



Response to the Scottish Government call for evidence on the Domestic Abuse (Protection) (Scotland) Bill

9th December 2020

Overview

The Scottish Women's Rights Centre (SWRC) is a unique collaborative project that provides free legal information, advice and representation to women affected by violence and abuse. The SWRC exists because of abuses of power and because a gap persists between women's experience of violence and abuse and their access to justice. The SWRC strives to fill these gaps by working with specialist solicitors and experienced advocacy workers. Informed by our direct work with victims/survivors of violence and abuse, we seek to influence national policy, research and training to improve processes and systems, and ultimately to improve the outcomes for women who have experienced gender-based violence (GBV).

We recognise that people of any gender can be affected by abuse and violence (including sexual violence). However, statistics show that these crimes are more often committed by men against women. Also, as the SWRC specifically supports women aged 16 and over, when we talk about victims/survivors in this response we will generally refer to women. Despite this, we are aware – and do acknowledge – any person can be subjected to these crimes.

Through our outreach services we are afforded a unique insight into the legal landscape and the issues faced by victim/survivors of gender-based violence. We offer daily helplines and weekly legal surgeries where we provide free and confidential legal information and advice to women who have experienced gender-based violence. It is through our direct contact with women across Scotland that we have seen the requirement for greater protections from abuse. We are aware that the need for such protection is always a prevalent issue for women although we have seen a sharp increase in the need for protection as a result of the Covid-19 pandemic. The SWRC therefore welcomes the discussion and proposed movement towards increased protection for women experiencing abuse.

1. Do you agree that a senior police officer should be able to impose a short-term Domestic Abuse Protection Notice (DAPN), without first seeking court approval, as proposed in sections 4-7 of the Bill? If so, what advantages would a DAPN have over the existing police and court powers?

Yes

We agree that the police are best placed to issue DAPN's as they have the necessary skills, training, expertise and experience to assess risk and make such decisions, and the ability to respond immediately (which is necessary for DAPN's to be effective as emergency measures). The police routinely make decisions with significant implications on the liberty of individuals and for the protection of members of the public.

We are aware through our outreach service that the police often recommend that women seek protective orders through the civil court system, both when there isn't sufficient evidence to press charges and where bail conditions do not offer sufficient protection in the circumstances. We submit that this demonstrates that there is a gap in the protection available to women and therefore DAPN's being available for enforcement by the police are necessary.

With regard to the police enforcing DAPN's, we would note the following:

- The police would need to be adequately resourced to be able to respond effectively and immediately and to enforce the notices once issued.
- Adequate training would be required (particularly regarding the complexities of domestic abuse in relation to factors that would be relevant to the assessment of risk, dual reporting/reporting by perpetrators as a means of abuse and how to identify the person at risk in such circumstances). We hope there will be improvements in awareness and understanding through the training which has been undertaken in relation to the Domestic Abuse (Scotland) Act 2018, but we submit that further specialist training would be necessary.
- Appropriate safeguards would require to be implemented to ensure that the powers are being used appropriately and proportionately. Training and understanding around risk assessment in domestic abuse situations would be essential to ensure that safety of victim/survivors is ensured.

At the moment victim/survivors of domestic abuse can seek protection through the criminal justice system firstly with bail conditions and latterly with a criminal Non-Harassment Order and through the civil justice system by seeking protective orders such as interdict non-molestation and civil Non-Harassment Orders.

DAPN's would bridge the gap in protection for women, which currently exists, between women disclosing abuse and obtaining adequate protection. By giving the police the power to enforce such notices it will increase safety and reduce any additional trauma for victim/survivors.

