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Welsh Women's Aid Briefing: May 2019

The Domestic Abuse Bill (England & Wales)

This briefing summarises our response to the 9 legislative proposals from UK Government's draft Domestic Abuse Bill for England and Wales, which was published in January 2019 and subject to pre-legislative Committee review in May 2019. We focus below on those proposals which will specifically impact survivors in Wales and the work of Welsh violence against women, domestic abuse and sexual violence specialist services.

This paper is a summary of our full briefing on the plans and recommendations laid out in the Bill and Welsh Women's Aid's response. It includes the priority areas we highlighted in our consultation response to UK Government in May 2018 and what UK Government has proposed around these areas. It also includes elements of the Bill where we feel the impact on Wales might be different or need further consideration.

This briefing should also be read alongside the [Joint Recommendations for the Domestic Abuse Bill](#) paper. We have joined forces with umbrella organisations and services in England, to make the case for the Bill to be transformative and will be collectively lobbying in support of our shared priorities and demands as the Bill progresses through Parliament. It should also be considered alongside the report from the [Joint Committee on the Draft Domestic Abuse Bill](#).

There are a number of issues that need to be fully considered within the Bill to ensure equivalency of services in Wales and that there is no conflict with legislation in Wales. We remain concerned that limiting this Bill to domestic abuse separates women's lived experiences into silos and moves away from the Violence Against Women and Girls policy and strategy framework in Wales, and which recognises the disproportionate impact of these forms of abuse on women and girls.

Summary of our recommendations

1. We want to see a definition in the Bill that is consistent with the definition provided by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence 2011 (Istanbul Convention) to which the UK Government is signatory and which is incorporated into the Wales Strategy.
2. We want to see the statutory position of Commissioner to be expanded to hold a broader violence against women and girls remit, to hold sufficient powers to enforce accountability, be independent of the State. We also want to see equivalence in roles, responsibilities and accountabilities for public services in Wales.
3. We want to see legislation which ensures the Government will comply with all aspects of the Istanbul Convention, a gender-sensitive approach to policies on domestic violence, and equal protection for all survivors by upholding vital non-discrimination principles in accordance with Istanbul Convention Article 4(3).



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4. We want to see a duty to assess the impact of welfare reforms on domestic abuse survivors, an immediate reversal of the two child tax credit limit, an extension to eligibility under the Domestic Violence rule and concession to all survivors with no recourse to public funds and from three to six months, and restrictions on immigration enforcement so that this is kept completely separate from the domestic abuse response by police, health and other services.
5. We want to see a ban on cross-examination by abusers extended to any family or civil proceedings, and prohibition of unsupervised contact for a parent who is on bail for domestic abuse related offences, or where there are ongoing criminal proceedings for domestic abuse.
6. We want to see a programme of training in the implementation and enforcement of protection orders, resources to process applications, effective representation for survivors and robust evaluation of electronic monitoring. The accreditation of perpetrator programmes must also be a requirement before associating these interventions with a Protection Order, and any revisions to an order must have survivors' consent and support at its heart and hold the perpetrator to account for their actions.
7. We want to see a whole system approach to domestic abuse perpetrators that puts the safety, wellbeing and needs of survivors and children central. This requires a range of responses across the criminal justice system alongside behaviour change programmes that adhere to national standards and are quality assured.
8. We want to see equivalent funding being allocated to support specialist organisations in Wales that is secure and enables their sustainability, similar tenancy protection for survivors of abuse, and data being disaggregated for England and Wales due to the differences in provision.

Bill proposal: Introducing a new statutory definition of domestic abuse

The statutory guidance on the definition will include:

- Types of abuse which are experienced by specific communities or groups, such as migrant and minoritised women, and teenage relationship abuse.
- That victims of domestic abuse are predominantly female.
- Economic abuse (which will replace financial abuse), recognising that economic abuse encompasses a wider range of abuses than financial.
- Victims of abuse as being those age 16 and over
- Different relationship dynamics such as family members, ex-partners and those who are not cohabiting.

What we say:

Continuing to recognise those aged over 16 as being victims of domestic abuse and the inclusion of former as well as current partners, is welcomed. The widening of the definition to include coercive control and economic abuse is also positive.



