

Sammy Wilson,
House of Commons,
London.SW1A 0AA

24.04.2020

Dear Mr Wilson,

Domestic Abuse Bill – opportunity to strengthen legal protection for those who offend as a result of abuse and coercion

I am writing on behalf of my local Soroptimists Club to request that you support amendments to the Domestic Abuse bill proposed by the Prison Reform Trust and endorsed by an impressive range of individuals and organisations:

<http://www.prisonreformtrust.org.uk/WhatWeDo/Projectsresearch/Women/DomesticAbuse>.

Law reform is urgently needed to prevent women being imprisoned for offences linked to their own prior victimisation, which we know is an objective of the government's Female Offender Strategy. The Domestic Abuse bill provides the ideal opportunity to achieve this but I understand that to date the government is refusing to amend the bill to strengthen protection for those whose offending is driven by abuse.

As explained in the attached short briefing the proposed amendments to the bill would:

- a) create a statutory defence modelled on that which applies to victims of trafficking and
- b) modify the law of self defence akin to the 'householder defence'.

The links between victimisation and offending are now better recognised but gaps in the criminal law remain and mean women can be unfairly and disproportionately punished – including for acting in self defence. This is a unique opportunity for the government to take action to strengthen the legal protection for women whose offending is driven by abusive and coercive relationships.

We urge you to support these amendments and would also ask that you write on our behalf to the Justice Minister Alex Chalk MP seeking a detailed explanation for the Government's refusal to adopt them when there is compelling evidence that well over half of women in prison have experienced serious domestic abuse.

Many Soroptimists are involved in supporting local women's refuges and other women's services and we are concerned about the continuing shortfall in funding for these vital community services. This has never been more important than during the current pandemic when all the evidence is that whilst most types of crime are falling, violence against women in the home is rising. We support the government's campaign *You Are Not Alone* but this must be accompanied by funding for community-based women's services.

Yours Faithfully,

Rita Allen

DOMESTIC ABUSE BILL - PROPOSED CHANGES IN THE LAW FOR DOMESTIC ABUSE SURVIVORS DRIVEN TO OFFEND

I have been astounded by the number of female offenders who are victims of domestic abuse and how that is a significant trigger to their offending.

Police inspector

We have been working with legal and domestic abuse experts to call for improved legal protection for survivors of domestic abuse to be added to the Domestic Abuse Bill for those whose **offending is driven by their experience of domestic abuse**. This would address a gap in legal protection for survivors, strengthen recognition of the links between victimisation and offending and deter inappropriate prosecutions. In its **report published in June**, the Joint Committee on the Draft Domestic Abuse Bill recommended that this proposal be considered by the government.

The Bill was reintroduced on 3 March 2020 and we will be seeking parliamentary support for our proposed amendments to give legal protection to those driven by domestic abuse into offending.

Please get in touch if you would like to support the proposals and if you are able to contribute case studies illustrating why improved legal protection is needed.

Download our short briefing [here](#).

Download our detailed submission to the Public Bill Committee [here](#).

Our proposals are supported by:

Agenda: the alliance for women and girls at risk
Paramjit Ahluwalia, Lamb Building
Appeal
AVA (Against Violence and Abuse)
Dame Vera Baird QC, Victims' Commissioner for England and Wales
East Surrey Domestic Abuse Services
Professor Marianne Hester OBE, University of Bristol
Nicole Jacobs, designate Domestic Abuse Commissioner for England and Wales
Justice for Women
Lambeth Council
Legal Aid Practitioners' Group
Refuge
Dr Jo Roberts, University of Bristol
UKPAC, Soroptimist International Great Britain and Ireland
Surviving Economic Abuse
Clare Wade QC, Garden Court Chambers
Welsh Women's Aid
Harriet Wistrich, Centre for Women's Justice
Women's Aid Federation for England
Women in Prison
Working Chance

Domestic Abuse Bill – legal protection for survivors who offend due to domestic abuse

I have been astounded by the number of female offenders who are victims of domestic abuse and how that is a significant trigger to their offending.

[Police inspector¹](#)

About the Prison Reform Trust

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. Our [Transforming Lives programme](#) to reduce the unnecessary imprisonment of women is supported by the National Lottery Community Fund.

Executive summary

PRT is calling for a new statutory defence and an amendment to the law on self-defence to be added to the Domestic Abuse Bill for those whose [offending is driven by their experience of domestic abuse](#).² This would address gaps in legal protection for survivors, strengthen recognition of the links between victimisation and offending and deter inappropriate prosecutions. In its [report published in June](#), the Joint Committee on the Draft Domestic Abuse Bill recommended that our proposed statutory defence be considered by the government.³ Our proposals are supported by the Victims' Commissioner, the designate Domestic Abuse Commissioner and other legal experts and domestic abuse organisations.