The current protective measures which are capable of being enforced by the police are bail conditions. We are aware from our outreach that insufficient evidence is an issue in many domestic abuse cases due to the nature of the offence. In these cases bail conditions will not be capable of being imposed (or if imposed by the police may drop if the Procurator Fiscal considers there to be insufficient evidence) and therefore the victim/survivor must seek their own protection through the civil courts. We often find that women are being recommended to seek such protection through the civil courts by the police. To seek protective orders through the civil court it generally will take anywhere from 3 weeks or longer to get such protection in place; from instructing a solicitor to the case first calling in court for a Pre-Warrant Hearing. If bail conditions are not put in place, this means that the victim/survivor is left without protection and therefore at significant risk of harm during this time.

These failings create a gap in protection for women, often at the end of a relationship, which can be the most dangerous point in an abusive relationship, where there are not protective measures in place. It has been found that murders of women and children where there is a history of domestic abuse often take place at the point of separation. Criminologist and former police officer, Dr Jane Monckton Smith studied 372 homicides, including Scottish cases, and identified an eight-stage timeline of offenders' behaviour patterns in the run-up to killing their partner or ex-partner.¹ It was found that at the point of the victim/survivor fleeing the domestic abuse, the abuser often engaged with so-called "last chance" thinking, where an abuser may feel there is nothing left for them and the risk of homicide escalates². Thus, the proposed DAPN would allow the police to put in place the necessary protection for women at this early and crucial stage.

2. Do you agree that the civil courts should be given powers to make a Domestic Abuse Protection Order (DAPO), as proposed in section 8-16 of the Bill? If so, what advantages would a DAPO have over the existing police and court powers?

Unsure

We are of the opinion that the proposed DAPO may conflict with, rather than compliment, current civil protective orders which are available to victim/survivors of abuse. We consider that these powers require to be reconsidered to allow them to sit well with the existing protective powers available. We believe that this issue warrants further examination and potentially consultation of relevant stakeholders. We have attempted to provide some possible solutions below, although would note that these suggestions require further refinement and consideration over time.

Currently, the civil courts can put in place interdicts, Non-Harassment Orders and Exclusion Orders against an abuser for the protection of the victim/survivor. It is accepted that the victim/survivor at this stage would require to apply for such an

¹ Monckton Smith, J, Intimate Partner Femicide: Using Foucauldian Analysis to Track an Eight Stage Progression to Homicide, (2019, Violence Against Women (VAG) Journal)

² Ibid.

order on her own and potentially at her own cost. The idea of having an order which the police, or another relevant body, can apply for on behalf of the victim/survivor, and at no cost to the victim/survivor, is one which the SWRC would strongly support.

However, the proposed time period for the DAPO to last is concerning. The DAPO is being proposed to last for a maximum of 3 months. If there is no criminal prosecution of the perpetrator, and therefore no bail conditions or criminal Non-Harassment Order, we would submit that the victim/survivor requires more comprehensive and long-standing protection than that of 3 months. It is often mistakenly thought that abuse will stop once the relationship ends, however it has been found that post separation, abuse often persists or intensifies for women and children³. Particularly in child contact negotiations which can be prolonged, often lasting for well over three months, and are used by perpetrators to continue the abuse.⁴

We note that within the explanatory notes accompanying the Bill it is stated that “*the intention is that during the time in which the police notices and court-imposed protection orders are in place, the person at risk would be protected from harm and would have time and space to consider their long-term housing options and take steps to secure their safety. Depending on the circumstances, this could involve moving home, pursuit of an exclusion order, non-harassment order or interdict or steps to remove a person from shared tenancy.*”⁵ We would submit that this intended purpose of the DAPO is concerning in two ways:

Firstly, a victim/survivor should not be expected to have to move home to secure their protection. The victim/survivor may have very little financial resources and therefore simply could not afford to secure alternative accommodation or facilitate the move which is associated. Furthermore, they may wish to remain in the family home which may have links to family, friends and children’s schooling. For many moving home would not be an option nor would the further trauma and disruption attached. Thus, we consider that the intention behind the DAPO to provide a respite period for victim/survivors to take such steps is flawed in this way.

