



26 January 2021

My Lords,

### **Domestic Abuse Bill 2<sup>nd</sup> Reading**

At Second Reading of the Domestic Bill on 5 January, I undertook to write about a few issues I was unable to address in the time available, including the commencement of Part 3 of the Digital Economy Act 2017.

Before I do that, however, I want to record my thanks again for the cross-party support of this landmark piece of legislation which will be transformational in better protecting and supporting victims of domestic abuse and their children, and bringing their perpetrators to justice. Many of you spoke eloquently about the Bill and measures which you felt could strengthen it further. There were five main themes emerging from debate, these were support for migrant women; a statutory duty on Local Authorities to provide community-based support; a bespoke offence of non-fatal strangulation; extending the 'revenge porn' offence to disclose intimate images to threatening to disclose them; and the need to extend the controlling or coercive behaviour offence to cover post-separation abuse.

I covered the Government's position on these briefly in my closing speech. I am sure these, and many other, issues will be further debated at Committee stage. In relation to the calls for a new offence of non-fatal strangulation, you may be aware that since Second Reading the Government has committed to introducing a new offence at the earliest opportunity.

This letter will focus on addressing the Government's position on some of the other points that were raised in the debate.

### Istanbul Convention

A number of colleagues were keen to know when the Istanbul Convention would be ratified. The Government remains committed to ratifying the Istanbul Convention as soon as possible. However, we take our international commitments very seriously and will only ratify when we are satisfied that the UK has met all our obligations under the Convention. The latest annual progress report made under the Preventing and Combating Violence Against Women and Girls (Ratification of Convention) Act 2017, which we published on 22 October 2020, set out our progress towards ratification and the issues which remain to be addressed. The report set out that, once this Bill receives Royal Assent and the relevant provisions in clauses 66 to 68 and Schedule 2 are commenced,

extra-territorial jurisdiction will extend to all the offences required by Article 44 of the Convention in England and Wales and Scotland and, with the exception of psychological violence, in Northern Ireland. The Domestic Abuse and Family Proceedings Bill, which is before the Northern Ireland Assembly, includes provisions necessary for the criminalisation of psychological violence in Northern Ireland, as required by Article 33 of the Convention, and for the application of extra-territorial jurisdiction to that crime. Once that Bill is passed and the relevant provisions are implemented, expected by the autumn, Northern Ireland will be compliant with Article 33 of the Convention and fully compliant with Article 44. The progress report also sets out that the compliance position on Articles 4(3) (to the extent that it relates to non-discrimination on the grounds of migrant or refugee status) and 59 of the Convention is under review, pending the evaluation and findings from the Support for Migrant Victims scheme, which launched on 15 December 2020. The progress report can be found at the following link:

[www.gov.uk/government/publications/ratification-of-the-council-of-europe-convention-on-combating-violence-against-women-and-domestic-violence-progress-report-2020](http://www.gov.uk/government/publications/ratification-of-the-council-of-europe-convention-on-combating-violence-against-women-and-domestic-violence-progress-report-2020)

### Domestic Abuse Protection Orders

Lord Moylan, Lord Anderson, Baroness Fox and Baroness Hamwee pointed to the need for the provisions in the Bill in respect of Domestic Abuse Protection Orders (DAPOs) to safeguard the rights of perpetrators while also protecting victims. We want to send a clear message to perpetrators that breach of an order will be acted upon, which is why we have provided that breach of an order will be a criminal offence. This is already the case with many existing civil orders, including restraining orders, non-molestation orders, knife crime prevention orders and serious crime prevention orders. Where a DAPO has been breached, this will not lead to automatic criminal sanctions. The breach will need to be reported to the police, who will then investigate and refer to prosecutors for a decision on whether to pursue a prosecution. Criminal sanctions will only be imposed following a conviction for the breach offence in the criminal court, which would need to be proved to the criminal standard in the usual way.

However, we recognise that some victims will be concerned about the possible consequences for their partner or ex-partner and would not want them to be criminalised for a breach. As an alternative to a criminal prosecution for breach of a requirement imposed by an order, it would be possible to proceed through civil contempt of court proceedings. We expect that the victim's views would be considered together with other issues of public interest when deciding which sanction for breach should be pursued.

Under our proposed model, the orders are fully flexible so that the requirements imposed, and the duration of those requirements, can be tailored by the court to adequately protect the victim based on the specific facts of each individual case. The Bill makes clear that, when making an order, the court must be satisfied that the order is necessary and proportionate to protect the victim from domestic abuse or the risk of domestic abuse. The Bill also contains further safeguards for perpetrators by providing that the terms of the order must, as far as practicable, avoid conflict with the person's religious beliefs or interference with the person's work or their attendance at an educational establishment.