Why new legal protection is needed

The recent case of [Sally Challen](#) highlighted the devastating impact of coercive relationships and the lack of legal protection for survivors of domestic abuse who are driven to offend.⁴ [Almost 60% of women](#) supervised in the community or in custody, who have an assessment, have experienced domestic abuse;⁵ the [true figure is likely to be much higher](#).⁶ [Most women in prison are there for non-violent offences](#).⁷ [Women in prison are more than twice as likely as men](#) to say they have committed offences to support someone else's drug use as well as their own.⁸ [Research by the Disabilities Trust](#) with 173 women at HMP Drake Hall found 64% had a history indicative of brain injury and for most this was caused by domestic violence.⁹ [Women with learning disabilities](#) are particularly vulnerable.¹⁰

Women can become trapped in a vicious cycle of victimisation and criminal activity. [Their situation is often worsened](#) by poverty, substance dependency or poor mental health.¹¹ Imprisonment compounds their problems and has a severely detrimental impact on any [dependent children](#).¹²

He'd make me do things just so that I could get drugs and then it was me running around pregnant trying to get money.

[Domestic abuse survivor¹³](#)

In 2017 the then Home Office Minister for Crime, Safeguarding and Vulnerability [said](#) that there needed to be 'a root and branch review of how women are treated in the criminal justice system when they themselves are victims of abuse'.¹⁴ Yet the criminal law still fails to protect those whose experience of abuse drives them to offend.

Survivors' statutory defence

We propose a new statutory defence for survivors whose offending is driven by their experience of domestic abuse, adapted from the defence in [Section 45](#) of the Modern Slavery Act 2015 for victims of human trafficking or modern slavery who are coerced into offending.¹⁵ This requires proactive, early case management and allows all agencies to become more adept at recognising and responding to circumstances which indicate there is no public interest in prosecuting a case, or where the statutory defence is likely to apply. The proposed new defence would be available to both men and women and would need to be supported by a CPS policy and judicial directions.

Better protection for survivors acting in self-defence

We propose an amendment to the law on self-defence modelled on the provisions for householders in Section 76 of the Criminal Justice and Immigration Act 2008. This would allow survivors acting in self-defence against their abuser the same protection that is currently available to householders who act in self-defence against an intruder in the home.

How domestic abuse drives offending by survivors

The [government recognises](#) that women's offending is often driven by their experience of domestic abuse.¹⁶ [Offending can result from the victim's attempts to survive and the criminal justice process itself can be used against survivors by abusive partners.](#)¹⁷ As [Women's Aid](#) puts it:¹⁸

Coercive control creates invisible chains and a sense of fear that pervades all elements of a victim's life... Experts like Evan Stark liken coercive control to being taken hostage. As he says: "the victim becomes captive in an unreal world created by the abuser, entrapped in a world of confusion, contradiction and fear".

[PRT has heard from women](#) who have been convicted of a wide range of offences as a direct result of domestic abuse, such as:¹⁹

- Handling stolen goods under threat of violence by a partner
- Possession of a controlled substance belonging to an abusive partner
- Carrying a knife on behalf of an abusive partner
- Theft offences to pay for drugs and alcohol used by them and an abusive partner
- Assault against an abusive partner or ex-partner
- Failure to ensure a child's attendance at school for fear of an abusive ex-partner
- Bringing drugs into prison for an abusive partner.

Gaps in the current law

The introduction of the offence of controlling or coercive behaviour in [Section 76 of the Serious Crime Act 2015](#) recognised the consequences of domestic abuse as a pattern of behaviour over time. Yet the criminal law still does not provide an effective defence for those who commit offences as a result of abuse. [The common law defence of duress](#) is ill suited for cases where a defendant is experiencing domestic abuse because:²⁰

- It does not reflect the complexities of domestic abuse and does not recognise psychological, sexual or financial abuse.
- For the defence of duress to succeed, the threat of physical harm must be imminent. This fails to recognise the 'typically entrenched, unpredictable and random' nature of domestic abuse. (Loveless, J. 2010)²¹
- The defendant must establish 'relevant characteristics' including 'battered woman syndrome' and 'learned helplessness'. These are outdated concepts which pathologise women rather than offering an effective defence for the actual circumstances. They require the production of medical evidence which is not practicable in many cases.