Secondly, it is proposed that a short-term order would allow the victim/survivor time to seek further protective orders through the civil courts, such as interdicts, Non-Harassment Orders or Exclusion Orders. The DAPO is proposed to last for 3 months. The nature of civil court protection orders, and the legal tests which are associated, mean that in most circumstances there must be recent and ongoing harassment or abuse. If the victim/survivor takes the 3-month reprieve offered by the DAPO, prior to seeking protective orders, and there is no further abusive behaviour during this time, they may encounter difficulties with meeting the legal test required

³ Thiara, R. and Harrison, C. (2016) ‘Safe not sorry: supporting the campaign for safer child contact. Key issues raised by research on child contact and domestic violence.’ Women’s Aid. https://www.researchgate.net/publication/291341994_Thiara_RK_and_Harrison_C_University_of_Warwick_Safe_not_sorry_Supporting_the_campaign_for_safer_child_contact_Bristol_Women's_Aid_2016

⁴ Ibid.

⁵ See <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/domestic-abuse-protection-scotland-bill/introduced/explanatory-notes-domestic-abuse-protection-scotland-bill.pdf>

to satisfy the need for such protective orders, dependant on the individual circumstances of the case. The victim/survivor may then find themselves without protection for a period of time, until such point as there may be further incidents of abuse, once the DAPO falls. It is further submitted that if the intention is that victim/survivors should be, during the life of the DAPO, taking steps to secure civil protective orders, this would lead to confusion and multi-loading of court processes. The victim/survivor should not be required to engage with 2 court processes at the same time or one straight after the other as this is not trauma-informed practice, or an effective use of the civil justice system

We would propose that some possible solutions to the above problems may be as follows:

A) the life of a DAPO would have to be longer for a period of 6 months to 1 year, or alternatively

B) the DAPN could be a standalone protective measure which the police can enforce for a period of time before the victim/survivor seeks the appropriate civil court protection.

We would suggest that if recommendation B is to be followed, then the DAPN should be in force for at least 3 weeks to allow the victim/survivor a period of protection prior to full protective orders being sought through the civil courts (such as Non-Harassment Order/Exclusion Orders). This would avoid the duplication of court processes and re-traumatisation of the victim/survivor.

We appreciate that with regard to the shorter time period proposed for the DAPO (3 months) part of the rationale behind this will be the lower evidential burden required to secure such an order. We would therefore submit that if recommendation A) is to be followed, then more consideration should be given to the evidential burden required at this stage. It may be that the process of securing a DAPO requires to be conflated with that of the civil process for interdicts, Non-Harassment Orders and Exclusion Orders, to allow the protection to be longer lasting.

Although we are unsure about the compatibility of DAPO's with other civil protective orders, we do consider that there would be benefits to such a process. We note that the DAPO would remove the obligation and burden upon the victim/survivor to have to seek their own protective orders. If the police, or other relevant organisations, are able to make applications for protection on behalf of the victim/survivor it eases the pressure upon them at such a challenging time.

Additionally, the financial burden would be removed from the victim/survivor as it would be for the applying authority to fund. We are aware that there are significant issues in terms of funding for protective order cases. Current civil legal aid provisions have made protective orders inaccessible for some victim/survivors of abuse, leading to an imbalance between the access to justice afforded to the perpetrator and that available to the victim. Protective Order cases will only be legally aided if the victim/survivor meets the financial and merit tests applied by the Scottish Legal Aid Board and even when they do qualify may have to pay a significant contribution towards their legal fees. We submit that no victim/survivor of domestic abuse should

have to pay for their own protection and that of their children. We are aware from our work with victim/survivors that the current position discourages those experiencing abuse from taking the necessary steps to protect themselves from harm. It is therefore welcomed that thought has been given to increasing the options to seek protection available to victim/survivors in this way and we are suggesting that further thought requires to be given to allow this to compliment the current system.

If the time period of the DAPO was to be extended, as proposed above, it could potentially lead to a quicker and more efficient process for seeking protection. An order in place for a longer period of time may reduce the need for victims/survivors to instruct a solicitor to seek protective orders on their behalf through the civil court. We anticipate that there would still be a need for such action to be taken in cases where the abuser continued his abuse following expiry of the DAPO, however, an order in place for 6 months to 1 year may dissuade further abuse, minimising the processes required for the victim/survivor.

