



Northern Ireland
Assembly

E-mailed to: committee.justice@niassembly.gov.uk

Ref: JA/PM/Justice/8941

Paul Givan MLA
Chair of Justice Committee

29 May 2020

Dear Paul,

Re: Domestic Abuse Bill

I enclose four items of correspondence:

1. My letter to the Scottish Justice Secretary, dated 29 April 2020;
2. The response from the Scottish Justice Secretary, dated 19 May 2020;
3. My letter of 20 May 2020 to our local Justice Minister;
4. The response from Mrs Long MLA, dated 28 May 2020.

In your committee's consideration of the above Bill I think it is important to note that any suggestion that there have been successful prosecutions in Scotland, where no actual harm was caused - as stated to the Assembly - is not borne out by actual data.

Yours sincerely

Jim Allister MLA

James H Allister QC MLA, 38 Henry Street, Harryville, Ballymena, Co Antrim BT42 3AH

Tel: 028 25 640250



Northern Ireland
Assembly

E-mailed to: scottish.ministers@gov.scot

Ref: JA/PM/Justice/8891

Cabinet Secretary for Justice
Mr Humza Yousaf MSP

29th April 2020

Dear Minister,

Re: Domestic Abuse legislation

As you may be aware the NI Assembly is presently considering a Domestic Abuse Bill.

In this regard I'd be obliged if you could advise me how many convictions there have been in Scotland despite the conditions specified in the provisions of Section 4(1) and 4(2) of The Domestic Abuse (Scotland) Act 2018 both being present. In other words, how many convictions where there was no harm to or relevant effect on the victim?

I look forward to hearing from you.

Yours sincerely

Jim Allister MLA

James H Allister QC MLA, 38 Henry Street, Harryville, Ballymena, Co Antrim BT42 3AH

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Rùnaire a' Chaibineit airson Ceartais
Cabinet Secretary for Justice
Humza Yousaf BPA/MSP



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Jim Allister MLA
[REDACTED]

Ar faidhle/Our ref: 202000033103
19 May 2020

Dear Jim

Thank you for your correspondence in relation to the operation of the Domestic Abuse (Scotland) Act 2018 ("the Act"), which came into effect in April 2019.

The Act created a "course of conduct" offence for the first time in Scotland – enabling physical, psychological and controlling behaviour to be prosecuted at once. Sections 1 and 2 of the Act makes it a criminal offence for a person to engage in a course of behaviour which is abusive of their partner or ex-partner.

As you highlight in your letter, section 4(1) of the Act provides, for the avoidance of doubt, that the prosecutor does not need to establish that the accused's behaviour actually caused the victim to suffer physical or psychological harm in order for an offence to be committed. Similarly, section 4(2) provides that it is not necessary to prove that a 'relevant effect' (listed under section 2(3) of the Act)) has actually been experienced by the victim in order for an offence to be committed. Relevant effects include, for example, making the victim dependent on, or subordinate to, the accused, or isolating the victim from family or friends.

This is because a 'reasonable person' test applies both in section 1(2)(a) (in relation to physical or psychological harm) and 2(2)(b)(2) (in relation to 'relevant effects'). It is therefore sufficient that a reasonable person would consider it likely that the behaviour would result in the victim suffering physical or psychological harm, or experiencing a 'relevant effect'. So, for example, section 2(2)(b) would cover behaviour which a reasonable person would consider likely to frighten, humiliate, punish or degrade the victim, irrespective of whether the victim suffers actual fear, humiliation, punishment or degradation.

You have asked for figures on how many convictions there have been in Scotland where there was no harm to or 'relevant effect' on the victim.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

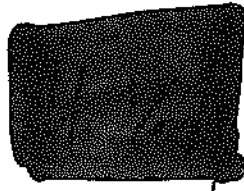
Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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I can advise while data is collected on the number of reports and convictions for the new domestic abuse offence, data is not collected as to whether the specific facts and circumstances of each case involved actual harm or a relevant effect upon the victim. I'm afraid I am therefore unable to provide you with the information you have requested.

Please do not hesitate to get in touch if I can assist you any further during your consideration of introducing a similar offence in Northern Ireland.



HUMZA YOUSAF

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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Northern Ireland
Assembly

E-mailed to: [REDACTED]

Ref: JA/PM/Justice/8925

Naomi Long MLA
Justice Minister

20 May 2020

Dear Minister

Re: Domestic Abuse Bill

You may recall that during your winding up speech in the above debate we had an exchange about the viability of obtaining convictions where the 'victim' suffered no harm and none of the components of abuse.

In response you said, inter alia, "It has been done successfully in Scotland".

That response sparked my interest and accordingly I wrote to your counterpart in Scotland enquiring as to the number of such successful prosecutions. I enclose my correspondence with the Scottish Justice Secretary.

You will note the advice that "data is not collected as to whether the specific facts and circumstances of each case involved actual harm or a relevant effect upon the victim". In consequence the Scottish Government cannot say if there have been successful prosecutions in circumstances where there was no actual harm or relevant effect upon the victim.

I am therefore left intrigued as to the basis for your declaration to the Assembly that "It has been done successfully in Scotland".

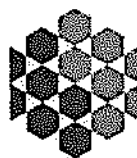
I look forward to hearing from you further on this matter.

Yours sincerely

James H. Allister QC MLA, 38 Henry Street, Harryville, Ballymena, Co Antrim BT42 3AH

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FROM THE OFFICE OF THE JUSTICE MINISTER



Department of

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Our ref: CORR-1386-2020

Jim Allister MLA

Via email: [REDACTED]

28 May 2020

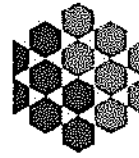
Dear Jim

Thank you for your letter of 20 May 2020 regarding the exchange we had during Second Stage of the Domestic Abuse and Family Proceedings Bill about the viability of obtaining convictions where no harm was caused to the victim.

I note your exchange with Humza Yousaf BPA/MSP, Cabinet Secretary for Justice in the Scottish Government, in which he advises that data is not collected as to whether the specific facts and circumstances of each case involved actual harm or a relevant effect upon the victim, meaning that he cannot say if there had been successful prosecutions in circumstances where there was no actual harm or relevant effect upon the victim.

You have asked me to clarify the basis for my statement that, "it has been done successfully in Scotland." I can confirm that my intention was to highlight that the offence is operating well in Scotland and that this is based on the premise that harm does not have to be caused. You will be aware that the Scottish offence only came into force on 1 April 2019, so published statistics are not yet available, however, I understand that it has a higher prosecution and conviction rate than England and Wales

FROM THE OFFICE OF THE JUSTICE MINISTER



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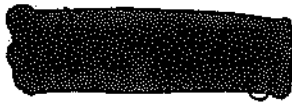
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had at the outset.

While figures are not collected as to whether the case involved actual harm or a relevant effect upon the victim, I am not aware of any issues being raised in Scotland with regards to harm not having to be actually caused.

As I have previously explained, I consider that harm should not have to be caused for the offence to apply as some victims may be resilient to the abuse or it may become normalised particularly if it has been going on for many years.



NAOMI LONG MLA
Minister of Justice