory guidance for professionals who have safeguarding obligations.

INTERNATIONAL LAW: DOMESTIC ABUSE AS GENDER-BASED VIOLENCE AGAINST WOMEN

- 6** The UK ratified the UN Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW or the Women’s Convention) in 1986 and ratified the Convention’s complaints mechanism in 2004. CEDAW Article 2 establishes that the overarching obligation of States parties is to pursue a policy of eliminating discrimination against women, including gender⁵ based violence against women, defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”⁶. Family violence and domestic abuse is recognised as one of the most insidious forms of violence against women⁷.
- 7** The body responsible for interpreting and monitoring the implementation of the Women’s Convention, the CEDAW Committee, uses the expression ‘gender based violence against women’ to make explicit the gendered causes and impacts of this violence and to strengthen the understanding of such violence as a social – rather than individual – problem, requiring comprehensive responses, beyond specific events, individual perpetrators and victims/survivors.⁸ The CEDAW Committee specifically recognises that gender-based violence against women is “one of the fundamental, social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetrated” and is a critical obstacle to achieving substantive equality between women and men.⁹
- 8** States parties to the Women’s Convention are required to have an effective and accessible legal and services framework in place to address all forms of gender-based violence against women. Importantly, the obligations of States parties apply to all women without discrimination, citizens

2 Serious Crime Act 2015, s.76 created the new offence of controlling or coercive behaviour in an intimate or family relationship.

3 SafeLives data: <http://www.safelives.org.uk/practice-support/resources-marac-meetings/latest-marac-data>.

4 CEDAW Optional Protocol 1999, A/RES/54/4. States Parties to the Protocol allow the CEDAW Committee to hear complaints from individuals or to inquire into “grave or systematic violations” of the Convention.

5 The term gender refers to society’s socially constricted identities, attributes and roles for women and men and society’s social and cultural meaning for biological differences between men and women which result in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women: CEDAW Committee General recommendation No. 28, CEDAW/C/GC/28, 16 December 2010 (CEDAW GR 28), para.5.

6 UN CEDAW Committee General recommendation No. 19 on violence against women, A/47/38, 1992 (CEDAW GR 19), para.9.

7 CEDAW GR 19, para.23.

8 UN CEDAW Committee General recommendation No. 35 on gender-based violence against women, updating general recommendation no.19 CEDAW/C/GC/35, 14 July 2017 (CEDAW GR 35), para.9.

9 CEDAW GR 19, para.23.

and non-citizens alike, including refugee women, women seeking asylum, migrant women and stateless women, within a State's territory. States must act to eliminate intersecting forms of discrimination (based on race, ethnicity, religion or belief, status, caste, sexual orientation) and the compounded negative impact of discrimination and violence on different groups of women.¹⁰

- 9** The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) applies to all forms of violence against women, including domestic violence. It is important given the UK Government's intention to ratify the Istanbul Convention and its need to be compliant with it. The Istanbul Convention provides a gender neutral definition of domestic violence as all acts of physical, sexual, psychological or economic violence between members of the family or domestic unit, irrespective of biological or legal family ties, but explicitly recognises that domestic abuse affects women disproportionately and requires States parties to pay particular attention to women victims of gender-based violence in implementing the Convention.¹¹ It recognises that States parties may wish to take special measures to prevent and protect women from gender-based violence and provides that such measures will not be considered discrimination: "the fact that women experience gender-based violence, including domestic violence, to a significantly larger extent than men can be considered an objective and reasonable justification to employ resources and take special measures for the benefit of women victims only".¹²

THE APPROACH TO LEGISLATING FOR DOMESTIC ABUSE IN WALES

- 10** The Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 was introduced in Wales to improve arrangements for the prevention of gender-based violence, domestic abuse and sexual violence and to improve protection of and support for victims of such abuse and violence. It came into force in April 2015.
- 11** Whilst the definition of domestic abuse is gender neutral, the Act situates the offence of domestic abuse within a broader context of gender-based violence against women and girls, recognising the gendered nature of the abuse and its disproportionate impact on women and girls.
- 12** Domestic abuse is defined as abuse where the victim is *associated with* the abuser.¹³ Abuse is defined as physical, sexual, psychological, emotional or financial abuse. The definition of an associated person reflects the Family Law Act 1996¹⁴ – a person is associated with another person if they have agreed to marry, are or have been married to each other, or have been civil partners; they have or have had an intimate personal relationship with each other; they live or have lived together in an enduring family relationship (whether they are of different sexes or the same sex); they live or have lived in the same household; they are relatives; in relation to a child, each of them is a parent of the child or has, or has had, parental responsibility for the child.