- 3. Section 1 of the Bill requires the two people covered by the DAPN or DAPO to be spouses, civil partners or in an 'intimate personal relationship' with each other. In addition, the suspected perpetrator must be aged 18 or over and the person at risk must be 16 or over. Do you agree with this overall approach or do you wish to suggest any changes? In the Domestic Abuse Bill, that is currently making its way through the UK Parliament, a broader approach is proposed for England and Wales, extending to other family relationships and people sharing a house in other circumstances.**

We would propose changes

In our view, the focus of orders for protection against domestic abuse should be partners or ex-partners and people connected to the abuser (such as family members, and specifically those living in the same household) where appropriate, (we regularly hear from women who tell us that family members of their ex-partner harass, sometimes stalk, and abuse them following the end of an abusive relationship). That does not mean that crimes committed by, for example, other family members or people who are living together who are not in a relationship are lesser, but rather that domestic abuse has specific dynamics underpinned by societal and cultural norms that require to be specifically addressed, and specific factors which may act as barriers to the person at risk leaving their residence such as potential financial liabilities, children, family, stigma and so on.

Considering the age of the parties to the abuse, we agree that the age of the victim/survivor should be 16 years old. Our service assist women aged over 16 who have experienced gender-based violence. Through our services we are aware that young persons (aged 16-18 years old) are just as likely to experience domestic abuse.

We would echo this regarding the perpetrator and note that the current proposals are that the perpetrator must be aged 18 years old or over. We consider that this

remains a grey area in terms of whether appropriate measures will be put in place for young perpetrators aged 16-18 years old. Avoiding such a gap in access to protection is especially pressing, given that young women aged 16-19 experience domestic abuse at a higher rate than any other age demographic, and the abuse itself is no less severe.⁶

4. Under section 8 of the Bill only police officers would be able to apply to the court for a DAPO. Do you agree with this approach or do you think the power to apply should be extended to other individuals or organisations? If the latter, who would you wish to include?

We would propose changes

Consideration should be given to whether local authorities should have the power to apply to the courts for DAPO's as well as the police. Social work departments routinely deal with situations of abuse and protection of vulnerable people and children, and accordingly would be well placed to handle the complexities of a civil court process like this, as well as the ethical and practice issues. It is important that the person at risk would have access to information, advice, representation and support through the process.

Statutory services such as health and social work services, housing services, Independent Domestic Abuse Advocates, Multi-Agency Risk Assessment Conferences and other relevant services should have a role in seeking DAPO's. However, we would suggest that the most appropriate method for most services may be to refer to the police, or social services if deemed appropriate, to request that they consider issuing/applying for a DAPN/DAPO. For these services to have the power to apply for DAPO this would be onerous and would require training and adequate resources and safeguards.

We would submit that there should be a mechanism for the person at risk to request that the relevant authority seeks a protection order on their behalf.

Forced Marriage Protection Orders (FMPO) involve similar provision for third parties to make applications on behalf of a victim/survivor. However, only specified relevant third parties can make these applications without leave of the court, and they must take into account whether it is in the interest of the victim/survivor and whether it will increase the risk they are at. In the context of domestic violence, particularly vulnerable victims/survivors may not be able to apply themselves or feel ready to report to the police, and thus may welcome a third-party being permitted to apply on

⁶In 2017, Safe Lives found that 12.6% of women ages 16-19 experienced domestic abuse in the last year, at a rate 42% higher than the next worst affected age bracket, women ages 20-24. Many women aged 16-19 experiencing abuse have older partners, but those with abusive partners the same age or younger are significantly less likely to report. <https://www.norfolkscb.org/wp-content/uploads/2017/07/Safe-Young-Lives.pdf>

their behalf. It is vital, however as with FMPOs, that third parties applying for DAPOs must consider various factors, including the victims/survivor's wishes for anonymity, and whether or not a DAPO will put them at further risk. Any risk of subjecting the victim/survivor to further violence or trauma must be mitigated by specific, thought-out guidelines. Appropriate training and resources would be required to ensure that this risk is avoided.

