

Equally Safe – Reforming the criminal law to address domestic abuse and sexual offences



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Social Work Scotland

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

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3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

CONSULTATION QUESTIONS

1. Does the existing criminal law provide the police and prosecutors with sufficient powers to investigate and prosecute perpetrators of domestic abuse? Yes / No (if No, please specify how the existing law should be strengthened)

Yes No

Comments: The law does not currently address the sometimes cumulative psychological nature of domestic abuse and its impact on the victim. In order to ensure all domestic abuse, regardless of the method of abuse, is criminalised there is a need for increased powers.

2. One of the ways in which it has been proposed the law could be strengthened is through the creation of a specific criminal offence concerning domestic abuse. Do you agree that this would improve the way the justice system responds to domestic abuse?

Yes No

Comments

It would capture the behaviours that in isolation do not amount to significant harm but that over time erode and diminish people's self esteem and control over their lives. It would send a clear message to those who seek to control and diminish those closest to them that it is unacceptable behaviour and help prevent escalation into more violent abuse.

3. What behaviours which are not currently criminalised should be included within the scope of a specific offence?

Comments

Non-violent methods of asserting control over an individual which causes psychological harm should be criminalised. The offence should include controlling behaviours such as deliberate attempts to isolate victim from family and friends, restriction of movements or activities, making habitual derogatory remarks in order to undermine self esteem, threats which constitute "emotional blackmail" to obtain compliance and control of finances.

4. Should any specific offence of 'domestic abuse' be restricted to people who are partners or ex-partners, or should it cover other familial relationships?

Comments

It should cover familial relationships.

The view that the specific offence of domestic abuse is not applicable to abuse committed by family members because it has a different dynamic is not shared by those professionals experienced in working with the Adult Support and Protection Scotland Act 2007. Adults being psychologically, physically and financially harmed by their adult children and other relatives can have a high degree of dependency on the relative for their care and support. Sometimes the adult at risk raises the alarm, but then quickly tries to explain away their child's or relative's behaviour and minimises the harm caused. Frequently, we are aware that either the adult lived with domestic abuse earlier in their life or that the abusive dynamic of the relationship they have with their child or relative is long-term in nature, and the harm or exploitation they are experiencing is purposeful and systematic.

There is a power dynamic involved in familial violence. It is appreciated that that it is not an 'intimate' one as exists when situation involves a partner but there is a different 'intimacy bond' between parent and child/grandchild which impacts on the adult's ability to act in their own interests.

Finance, control of property are often the primary drive particularly when family members reside with the person. However this is often underpinned by coercive and controlling behaviour which manifests in direct/implied threats and/or with calm and calculating menacing behaviour. It is often impossible for police to charge the family member as there is no evidence of assault or theft. The woman or man hands over bank cards to their family member and least resistance is often preferable to any perceived consequences.

Civil banning orders under the Adult Support and Protection (Scotland) Act 2007 can only be used where councils can evidence to a Sheriff that the person's disability is impacting on their ability to safeguard themselves. In many cases this cannot be evidenced as the women are older/more mature but have no 'disability/infirmity'.

Banning orders can also only be used when either the adult at risk consents to an application or undue pressure can be evidenced. Banning orders cannot be enforced as breach of banning order is not a criminal offence. In cases where despite the banning order the adult concedes to contact by the family member very little can be done to protect the victim.

5. Are there any other comments you wish to make about the creation of a specific offence of domestic abuse?

Comments

Any new domestic abuse legislation should reference the interface with the Adult Support and Protection Scotland Act 2007. Partnerships involved in public protection (i.e. Child Protection, Adult Protection, offender management, violence against women, substance misuse) are increasingly working together. Legislation which albeit unintentionally perpetuates working in separate silos is not helpful. Many people who experience domestic violence are also adults at risk as defined by the above legislation and this proportion will grow should the offence be extended to family members.

The Mental Welfare Commission Report "Justice Denied" highlighted the barriers faced by adults with disabilities having equal access to justice. In our experience adults with cognitive impairment still do not get equal access to justice because evidence is not robust enough for a criminal prosecution under current criminal law, there are questions around the reliability of the witness and/or there is limited use of special measures under The Vulnerable Witnesses Scotland Act.