We must hold perpetrators to account for their actions in order to tackle the root cause of domestic abuse. However, we should stress that DAPOs are not punitive, but instead are designed to be preventative. As such, requirements may only be imposed by the court if considered necessary for the protection of the victim from domestic abuse or the risk of domestic abuse. We recognise that attending a perpetrator programme will not be suitable or appropriate for all those subject to a DAPO. Before imposing a positive requirement, the court must hear evidence from the person who will be responsible for monitoring the

perpetrator's compliance with the requirement on the suitability and enforceability of the requirement. It should also be noted that we expect positive requirements to be in the form of a requirement to attend an *assessment* for a perpetrator programme or a drug/alcohol programme. This will provide an opportunity to fully assess the subject's suitability and ensure that they are likely to engage with and benefit from the intervention. Furthermore, positive requirements imposed by an order, like the requirement to attend a behaviour change programme or a drugs or alcohol treatment programme, could help the perpetrator address their harmful behaviours and may therefore be actively beneficial for the perpetrator.

We will use the pilot to evaluate the effectiveness of the orders, including the consistency of their use by the criminal, family and civil courts, which will help us to refine the guidance and training on the orders accordingly before we roll them out nationally.

When making an order, the court must be satisfied that requirements imposed by the order are necessary to protect the victim from domestic abuse or the risk of domestic abuse. An order requiring a perpetrator to leave their home should only therefore be made if such criteria is fulfilled. We will produce specific guidance for perpetrators in addition to statutory guidance for practitioners, which will include signposting to emergency accommodation if the order makes them homeless.

### Joint tenancies

Baroness Lister raised the issue of joint tenancies and Baroness Burt and Baroness Warwick suggested that new powers are needed to allow for transfer of such tenancies to the victim. We recognise the rules on terminating joint tenancies is a difficult area which can give rise to some hard cases, including where an abusive partner seeks to exert coercive control over the victim. However, there are good practical and principled reasons for the rules which seek to balance the rights and interests of each tenant and the landlord. We will need to give this matter serious consideration before making any changes. Ministry of Housing, Communities and Local Government (MHCLG) Officials are currently engaging with the domestic abuse sector and other relevant stakeholders on the issues and considerations regarding the termination and transfer of joint tenancies.

### Male victims

Lord Paddick spoke of the impact of domestic abuse on male victims and the need to make it clear in the Bill and statutory guidance, that the provisions apply equally to all victims of domestic abuse, regardless of their gender. We know that victims' needs must be at the centre of service provision and that victims need to be treated as individuals with individual needs, including through an understanding of their gender.

Men can, and do, suffer from crimes such as domestic and sexual abuse. It is an horrendous experience that often goes unrecognised as some men feel they cannot report their experiences because of societal views around masculinity. The gender-neutral definition in the Bill is critical to ensuring that all victims and all types of domestic abuse are sufficiently captured, and that no victim is inadvertently excluded from protection or access to services.

The statutory guidance provided for in clause 73 will, among other things, expand further on the different types of abuse and the forms they can take. This will include types of abuse which are experienced by specific communities or groups, such as male victims. We are determined to bring these horrific crimes to light and support victims and survivors, regardless of gender.

## Prohibition on cross-examination in person

On the cross examination provisions in the Bill, Lord Marks thought that the ban on cross examination should extend to all family and civil cases involving domestic abuse; Lord Ponsonby felt that the role of a publicly funded advocate was too narrow and that a lawyer should be appointed for a larger part of the process; and Baroness Fox was keen to ensure that all evidence was thoroughly tested and everyone had a right to a fair hearing.

The Bill extends the prohibition on cross-examination in person by an unrepresented defendant, which already applies in the criminal courts, to parties in the family and civil courts.

Where such a prohibition applies (or has been imposed by the court), the court will first consider if there are effective alternatives to cross-examination available, such as the judge putting questions to the witness, or using pre-recorded evidence that was given in related proceedings. If satisfactory alternatives to cross-examination are not available, the court will invite the relevant party to appoint a legal representative to conduct the cross-examination. If the party does not do so, the court can appoint a publicly funded legal advocate to carry out the prohibited cross-examination, if it considers it to be in the interests of justice to do so.

The purpose of these provisions is to protect appropriately, parties in proceedings and therefore the role of a legal representative appointed by the court, is limited to those occasions where direct cross-examination or where the court otherwise gives a direction in accordance with the provisions in the Bill. In protecting victims and alleged victims these provisions should be seen in the wider context of other measures to enhance their protection, such as those in relation to special measures in family and civil proceedings.