Research has found that young people who have experienced domestic abuse are much less likely to go to the police than adults and are also more frequently referred to the police from a wider range of different support services and organisations, including children's services and health professionals. Given the high rate at which those aged 16-18 experience domestic abuse, it is important that any policy on third party applications accounts for this. Young people are also significantly more likely to still be in an abusive relationship when the abuse comes to the attention of support services, thus there is a great need to ensure that the provisions for protection set out in this Bill account for the specific contexts of 16 to 18-year-olds.⁷

5. Do you agree with the tests (set out in section 4 and section 8 of the Bill) which must be satisfied for the making of a DAPN and a DAPO respectively?

We would propose changes

We note that at sections 4(4) and 8(7) it is provided that the domestic abuse protection notice, and order may be made without the consent of the victim/survivor.

We have concerns that this removes autonomy from the victim/survivor, who will already feel disempowered as a result of the abuse experienced. Victim/survivors should be given control and autonomy over processes which involve them where possible. We consider that in most cases such an order would be welcomed although there may be situations where a victim/survivor has not reported the abuse and rather a third party has, and in this situation a woman may not be ready for such measures. There may be other considerations such as childcare/ family commitments that affect such decision making.

It is important for people to have autonomy, the ability to make decisions, control over their circumstances and not having decisions imposed on them that they do not want and/or are not necessary. There could be limited value in applying for orders where there is not agreement from the victim/survivor. If someone is leaving an abusive relationship this is a process that can take time and that can have setbacks. Further, it is essential that withholding consent would not carry a negative inference to potential future reports.

⁷ 44% of adults are referred to support services by the police following a decision to report, 22% of adults self-refer. Young people are more likely to be referred by other services, and often by professionals who identify abuse before the victim/survivor chooses to disclose it. 68% of young people are still in the abusive relationship when they are referred to support, compared to adults who are more likely to seek support at the point of separation. See <https://www.norfolkscb.org/wp-content/uploads/2017/07/Safe-Young-Lives.pdf>

With the proposed time frame of 3 months for DAPO's, we would suggest that it would be important to take the victim/survivor's consent, or at least their views, for e.g. on measures affecting children.

The proportionality of decisions being made without consent depends on the implications of the decision (i.e. it may be proportionate to have powers to issue short-term orders without the need for consent, but longer-term orders may require consent).

With regard to short term DAPN's, the safest option may be to seek views, not consent, when considering granting a short-term order for protection against immediate danger. We suggest that consideration should be given to whether there is a way to take views from the victim/survivor on a confidential basis for their safety.

Consideration should be given as to whether consent should be required for longer-term orders, such as DAPO's, bearing in mind the dynamics of domestic abuse and the risks this could pose. An option could be to require consent but put in place provisions which mitigate this risk, such as the court being able to issue an order without consent if they deem the person at risk has been unduly pressurised to refuse consent.

We believe that taking the views of the individual should be built into the process where appropriate. It would greatly benefit victim/survivors, and their experience of the justice system, if they are afforded the opportunity to express their views and the impact that the abuse has had on them. We would suggest that consent, or at least views, are taken at the beginning of the processes and that during any decision-making process through the civil court, the victim/survivor be able to provide for e.g. a Victim Impact Statement. We suggest that this involvement would best be supported through relevant support agencies, such as Women's Aid, Rape Crisis Scotland and other advocacy support services. We note that the current proposals make provision for the child's views to be taken, where there is the involvement of a child, and we would therefore submit that where this is seen an important element for the child's involvement it should equally be regarded for that of the victim/survivor.