Much has been done to increase access to justice in respect to partner violence, e.g. the removal of the public element to violent or threatening behaviour and the extension of special measures/special courts, which could also benefit adults with disabilities experiencing familial violence.

6. Do you think that there should be a statutory aggravation that a criminal offence was committed against a background of domestic abuse being perpetrated by the accused? Yes/No if no, please give reasons for your answer

Yes No

Comments

7. If you think that there should be a statutory aggravation of this kind, do you think this should be in addition to, or instead of, a specific statutory offence of 'domestic abuse'? Give reasons

Comments

8. Do you agree that it should be a specific criminal offence to share private, intimate images of another person without their consent? If no, give reasons

Yes No

Comments

9. Do you agree with the proposal that the offence should be restricted to images?

Yes No

Comments

10. Should the types of images that should be covered by the offence should be based on the definition of a 'private act' contained at section 10 of the Sexual Offences (Scotland) Act 2009? Or do you think a definition which defines an image as 'private and intimate' if the person featured in the image and the person sharing the image understand it to be such would be more appropriate?

Comments

I would opt for the second of the options

11. Do you agree that the offence should be framed so that a person commits an offence where they share a private image of another person and they knew or ought to have known that its sharing/distribution would be likely to cause that person alarm or distress

Yes No

Comments

12. Do you agree that it should be an offence to threaten to share private, intimate images of another person without their consent?

X

Yes No

Comments

13. What level of maximum penalty do you think should apply for the new offence? Do you have any other comments regarding the penalties for the new offence?

Comments

14. Do you think that there should be statutory defences to the proposed offence of disclosing a private, intimate image?

Yes No

Comments

15. If so, what defences do you think should be provided and why do you think they are needed?

Comments

16. Do you agree that there should be statutory jury directions which require the trial judge to make the jury aware that there may be good reasons why a victim of a sexual offence may not report that offence until some time

after it has been committed and that this does not, in and of itself, indicate that the allegation is more likely to be false?

Yes

No

Comments

17. Do you consider that the terms of the jury direction used in New South Wales, Australia, requiring the judge to warn the jury that the absence of complaint or delay in complaining does not necessarily mean an allegation is false and that there may be good reasons why a victim of a sexual assault may hesitate in making, or refrain from making a complaint about the assault, is an appropriate model for a similar direction in Scots law?

Yes

No

Comments

18. Do you agree that there should be statutory jury directions which require the trial judge to make the jury aware that there may be good reasons why a victim of a sexual offence may not physically resist their attacker and that this does not indicate that it is false?

Yes

No

Comments

19. Do you have any comments on how such a statutory jury direction should be worded?

Comments

20. Do you agree that non-harassment orders should be available to the court where the court is satisfied, following an examination of facts, that a person did carry out the acts constituting the offence with which they were charged?

Yes No

Comments

21. If you do not support extending the circumstances in which the courts can make a non-harassment order in this way, do you have any views on other approaches that would protect victims from harassment or stalking by persons found unfit for trial?

Comments

22. Do you agree that the provisions concerning extra-territorial effect of Scots law on sexual offences against children should be amended to enable Scottish courts to prosecute offences committed in other jurisdictions within the United Kingdom?

Yes No

Comments

23. Do you consider that any of the reforms proposed in this paper will have a particular impact - positive or negative - on a particular equality group (e.g. gender, race, disability, sexual orientation)?

Yes No

Comments

24. Are there any other issues relating to equality which you wish to raise in relation to the reforms proposed in this paper?

Comments

25. Do you have any comments or information on the likely financial implications of the reforms proposed in this paper for the Scottish Government (police, Scottish court service, prison service, COPFS), local government or for other bodies, individuals and businesses?

Comments

26. Do you consider that the any of the proposals would have an impact on island communities, human rights, local government or sustainable development?

Comments

27. Do you have any other comments about the content of this paper?

Comments