THE APPROACH TO LEGISLATING FOR DOMESTIC ABUSE IN SCOTLAND

- 13** The Domestic Abuse (Scotland) Act 2018 creates for the first time a domestic abuse offence in Scotland.¹⁵ The Act adopts a narrow, gender-neutral definition of domestic abuse, limiting the offence of domestic abuse to a course of abusive behaviour towards partners or ex-partners only. By excluding wider familial violence, the Act fails to protect victims who suffer domestic abuse perpetrated by other family members.
- 14** Abusive behaviour is given a broad definition,¹⁶ which includes physical or sexual violence; threatening or intimidating behaviour; and behaviour that has the effect of (i) controlling or coercing the victim, including restricting the victims' movements or freedom of action; (ii) making the victim dependent or subordinate, e.g. treating the victim like a domestic slave; (iii) isolating the victim and controlling access to forms of communication or monitoring her day-to-day activities; or (iv) frightening, humiliating, degrading or punishing the victim.

¹⁰ CEDAW GR 28, para.s 12 and 18.

¹¹ Istanbul Convention, Article 2.

¹² Explanatory Report to the Istanbul Convention, Council of Europe Treaty Series No. 210, Istanbul, 11 May 2011, para.55, applying the approach of the European Court of Human Rights in its case law relating to ECHR Article 14, see, e.g. *Abdulaziz, Cabales and Balkandali v UK*, Application No.s 9214/80, 9473/81, 9474/81, 28 May 1985.

¹³ Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (Wales Act), s.24.

¹⁴ Family Law Act 1996, s.62(3).

¹⁵ The Act received Royal Assent on 9 March 2018 and is anticipated to come into force later this year.

¹⁶ Article 2(2) and Scotland Act Explanatory Note, para.s 18-22.

- 15** The prosecution must prove that a reasonable person would consider the course of abusive behaviour to be likely to cause the individual victim, taking into account her particular characteristics and vulnerabilities, to suffer physical or psychological harm;¹⁷ and that the perpetrator intended his behaviour to cause, or was reckless as to whether the behaviour would cause, the victim to suffer physical or psychological harm.
- 16** Significantly, the offence does not depend on the abusive behaviour actually causing the victim to suffer physical or psychological harm or actually having one of the effects set out in para.14 above.¹⁸



RECOMMENDATIONS FOR THE DOMESTIC ABUSE BILL

Government Consultation questions relevant to this recommendation: Q1, Q2, Q3.

- + The new statutory definition of domestic abuse should recognise the gendered nature, causes and impacts of domestic abuse, which affects women and girls disproportionately. This is critical to strengthen the understanding of domestic abuse as a social – rather than individual – problem, requiring comprehensive responses, beyond specific events, individual perpetrators and victims/survivors.
- + The Government should clarify its intention that the new statutory definition will not automatically replace all other existing definitions, or apply to other legislative provisions. If this means that different, potentially conflicting definitions of domestic abuse will apply in particular circumstances, this will create legal uncertainty and confusion.
- + The new statutory definition of domestic abuse should ensure UK compliance with international standards on VAWG, including the UN Convention on the Elimination of Discrimination Against Women and the Istanbul Convention, in particular the obligation to combat violence against women without discrimination and to provide protection and support to all women, citizens and non-citizens alike, including refugee women, women seeking asylum, migrant women and stateless women.
- + The Domestic Abuse Bill and the statutory guidance underpinning the new definition of domestic abuse should make clear that public authorities will be held responsible where they fail to:
 - (i) comply with their due diligence obligations to take all appropriate measures to prevent, investigate, prosecute, punish and provide reparations for gender-based violence against women and girls; and
 - (ii) act to eliminate intersecting forms of discrimination and violence (based on race, ethnicity, religion or belief, status, caste, sexual orientation) and the compounded negative impact of discrimination and violence on different groups of women (for further more information, see Sisters For Change Briefing Note 1).

CONTACT

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