We are aware that there may be concerns regarding the proportionality and the threshold of the test for both the DAPN/DAPO. We agree that the definition of abuse within the Bill should mirror that which is in the Domestic Abuse (Scotland) Act 2018 (the 2018 Act). We note that if the behaviour falls into this category then it would be deemed criminal behaviour and therefore should be considered sufficient to warrant such protective measures. We would submit that in terms of the criminal justice system, although the behaviour may fall under this category, it is often decided that there is insufficient evidence to take criminal proceedings. In these cases, the victim/survivor is left unprotected. We submit that the intended purpose of the current Bill is to address this gap. The threshold test for domestic abuse in England and Wales at the moment is much higher than it is in Scotland. Similar legislation which has been introduced in England and Wales provides that there must be violence or

threat of violence for similar provisions to the DAPN/DAPO to be enforced⁸. It has been acknowledged that this test is too high and does not account for coercive and controlling behaviour. A review of the orders used under the Crime and Security Act 2010 found that there had been confusion in police forces over the types of abusive behaviour covered by the orders due to the requirement for ‘violence or threat of violence’⁹. The UK Government is in the process of changing this through the Domestic Abuse Bill 2020 and broadening the definition to include non-violent abuse¹⁰. We would suggest that the test as provided in the Domestic Abuse (Scotland) Act 2018 and now in this Bill is reflective of the lived experiences of victim/survivors of domestic abuse and will ensure their protection from further abuse.

We are aware that there could be concerns around the proportionality and threshold of these powers and therefore appropriate assessment must be undertaken to ensure that there is sufficient checks and balances on these powers so that their aim in filling a protection gap is not undermined.

6. Do you support the definition of ‘abusive behaviour’ (in sections 2 and 3) which is a key component of those tests?

Yes

We note that section 3 of the Bill reflects the provisions of the Domestic Abuse (Scotland) Act 2018, in terms of the definition of domestic abuse. We would support this definition which includes coercive and controlling behaviour. We would however submit that it is important that appropriate training is provided to enforcers of these protective measures in respect of domestic abuse and the indicators of abuse.

7. Under the Bill, a DAPN lasts until a DAPO (or interim DAPO) is made. A DAPO can last for a maximum of three months. Do you agree with the proposed maximum periods the DAPN and DAPO can last for?

We would propose changes

As we have highlighted in answer 2 of this response, we consider that more thought needs to be given to the DAPO for it to be beneficial to victim/survivors and to be

⁸ Crime and Security Act 2010, ss 24-33,

⁹ “*Domestic Violence Protection Orders: One Year On, Home Office Assessment of National Roll Out*”, Home Office, August 2016, see

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/506148/2016-03-08_DVPO_report_for_publication.pdf

¹⁰ See <https://publications.parliament.uk/pa/jt201719/jtselect/jtddab/2075/2075.pdf>

complimentary to current protective measures available. We would comment as follows:

DAPN:

We have recommended at answer 2 of this response that one option to resolve the issues we envisage with the Bill would be to have the DAPN as a standalone protective measure which the police can enforce for a period of time before the victim/survivor seeks the appropriate civil court protection. We would recommend that if answer 2, recommendation B is to be followed then the DAPN should be in force for a period of 3 weeks to allow the victim/survivor a period of protection prior to full protective orders being sought. This would avoid the duplication of court processes and re-traumatisation of the victim/survivor.

DAPO:

We have recommended at answer 2 of this response that if the DAPO is to come into force then we would submit that it should be enforceable for a period of 6 months – 1 year, in order to provide adequate protection to victim/survivors and to avoid conflict with the current protective order processes. Please see answer 2 above for further detail.

Interim DAPO:

We note that it is proposed at Section 10(7) of the Bill that any interim DAPO should have effect for a period not exceeding 3 weeks. We would draw attention to the impact that the Covid-19 pandemic has had on the civil court system and the backlog of cases that has been created as a result.¹¹ We have concerns that if the interim DAPO is to fall prior to the court being able to facilitate a further hearing the victim/survivor may be left unprotected until further hearing of the court can be assigned. We would submit that consideration will require to be given to the current court landscape and the commitment that can be provided by the Scottish Courts and Tribunals Service that hearings will be assigned no later than 3 weeks from the granting of such interim orders to avoid any failings in safety.