Criminal defence lawyers advise that the common law defence of self-defence is very difficult to establish in cases of reactive violence by a survivor of domestic abuse against their abusive partner or former partner, where a jury may well conclude that the response was disproportionate without taking account of the long history of abuse. Our proposed amendment to section 76 of the Criminal Justice and Immigration Act 2008 would make it easier for those who acted in response to domestic abuse to establish they were acting in self-defence, providing them with equivalent protection to those acting in response to an intruder in their home.

For more information and a full list of the legal and domestic abuse experts supporting these proposals, go to the website below or contact us:

020 7251 5070 | [@PRTuk womensprogramme@prisonreformtrust.org.uk](mailto:@PRTuk_womensprogramme@prisonreformtrust.org.uk) | www.prisonreformtrust.org.uk/women/domesticabuse

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- ¹ [Prison Reform Trust \(2017\) Fair cop? Improving outcomes for women at the point of arrest](#), London: PRT
- ² See: [Prison Reform Trust \(2019\) Prison Reform Trust Briefing on the Draft Domestic Abuse Bill: Pre-legislative scrutiny – April 2019](#), London: PRT; see also: [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending](#), London: PRT and the accompanying [briefing by the Criminal Bar Association](#).
- ³ [Joint Committee on the Draft Domestic Abuse Bill \(2019\) Draft Domestic Abuse Bill: First Report of Session 2017-2019](#), London: TSO. See also: [MacGuigan, G. and Walker R. \(2019\) Survived...but at what cost? A study of women in the criminal justice system who experienced domestic abuse, and the potential for change](#), London: Griffins Society
- ⁴ ['My mother, Sally Challen, was branded a cold-blooded killer. At last she has justice'](#), The Guardian, Saturday 8 June 2019
- ⁵ [Ministry of Justice \(2018\) Female Offender Strategy](#), London: MoJ
- ⁶ [Gelsthorpe, L., Sharpe, G., and Roberts, J. \(2007\) Provision for Women offenders in the community](#) London: Fawcett Society
- ⁷ [Table 2.9i, Ministry of Justice \(2019\) Offender management statistics quarterly: October to December 2018](#), London: Ministry of Justice
- ⁸ [Light, M., Grant, E. and Hopkins, K. \(2013\) Gender differences in substance misuse and mental health amongst prisoners](#), London: MOJ
- ⁹ [The Disabilities Trust \(2019\) Making the link: Female offending and brain injury](#), London: The Disabilities Trust
- ¹⁰ [PRT \(2019\) Out of the Shadows: Women with learning disabilities in contact with or on the edges of the criminal justice system](#), London: PRT
- ¹¹ [PRT \(2019\) Why focus on reducing women's imprisonment? England and Wales fact sheet – April 2019](#), London: PRT
- ¹² See: [Beresford, S. \(2018\) What About Me? The impact on children when mothers are involved in the criminal justice system](#), London: PRT; and [Ministry of Justice \(2019\) The importance of strengthening female offenders' family and other relationships to prevent reoffending and reduce intergenerational crime](#), London: MoJ
- ¹³ [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending](#), London: PRT
- ¹⁴ [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending](#), London: PRT
- ¹⁵ The proposed amendment is annexed to PRT's submission to the Joint Committee on the Draft Domestic Abuse Bill: [PRT \(2019\) Prison Reform Trust Briefing on the Draft Domestic Abuse Bill: Pre-legislative scrutiny](#), April 2019, London: PRT
- ¹⁶ See: [HM Government \(2019\) Transforming the response to domestic abuse: Consultation response and draft Bill](#), London: OGL and [Ministry of Justice \(2018\) Female Offender Strategy](#), London: Ministry of Justice
- ¹⁷ [Roberts, J. \(2015\) 'It was do or die' – How a woman's experience of domestic abuse can influence her involvement in crime: A qualitative investigation of the experiences of community-based female offenders. Unpublished doctoral research findings summary report](#), University of Leicester
- ¹⁸ Women's Aid website, viewed 03/04/19: <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/coercive-control/>
- ¹⁹ See: [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending](#), London: PRT and [Criminal Bar Association of England and Wales \(2017\) Defences available for women defendants who are victims/survivors of domestic abuse](#), London: CBA
- ²⁰ See: [Criminal Bar Association of England and Wales \(2017\) Defences available for women defendants who are victims/survivors of domestic abuse](#), London: CBA and [Loveless, J. \(2010\) 'Domestic Violence, Coercion and Duress'](#), Criminal Law Review, pages 93-108
- ²¹ [Loveless, J. \(2010\) 'Domestic Violence, Coercion and Duress'](#), Criminal Law Review, pages 93-108