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However, the new definition lacks a clear and necessary distinction between intimate partner abuse and other familial violence. Significantly, it also fails to recognise the gendered nature of domestic abuse and the disproportionate impact on women on the face of the Bill, contrary to international obligations.

We are also concerned this places the Westminster Bill out of step with legislation in Wales, which introduces statutory duties for devolved public services to prevent violence against women.

We want to see a definition in the Bill that is consistent with the definition provided by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence 2011 (Istanbul Convention) to which the UK Government is signatory and which is incorporated into the Wales Violence Against Women , Domestic Abuse and Sexual Violence Strategy.

Bill proposal: A Domestic Abuse Commissioner

The Bill proposes appointing a Domestic Abuse Commissioner to oversee the provision of services and the power to hold those delivering them to account, across England and Wales.

- UK Government maintains there will continue to be a separate strategy to address violence against women and girls.
- The Commissioner will establish a victims' and survivors' advisory group.
- The impact of domestic abuse on children will be included in the role.
- Consideration of how specialist services and statutory services (health, education, social care and criminal justice) support and interact with survivors and children will be included in the role.
- They will have a specific focus on the needs of minoritised and marginalised individuals and communities (including Black and minority ethnic (BAME), lesbian/gay/bisexual/trans/plus (LGBT+), disabled, Deaf, migrant and/or those who have complex needs).

What we say:

Welsh Women's Aid welcomed the creation of an independent Commissioner, with strong powers, resources and independence to holding state services and Governments to account. We were also clear it is critical that the role will have sufficient powers, and in our response, we called for further detail on how sanctions will take place if legal duties are broken and how they will be imposed.

Some of the areas the Commissioner will have responsibility for monitoring is devolved to Welsh Government, such as health, local government, education, housing and social care, therefore it is vital that a robust process for working with Welsh Government, the Wales National Advisor, with survivors and the specialist sector in Wales is established.

We want to see the statutory position of Commissioner to be expanded to hold a broader violence against women and girls remit. Informed by learning from Wales, it is also essential that to be effective, **the Commissioner needs sufficient powers** to effectively enforce accountability, be fully

independent of Government and supported by a budget in accordance with their remit. Duties to collect and publish data across sectors should be robust, and an England and Wales sector-led scrutiny Board should be established, to ensure that progress is informed by specialists in the field.

We also want to see equivalence in roles, responsibilities and accountabilities, so that devolved public services in Wales have equivalent accountabilities to deliver devolved legislation. How the Commissioner and National Advisor will interact is critical to ensure their roles in providing guidance to the public sectors and government are complimentary. There should be a requirement to work closely with National Advisors in Wales to ensure joined up working, sharing of best practice and to avoid duplication.

Bill proposal: Ratification and implementation of the Istanbul Convention

The Bill sought to understand if current offences within UK law will work to satisfy ratification of the Istanbul Convention. These include taking extra-territorial jurisdiction over certain offences and extending the circumstances in which certain sexual and violent offences committed abroad may be prosecuted in England and Wales. Planned changes include:

- Closing the gap so that courts in England and Wales have jurisdiction in all cases where violence against women offenses are committed abroad by a person who is habitually resident in the UK.
- In terms of intentionally performing an abortion – the Bill states that sections of various UK Acts cover every stage of pregnancy in which a forced abortion might take place.

What we say:

Welsh Women's Aid supports steps taken to ensure the UK complies in regards to extraterritorial jurisdiction.

However **we want to see legislation which ensures the Government will comply with all aspects of the Istanbul Convention**. Currently we are concerned that the Bill excludes protections for migrant women, which breaches obligations under the Istanbul Convention and CEDAW. So we also want to see commitments in the Bill to

- A gender-sensitive approach to policies on domestic violence
- Equal protection for all survivors by upholding vital non-discrimination principles in accordance with Istanbul Convention Article 4(3). That is, that the Bill applies to all regardless of "sex, race, gender, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee or any other status"

Bill proposals: Reformed welfare system that supports survivors to be free from abuse

UK Government will continue to offer split payments on request, and has also confirmed it will work with the Scottish Government to establish the practicalities of delivering split payments in Universal Credit in Scotland, to further understand their impact.