8. Do you agree that breach of a DAPN and breach of a DAPO should be a criminal offence, as proposed in sections 7 and 12 of the Bill? Do you support the penalties proposed for breach of a DAPN and breach of a DAPO?

Yes

¹¹ The Law Society of Scotland reports a backlog of 1700 cases:
https://www.parliament.scot/S5_JusticeCommittee/Inquiries/20200526_LawSocietyScotlandResponsetoJusticeCommitteeRestarting_Jury_trials.pdf

- 9. Sections 5 and 9 of the Bill says which obligations a DAPN and a DAPO can include. As well as obligations relating to the person at risk's home and contact with the person at risk, both a DAPN and a DAPO can impose obligations relating to a child usually living with a person at risk. Do you agree with the approach of the Bill under sections 5 and 9 or do you wish to suggest any changes?**

We would propose extension of Section 5

We would submit that Section 5(1) regarding the content of DAPN's should include:

- It should be possible to impose conditions on the perpetrator prohibiting them from entering other specified locations in order to prevent approaching the victim/survivor at locations where they frequent such as places of work or study and close family or friends' homes. The Council of Europe's view is that *"any regulation that is limited only to banning the perpetrator from the residence of the victim but allows him/her to contact the victim or person at risk in other places, would fall short of fulfilling the obligation under the Istanbul Convention"*.¹² We frequently hear from women who tell us they are continuing to be stalked and harassed by ex-partners following the breakdown of an abusive relationship. This provision would be necessary for these orders to be effective. We frequently hear from our outreach that the perpetrator will sit outside of places that the victim/survivor will frequent in order to threaten and intimidate. With the current proposals such behaviour would not be considered a breach of a DAPN and we would submit that it should be, as it can cause significant fear and alarm to the victim/survivor.
- It should be possible to impose conditions on the subject prohibiting them from approaching any child's place of education, such as school, nursery or child minder. This would be to avoid threatening and intimidation of the child and the victim/survivor and for the protection of the child where the perpetrator has parental rights and responsibilities and so is entitled to attend at the child's place of education.

- 10. Do you think the Bill is clear about what should happen when the terms of a notice or order conflicts with an order relating to children imposed under family law?**

¹² Council of Europe, June 2017 ("Council of Europe paper on Emergency Barring Orders")

We think that the Bill could be clearer

We note that Sections 4(3)(c) and 8(6)(c) of the Bill provide that the Constable or Sheriff, when making a DAPN/DAPO, should take account of the welfare of any child relevant to the application. We consider that this could afford the decision-maker an opportunity to consider any conflicting orders that are in place, although does not explicitly specify this should happen. We have concerns that any ambiguity within the Bill may cause difficulties for victim/survivors in terms of ongoing contact arrangements, for e.g. concerns around breaching contact orders which may be in place. We submit that there should be explicit wording within the Bill that provides that the Sheriff/Constable should take account of any contact orders which may be in place and the impact of such notice/order upon these.

11. Do you agree with the approach in section 18 of the Bill, introducing an additional ground to end a social housing tenant's interest in a tenancy? If so, what benefits does this power have over and above existing statutory powers?

Yes

We are in strong support of the approach in Section 18 of the Bill. We frequently hear through our outreach work that victim/survivors experience significant difficulty in having their abuser removed from the family home.

Currently, there are some provisions for women experiencing domestic abuse in the form of statutory powers. The landlord has some statutory powers of eviction in The Housing (Scotland) Act 2001 Schedule 2 specifically if the tenant is using the house for illegal purposes, committed an offence in the property or locality, and engaged in anti-social behaviour or a conduct of harassment. The landlord can in these instances seek to evict and, or, transfer the tenancy to the partner. The Housing (Scotland) Act 2014 provides a streamlined evictions process for where there has been a recent criminal conviction punishable by imprisonment for tenancy related antisocial or criminal behaviour (section 14 of the 2014 Act) within the previous 12 months. These existing powers do not extend necessarily to abusive behaviour which is not prosecuted if it is not harassment or anti-social behaviour.

