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Dear Christine,

Domestic Abuse and Family Proceedings Bill - Committee Deliberations on other issues raised in the evidence received

Thank you for your letter of 21 September 2020, seeking further information/clarification on other issues raised in the evidence received and which are currently not in the Domestic Abuse and Family Proceedings Bill. Please see below a response to each point.

Secure tenancies – An update from the Department in relation to the on-going discussions referred to in its written response on secure tenancies and clarification of its position on the view of the Committee for Communities that the inclusion of commentary on this issue, in the Explanatory and Financial Memorandum, which reflects the importance of safe and secure homes in the prevention and protection of women and children from domestic abuse is essential.

Colleagues in the Department for Communities have advised that the Communities Minister believes that the operation of introductory tenancies within the Housing Selection Scheme should be more carefully considered. The Communities Minister has asked her



officials to initiate a review of the introductory tenancy scheme. If that review considers that change is needed (in the context of secure tenancies) we understand that a legislative vehicle should be available to take this forward in the current mandate.

Members will wish to note that reference to this issue cannot be included in the Explanatory and Financial Memorandum associated with the Domestic Abuse and Family Proceedings Bill, given that this is restricted to matters that are contained within the Bill itself and dealt with in each of the clauses.

Coercive abortions - Confirmation from the Department regarding whether its use of the term 'may' means the existing criminal law in the Offences Against the Person Act 1861 does provide protection to women against forced or coercive abortion or whether it does not provide such protection.

The Department considers that section 24 of the Offences Against the Person Act 1861 (administering poison or noxious thing so as to endanger life or inflict grievous bodily harm; or with intent to injure, grieve or annoy) is sufficiently broad to capture within its remit a situation where a pregnant woman was coerced to take abortion pills without her consent, or where they were administered without her knowledge.

Emergency barring orders - Further information on the Scottish model of emergency barring orders and any consideration the Department has given to these.

A consultation was instigated at the end of 2018 in Scotland on the issue of emergency barring orders. The issues touched on in that consultation paper are very similar to those around the new domestic abuse notices and orders in England and Wales. This includes consideration of barring a person who poses a risk of domestic abuse from the home, or returning to the home; prohibiting contact; and prohibiting the person from other locations (such as the place of work, or homes of relatives, of the person at risk). At the end of last year the Scottish Government indicated that it will introduce legislation to provide for



a new scheme of protective barring orders for people at risk of domestic abuse. The Department is considering the position in both jurisdictions in looking at the way forward.

Stalking legislation - Confirmation that there has been no slippage with regard to the timescale for the introduction of Stalking legislation as set out in the Department's correspondence dated 26 August including whether drafting of the Bill was completed at the end of August, whether the Bill has been submitted to the Executive for approval for introduction and whether an offence of upskirting could be included in this Bill rather than the proposed Justice (Miscellaneous Provisions) Bill.

Members will wish to note that urgent work on Coronavirus legislation, and remote working, have impacted on the original timescale for the introduction of stalking legislation. Drafting of the Bill is now at an advanced stage and is expected to be finalised early next month. Subject to the timely completion of pre-introduction clearances, the Minister expects to seek Executive Approval for Introduction towards the end of October and to introduce the Bill to the Assembly in November.

The scope of the Protection from Stalking Bill means that an offence of up-skirting could not be included in this Bill.

Violence Against Women and Girls Strategy - The rationale why Northern Ireland does not have a Violence Against Women and Girls Strategy given other parts of the UK including Scotland have such a strategy.

The seven year Stopping Domestic and Sexual Violence and Abuse Strategy clearly recognises that anyone can be a victim of domestic abuse regardless of their gender, gender identity, age or sexual orientation, amongst other factors. The cross cutting strategy was developed in collaboration with a number of Executive Departments, and engaged full consultation with statutory and voluntary sector partners representing the interests of all aspects of society. The Executive collectively agreed to the publication



of that strategy.

During 2018/19 69% of all domestic abuse crime victims were female. However, it must also be remembered that just under a third of victims were male, while around 40% of domestic homicides involve males. It is essential that we seek to protect all victims, regardless of gender or gender identity and ensure full inclusivity of all sections of the community.

There would be concerns that the adoption of a gendered strategy could send out a message that tackling abuse against men is less important.

Equality screening - A response to the assertion by the Children's Law Centre that the equality screening undertaken as part of the consultation on the policy proposals in 2015/16 no longer stands given that clauses 11 and 17 now exclude many under 18s and the Department is required to carry out an equality screening exercise, a full equality impact assessment, consultation and propose mitigation otherwise it will have breached its Section 75 duty.

Members will wish to note that the provisions in the Bill were rescreened prior to the Bill's introduction to the Northern Ireland Assembly in March 2020. This rescreening exercise noted that the Department did not intend that the new offence would include parental abuse or neglect as this falls under child protection provisions, but that the new offence and other provisions would apply, and be accessible equally, to all groups/individuals (outside of this scenario). This would include, for example, a person under 18 being abused by a sibling, as well as abuse within teenage relationships. It was therefore considered that there was no evidence to indicate that under 18s would be adversely affected by the provisions.

The subsequent evidence received by the Committee highlighted concerns that non-physical behaviour of a child by someone with parental responsibility for them was not



captured by child protection provisions. In order to respond to this, the Department is proposing a draft amendment (provided to the Committee separately) which would amend the child cruelty offence in Section 20 of the Children and Young Persons Act 1968, making clear that non-physical ill treatment of a child, by someone with parental responsibility for them, is an offence. It would also provide that references to an offence around unnecessary suffering or injury to a child explicitly state that this relates to the suffering or injury being physical or otherwise, again ensuring that non-physical behaviour is captured. This should enable matters such as isolation, humiliation, buying etc. to be captured.