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DWP has also committed to ensuring household payments go directly to the main carer in a household, and are looking at what more can be done to ensure the main carer receives the payment. It is proposed these changes will begin later in the year.

What we say:

In our consultation response Welsh Women's Aid highlighted that welfare policy reforms, including universal credit, child tax credit limitations and reduced access to housing benefit through various changes have left survivors without adequate access to money to secure access to safety, support and justice. We identified, for example, that split payments can actually exacerbate domestic abuse and so recommended the introduction of separate payments to be made individually as default.

We also want to see a duty to assess the impact of welfare reforms on domestic abuse survivors, and an immediate reversal of the two child tax credit limit, because the exemption on the grounds of rape and coercive control remains unworkable and contrary to human rights.

We remain concerned that access to protection and support largely depends on visa status. Despite the availability of access to time-limited (3 months) access to public funds under the Domestic Violence Rule¹ and Destitution Domestic Violence Concession² for qualifying victims of abuse on spousal or partner visas who can prove their relationships have broken down due to domestic violence and they have no money to support themselves, many others continue to be excluded from access to protection.

We want to see all restrictions associated with no recourse to public funds to be abolished. Until this happens, we support Southall Black Sisters' campaign to extend eligibility under the rule and concession, in the meantime, to all survivors with no recourse to public funds and from three to six months. **We also want restrictions on immigration enforcement** so that this is kept completely separate from the domestic abuse response by agencies like the police, to maximise the safety of victims.

Bill proposal: Improvements to the family courts system and wider court system

The consultation did not ask any specific questions about fundamental reform to the family justice system, but responses raised the need for better awareness and understanding of domestic abuse and coercive and controlling behaviour, and an urgent need to stop perpetrators cross-examining victims in family courts.

Proposals in the Bill now include:

- Powers to prevent direct cross-examination of domestic abuse victims from happening by their abuser, if they have a record of their abuse in the criminal or civil justice system.
- Improving the in-court protection available for victims of domestic abuse
- Options to better share information across jurisdictions to prevent contradicting conditions attached to orders between the family and criminal courts

¹ https://rightsofwomen.org.uk/wp-content/uploads/2014/09/ROW_Domestic-Violence-A4-DIGITAL.pdf

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679269/victims-of-domestic-violence-and-abuse-DDV-concession-v1_0.pdf



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- Through the Reducing Family Conflict consultation they proposed abolishing the ability of parties to contest divorce as a general rule

What we say:

Legislation should improve support for survivors across all court systems in the family, civil and criminal courts. We therefore welcome the commitment to improve communication, to provide automatic eligibility for special measures in domestic abuse cases in the criminal courts and to improve the court environment. An assumption of special measures should be made across all court systems, especially family courts, aligned to advocacy support for survivors to accompany them to all court proceedings.

We also called for an end to cross-examining of victims by perpetrators, so again welcome this move. However **we want to see a ban on cross-examination by abusers extended to any family or civil proceedings** in which contested allegations of domestic abuse, sexual abuse, stalking or harassment are being heard. This should also apply in family or civil proceedings in any circumstances where someone has been found or has admitted to have perpetrated domestic abuse, sexual abuse, stalking or harassment against the witness.

In our separate consultation response to Reducing Family Conflict, we supported the proposal to end contest divorces as it can be used as a means to further exert control by perpetrators.

Responses highlighted the need to ensure that victim and child safety is paramount in family court decisions, and that the presumption that contact with both parents is in the best interest of children often puts victims and children at risk. We therefore **want to see a prohibition of unsupervised contact for a parent who is on bail for domestic abuse related offences, or where there are ongoing criminal proceedings for domestic abuse.**

Bill proposal: Protection orders and other measures

The Bill will legislate to provide for the new Domestic Abuse Protection Notices (DAPN) and Domestic Abuse Protection Orders (DAPO). To support the introduction of new orders, it is proposed to issue statutory guidance, accompanied by a programme of training and practical toolkits for professionals.