More generally, the Ministry of Justice has announced a series of initiatives within the Legal Support Action Plan, which included work to test and evaluate different forms of early legal advice. The Secretary of State for Justice is reviewing this plan in light of Covid-19. We are also currently conducting a review of the legal aid means test, as part of which we are specifically considering the experiences of victims of domestic abuse.

We agree entirely both that questioning must be sensitive to the witness and ensure the fairness of proceedings, although a legal representative appointed by the court will not be responsible to the party. Before these provisions are commenced, we will work with stakeholders to develop and publish guidance to be issued by the Lord Chancellor for legal representatives on their role, including their not being responsible to the party, to assist them in the discharge of this role. We will also work with the appropriate rule committees to develop appropriate court rules and practice directions to provide further guidance on the operation of these provisions.

## Polygraph testing

Baronesses' Burt and Hamwee and Lord Marks thought there was no place for Polygraph testing in the criminal justice system. Polygraph examinations have been successfully used in the management of sexual offenders since January 2013 in the National Probation Service (NPS). Initially, this was as a successful pilot and later rolled out as a national programme. Similarly, the Domestic Abuse Bill enables us to commence a three-year pilot of mandatory polygraph examinations on domestic abuse perpetrators released on licence identified as being at high risk of causing serious harm. The pilot will be independently evaluated by Cambridge Centre for Evidence-Based Policing at Cambridge University before a decision is made about a national roll out. Polygraph examinations are used to

monitor the offender's compliance with other licence conditions. They are also used to monitor dynamic risk. Offenders cannot be recalled for failing a polygraph examination, nor can any information gathered during a polygraph be used in criminal courts. Information from the polygraph is routinely used by the offender manager to refine risk management plans. Additionally, the information is shared with the police who will then make further investigations where it is deemed necessary. If the police find clear evidence that further offences have been committed, charges will be brought, and the offender will be recalled.

Since August 2015 to end November 2019, NPS has carried out 5,228 examinations on 2,249 sexual offenders. 1,449 tests have resulted in significant disclosures leading to better risk management plans or the offender being returned to custody if they disclose breaches of other licence conditions or information that means they can no longer be safely managed in the community. Polygraph testing is an additional risk management tool for Offender Managers when working with very high- or high-risk offenders. It does not replace any existing forms of risk assessment or management. Polygraph provides information for the offender manager that s/he would not otherwise have and there is no evidence from the testing of sexual offenders that the polygraph is used as a substitute for other forms of risk assessment and management.

### Priority need status

Lord Randall asked that we consider an amendment to the Bill to provide an automatic grant of priority need status for accommodation secured by the local authority to include survivors of modern slavery. In May 2020, Government announced its intention to give those who are homeless as a result of being a victim of domestic abuse priority need for accommodation secured by the local authority (now provided for in clause 71). This will help to ensure victims do not stay with their abuser for fear of not having a roof over their head.

I recognise that victims of modern slavery are also a particularly vulnerable group in society, who can face homelessness when fleeing situations of exploitation and fear. Victims of modern slavery can access immediate support through the Victim Care Contract, which can include access to emergency accommodation where required. Whilst this is not a long-term solution and modern slavery victims cannot remain in this system indefinitely, local authorities have a duty under the Homelessness Reduction Act to seek to prevent and relieve their homelessness once those that are eligible, are ready to move on from their emergency accommodation. We are working with the MHCLG to provide clarity to the Victim Care Contract network on the housing support that modern slavery victims can access, including on how they can support modern slavery victims to make a homelessness application.

### Under recording of domestic abuse offences, in particular by Greater Manchester Police

Lord Dholakia and Earl Lytton raised concerns about the under recording of crimes by police forces, including domestic abuse, and specifically referenced Greater Manchester Police (GMP) following the publication (on 10 December) of Her Majesty's Inspectorate of Constabulary and Fire and Rescues Services (HMICFRS) findings of its inspection of the service GMP provided to victims of crime.

This inspection is the first of HMICFRS's new Victim Services Assessment (VSA), which is to be an integral element of its new PEEL framework across all forces. VSA will assess the end to end experience of victims from first report of a crime to its outcome and, in this case, included an inspection of the effectiveness of GMP's crime recording processes.

Since 2014, HMICFRS has carried out a discrete programme of police crime recording (known as Crime Data Integrity) inspections and these will now be included within the VSA element of its PEEL programme.

We expect all police forces to accurately record all crimes reported to them and ensure they are properly investigated. Where HMICFRS identifies deficiencies and/or makes recommendations for improvement, our expectation is that the Chief Constable (or Commissioner in London) will ensure the force takes the necessary remedial action and at pace. HMICFRS, as part of its on-going monitoring activity, regularly reviews and reports on the progress that each force is making to address its concerns and to inform its risk-based inspection programme. However, it is the responsibility of the local policing body (i.e. the relevant Police and Crime Commissioner or Mayor (in GM and London)) to hold the Chief Constable to account for any failings that are identified and ensure any appropriate and timely action is taken to improve. Each PCC has a statutory obligation, under section 55 of the 1996 Police Act, to publish their comments and response to any recommendations for improvement made by HMICFRS within 56 days of a report's publication.