More generally we will of course rescreen the provisions in the Bill to take account of any amendments accepted.

Register - Further information on the potential benefits of a general Register covering all the categories of offender referred to in the Department's written response including domestic abuse offenders.

There is no known precedent for holding a register of offenders for particular offences. There is for example, no sex offender register as such. Rather sex offenders are subject to statutory notification requirements, set out in law, which requires them to notify the police of certain personal information. The statutory framework does not provide for the information to be held on a central database so there is no central list of sex offenders that could be replicated for other purposes. In addition to sexual offending, notification requirements have been established in statute for violent offending behaviours as well as human trafficking. Importantly notification requirements are already in place for people who are subject to a violent offender prevention order, and this is a specific provision for domestic violence offences, helping to capture habitual perpetrators.

There are currently no plans to introduce a register for domestic abuse offenders (there



are no such registers in the rest of the UK either). Importantly notification requirements that are in place for a range of offences are intended to protect people from an individual who poses a public risk to others, regardless of whether they are in a relationship with them, for wider public safety. It is important that they are considered in this context. While a domestic abuse offender can pose a significant risk in the context of a relationship, it is often not to the wider public.

Under existing arrangements, details of those convicted of violent offences (including domestically motivated) will be included on the Police National Computer (PNC) which is a UK-wide database. It is likely that information on the new domestic abuse offence will be included on PNC also. Offender details may also be captured on the police Dangerous Persons Database, which enables police to manage risk and depending on the level of risk posed, perpetrators may be eligible for management under the Public Protection Arrangements Northern Ireland.

Further, specific provision was made in the Violent Offences Prevention Order (VOPO) to help ensure capture of habitual offenders, who as part of their court order, would be subject to notification requirements for the duration of the order, which could be between two and five years.

The domestic violence and abuse disclosure scheme also enables an individual to ask the police whether their partner, or the partner of someone that they are concerned about, poses a risk. In addition, under this, the police can proactively advise an individual that their partner poses a risk, as has occurred in a number of cases. Under that disclosure scheme around 15% of applications result in a disclosure. There is therefore considerably more interest in having such a disclosure than there are people who currently have access to it.

In light of the above the Department considers that the current arrangements in place, managed by police and in partnership with other risk management partners, manage



the risk posed by domestic violence perpetrators, without a general offenders register.

Miscellaneous Provisions Bill - *A list of the issues/areas that the Department intends to include in the Justice (Miscellaneous Provisions) Bill.*

Drafting of the Justice (Miscellaneous Provisions) Bill is underway – including provisions to create an offence of up-skirting – and, subject to the necessary Executive approvals, the Bill is expected to include the content set out in **Annex A** at Introduction.

Some other issues are currently under consideration – including the ‘rough sex’ defence - and any decisions as to their possible inclusion in the Bill, either at Introduction or by subsequent amendment at Consideration Stage – will be taken in the Autumn. It is intended that provisions relating to domestic abuse protection notices and orders would be included at amendment stage.

I hope this provides sufficient clarification and further information where appropriate and I would be grateful if you would bring this to Members’ attention.

Yours sincerely,

TIM LOGAN

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ANNEX A

PROPOSED CONTENT FOR THE JUSTICE (MISCELLANEOUS PROVISIONS) BILL AT INTRODUCTION

- Provisions arising from the Gillen review, which include;
 - exclusion of public from all serious sexual offence hearings;
 - anonymity of complainants to continue after death;
 - an increase in the penalty for breach of anonymity; and
 - Section 5 reporting requirement to exclude information relating to all serious sexual offences.
- Provisions arising from the outcome of a review of the law on child sexual exploitation and sexual offences against children to;
 - replace legislative references to ‘child prostitution’ and ‘child pornography’;
 - include live streamed images in the definition of exploitation for sexual purposes;
 - create a new offence of adults masquerading as children online; and
 - create a new offence of up-skirting.
- Legislative fixes to close gaps in provisions relating to the indecent assault offences under Article 45 of the Magistrates Courts Order 1981 and section 62 of the Offences Against the Person Act 1861;
- Adjustments to include the offence of abduction of children in care to Sexual Offences Prevention Order (SOPO) arrangements;
- Adjustments to dis-apply time limits for complaints under Violent Offences Prevention Order (VOPO) arrangements;



- Amendments to close a gap in intermediary appeal arrangements that would give legal cover for Registered Intermediaries to be provided for where there is an appeal from Magistrates or Crown Court (to County Court or Court of Appeal);
- Changes to legislation governing bail and remand for children to strengthen the existing automatic presumption of bail for children and introduce specific conditions which must be met before a child can be remanded in custody, and for how long, in order to comply with UN Convention on the Rights of the Child responsibilities;
- Changes to court security powers under the Justice Act (Northern Ireland) 2004 to extend the powers of Court Security Officers to cover all buildings in which Tribunals sit;
- Provisions to replace a complex taxation process with an administratively simpler payment of a standard fee as part of the remuneration payable to a legal representative for the provision of civil legal services;
- A technical amendment to Schedule 11 to the Land Registration Act (NI) 1970 to add charges created by the Access to Justice (NI) Order 2003 and the Civil Legal Services (Statutory Charges) Regulations (NI) 2015 to the Schedule under which statutory charges can be registered;
- Provisions to amend Schedule 8A of Part V of the Police Act to comply with a 2019 Supreme Court judgment on disclosure of non-court disposals for under 18s.
- Provisions to transfer the powers and functions contained in section 43 of the Justice and Security (Northern Ireland) Act 2007 from SOS to DOJ to restart the accreditation process for organisations wishing to deliver Community Based Restorative Justice (CBRJ) (SOS approval for approach confirmed); and
- Procedural adjustments to PACE detention review provisions (live links).