Proposals include:

- Enabling victims, the police and relevant third parties to apply for a DAPO, but not allowing family members and friends to apply without the court's permission
- Enabling the police to apply to a magistrate's court for a DAPO and other eligible applicants via the family courts
- Enabling DAPOs to be applied for by a party in any ongoing family or criminal proceedings or specified ongoing proceedings in the civil courts. It will require courts to take into account the wishes of victims before making an order.
- Placing Domestic Violence Disclosure Schemes on a statutory footing.

The consultation also proposed positive requirements for perpetrators subject to a DAPO, rather than the current process which only includes imposing prohibitive conditions. For example:



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- Allow courts to place positive requirements on perpetrators through orders. Supporting guidance to help agencies support positive requirements will be commissioned and this approach will be tested through a pilot.
- Require those subject to a DAPO to register certain details with the police, including; name and address.
- Additionally, courts will be enabled to impose additional notification requirements on a case-by-case basis such as details of new relationships, visa applications and firearms licences
- Ensuring that the breach of an order will be a criminal offence
- Enabling a court to attach an electronic monitoring requirement to a DAPO as a means of monitoring compliance with other provisions of the order where 'necessary and proportionate to protect a victim'.

What we say:

We welcome the focus on increasing protection of victims and ensuring breach of orders is an arrestable offence. However there are already failings in the use and enforcement of orders currently available e.g. bail, non-molestation orders, restraining orders.

We want to see a programme of training in the implementation and enforcement of protection orders, resources to process applications, effective representation for survivors and robust evaluation of electronic monitoring. The accreditation of perpetrator programmes must also be a requirement before associating these interventions with a DAPO, and any revisions to an order must have the survivors consent and support at its heart and hold the perpetrator to account for their actions.

We want to see a whole system approach to domestic abuse perpetrators that puts the safety, wellbeing and needs of survivors and children central. This requires a range of responses across the criminal justice system alongside behaviour change programmes that adhere to national standards and are quality assured.

Proposals: Resources and funding

The draft Bill recognises different types of support may be needed at different times in a survivor's journey in accessing help and support and that funding of services should reflect that. It acknowledges that many victims of domestic abuse also suffer sexual violence and that there is increasing demand for sexual violence services.

Proposals include:

- Developing a new victim's services delivery model to increase availability of services through joined up and sustainable funding.
- Exploring the benefits of full local commissioning of rape and sexual violence support services by Police and Crime Commissioners (PCCs).

In addition, the following proposals focus primarily on England:

- £24 million over three years to provide advice, support and counselling for women access rape and sexual violence support services across England and Wales.



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- £12 million for children affected by domestic abuse, female offenders who have experienced domestic abuse and a health pathfinder project.
- £8 million for groups such as LGBTQ+, older people, men and disabled victims as well as those affected by adolescent to parent abuse and victims of economic abuse.
- • Ministry for Housing, Communities and Local Government (MHCLG) will continue to invest in 'Routes to support' database of services, and will invest £300,000 to help reduce the impact of violence on the lives of Black and minoritised victims through capacity building with Black Asian and Minority Ethnic organisations, subject to the outcome of the Spending Review. A commitment to ensure that local authorities in England grant a lifetime tenancy to victims of domestic abuse where they previously held a lifetime tenancy.
- Improved data collection.

What we say:

In Wales, the legislation and Strategy reflects the reality that survivors may experience a myriad of different forms of abuse. Welsh Women's Aid has repeatedly raised the need for domestic and sexual violence services to be subject to secure and sustainable funding. There is a need for commissioners to understand the distinct responses needed for domestic abuse, sexual violence and other forms of violence against women and girls to ensure that there is holistic specialist support available in line with international obligations.

In Wales, there is already a commitment for secure and sustainable funding for specialist services, in the Wales National Strategy, but this has not been delivered. We want to ensure that proposals for service models and their sustainability are aligned with similar work being carried out in Wales. **We want to see equivalent funding being allocated to support specialist organisations in Wales, that is secure and enables their sustainability.** We will therefore seek clarity on this with UK and Welsh Government.

The introduction of lifetime tenancies is currently only being considered for England, and **we want to see similar tenancy protection for survivors of abuse in Wales.**

We want to see data being disaggregated for England and Wales due to the differences in provision. It is also important **that a process is established with Welsh Government to ensure appropriate data is collected by the public sector and third sector.**

Any comments or questions regarding this briefing can be directed to:

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