Some local authorities have their own domestic abuse strategies for social housing, for example listing domestic abuse as grounds for termination of tenancy.¹³ There is also a commitment to improving provision of housing for women experiencing domestic abuse, in the form of the Make a Stand pledge which was developed by the Chartered Institute of Housing, Women's Aid and the Domestic Abuse Housing Alliance. The pledge sets out provisions for housing organisations to tackle domestic abuse and involves housing organisations making information on domestic

¹³Edinburgh for example has a 'Zero-Tolerance' approach to domestic abuse, which aims to prevent women from becoming homeless in the first instance (which can include evicting the abuser). See: <https://womensaid.scot/wp-content/uploads/2019/08/Domestic-abuse-guidance-for-social-landlords-FINAL.pdf>

abuse support services available on their websites, embedding policy to support residents affected by domestic abuse, creating or amending HR policy to support members of staff experiencing domestic abuse, and appointing a senior-level champion to promote the campaign. It has been signed by the Scottish Association of Landlords, the Association of Local Authority Chief Housing Officers, and a range of Local Authorities.¹⁴

A victim/survivor can also apply to the court for an Exclusion Order, where their abuser has occupancy rights to the family home, to ask for them to be excluded from the property for a period of 6 months at a time. The process of seeking Exclusion Orders is not widely used due to the nature of the order and the difficulties associated with funding for legal representation in this area. Where a victim/survivor requires to seek an Exclusion Order, they will require to raise a court action against their abuser and ask the court to exclude them from the property. This process can re-traumatise victim/survivors and cause undue stress and anxiety of engaging directly against their abuser. Seeking an Exclusion Order can be a costly exercise if the applicant does not qualify for legal aid and such an order can only last for a period of 6 months at a time meaning that it will require to be extended after 6 months if matters persist, incurring further costs. As highlighted in our answer 2 in this response, we consider that no victim/survivor of domestic abuse should have to pay for their own protection and or that of their children.

The Children (Scotland) Act 1995, section 76, provides that the local authority can apply to the court to seek an Exclusion Order, excluding from the family home someone who has caused or is likely to cause the child harm, among other things. We are aware that this measure is not frequently used, likely due to the complexity surrounding Exclusion Orders as a measure and the high threshold test required.

We would submit that the proposal in Section 18 of the Bill removed the onus from victim/survivor to seek their own protection and simplifies the process to have the abuser removed. It also removes any costs that would be associated with seeking an Exclusion Order, as above, and increasing access to justice.

12. If you are responding on behalf of an organisation, what impact (if any) would the Bill have on your organisation? Is there any issue associated with the Bill you wish to comment on, not already covered by questions 1-9?

Impact that the Bill may have on our organisation

We foresee that the Bill would have a significant impact on our organisation and the work that we do. We provide outreach services to women who have experienced gender-based violence and, through our experience, we foresee that there would be an influx of enquiries to our service regarding the new legislation. We recall the impact which the Domestic Abuse (Scotland) Act 2018 had upon our service, and the

¹⁴ <https://www.cih.org/media/ob5oirgo/make-a-stand-the-pledge-document.pdf>

increase that occurred through our legal helplines from both victim/survivors and second tier advice. We anticipate that the introduction of the current Bill would have a similar effect given the importance of the notices/orders which would be available and the impact of the changes to housing legislation. We would require to be able to provide women with advice on the DAPN/DAPO's and the changes to housing rights.

With the introduction of the Bill we would require to do awareness raising both online and through support organisations in the violence against women sector.

Furthermore, we would be able to provide training to other organisations and solicitors on the new legislation and the impact that may have on women who have experienced domestic abuse.