As regards GMP, we welcome HMICFRS's decision to escalate the force to its Policing Performance Oversight Group (PPOG). PPOG members (including the senior leaders from the National Police Chiefs' Council, College of Policing, Association of Police and Crime Commissioners and the Home Office) will meet on 26 January to scrutinise GMP's plans for improvement and consider whether additional support from within the sector may be necessary to support the force to deliver the necessary step-change in performance quickly. PPOG will maintain oversight of GMP's implementation of its recovery plan until it is satisfied that the required improvements have been delivered. We also welcome HMICFRS's decision to re-inspect the force to assess the progress being made in six months (likely May). Finally, we expect the Mayoral response to the report to be published no later than 4 February.

### Making misogyny a hate crime

Lord Russell argued that misogyny should be made a hate crime as it can be a 'trigger for violence, coercion and a total lack of empathy for its victims'. The Government has heard concerns from victims and stakeholder groups about existing hate crime legislation and whether it is up to date and consistent. We also recognise that the legislation, having been developed and added to over time, raises some concerns by stakeholders about perceptions of unequal treatment across the existing protected characteristics. As part of the Hate Crime Action Plan Refresh in October 2018, we asked the Law Commission to conduct a review into the coverage and approach of hate crime legislation, including consideration of whether other protective characteristics, such as sex, gender and age, should be included. The Law Commission's consultation to support the review closed on 24 December 2020. We will respond to the review when it is complete.

### Age verification for on-line pornography

A number of Peers spoke about the harmful effects of online pornography and asked about the Government's plan to implement Part 3 of the Digital Economy Act 2017 (DEA). The Government announced in October 2019 that it will not commence Part 3 of the DEA. We will instead deliver these protections through our wider online harms regulatory proposals.

The online harms regime will ensure the most comprehensive approach possible to protecting children. It will deliver the objectives of Part 3 of the DEA, to protect children

from accessing online pornography, and go further to protect children from a broader range of harmful and age-inappropriate content on all services in scope. Where pornography sites host user generated content or facilitate online user interaction (including video and image sharing, commenting and live streaming), they will be subject to the duty of care, which means sites will have to prevent children accessing that content. The online harms regime will capture both the most visited pornography sites and pornography on social media, therefore covering the vast majority of sites where children are most likely to be exposed to pornography. Taken together we expect this to bring into scope more online pornography that children can currently access than the narrower scope of the DEA. The Government expects the regulator will take a robust approach to sites that pose the highest risk of harm to children, including sites hosting online pornography.

Under our proposals, we expect companies to use age assurance or age verification technologies to prevent children from accessing services which pose the highest risk of harm to children, such as online pornography. We are working closely with stakeholders across industry to establish the right conditions for the market to deliver age assurance and age verification technical solutions ahead of the legislative requirements coming into force. We would encourage companies to take steps ahead of the legislation to protect children from harmful and age inappropriate content online. We will continue to review our proposals to ensure we deliver the most comprehensive protections for children online.

Where content is illegal under any criminal law this will be captured by the online harm's duty of care. As the possession of extreme pornography imagery is illegal under existing legislation, it will fall within the duty of care in the Online Harms regime. Our new approach will be more robust than the DEA, as it will capture extreme pornography as well as other illegal pornography (including non-photographic child sexual abuse content) that is not included in the definition of extreme pornography referred to in the DEA. Companies will need to ensure that illegal content is removed expeditiously and that the risk of it appearing is minimised through effective systems.

Finally, a key objective of this Bill is to promote awareness of domestic abuse. This is especially important during the pandemic where victims of abuse and those worried about them will need to know that help and advice remains available. In April 2020 the **#YouAreNotAlone** communications campaign was launched to do precisely that. The campaign has reached almost 25 million people through paid advertising and supported by a range of celebrities and influencers who have shared the message with 130 million followers on social media.

The campaign has increased awareness of domestic abuse, shows victims that they are not alone and to convey to perpetrators that domestic abuse is unacceptable. The pandemic has highlighted the tragic reality that home is not a safe place for everyone, and so we will continue to protect all those at risk from abuse and exploitation, including domestic abuse.

I am copying this letter to all Peers who spoke at Second Reading and placing a copy in the libraries of both Houses and on the Bill page of Gov.UK.

*Williams of Trafford*

**Baroness Williams of Trafford**