



Jess Phillips
House of Commons
London
SW1A 0AA

30 June 2020

Dear Jess,

DOMESTIC ABUSE BILL: GOVERNMENT AMENDMENTS FOR REPORT

I am writing to let you have details of a second and final tranche of Government amendments (copy attached) we have tabled for Commons Report stage.

The so-called “rough sex” defence (new clause “Consent to serious harm for sexual gratification not a defence” and amendments to clauses 69, 70 and 74 and the long title).

In Committee, I undertook to consider new clauses 4 and 5 which sought to prevent the alleged consent of the victim being used as a defence to a prosecution in cases of domestic abuse which result in death or serious injury (Official Report, 17 June 2020, column 322). As I indicated in Committee, it is unconscionable for defendants to suggest that the death of a woman (or man) is justified, excusable or legally defensible simply because it is claimed that a woman (or man) consented to violent and harmful sexual activity that resulted in serious harm or even death. I said that the Government was committed to making the law clear in this Bill and new clause “Consent to serious harm for sexual gratification not a defence” aims to do just that. As new clauses 4 and 5 sought to do, the Government’s new clause broadly codifies the principle in the case of *R v. Brown* to make clear that consent to serious harm for sexual gratification would not be a defence and, by extension, nor would consent apply where such sexual activity resulted in the victim’s death. Serious harm is defined by reference to “relevant offences”, which in this case would be an offence of actual bodily harm (ABH) or grievous bodily harm (GBH) with or without intent. The Government will make clear that in codifying the broad principle in *Brown*, that this also implies, by extension, that a person cannot consent to their own death. This will be made clear in the explanatory notes that will accompany the Bill.

The Government’s new clause will extend to all cases where consent to rough sex is claimed and not just those cases where rough sex might be raised within a domestic abuse context. It will therefore also apply to cases where individuals are not “personally connected” as defined in clause 2 of the Bill. In addition, the new clause will recognise another aspect of existing case law in relation to sexual activity, namely, the circumstances in which it can be established that a victim consented to harm in the form of the risk of acquiring a sexually transmitted infection from a partner. Accordingly, of necessity, and in order to recognise the right to personal autonomy in this regard, the new clause also includes an exception where there had been “consent to the risk of transmission of a sexually transmitted infection”.

The amendments to clauses 69, 70 and 74 and the long title are consequential on the new clause, that to clause 74 provides for the new clause to come into force on Royal Assent.

The new clause will extend and apply to England and Wales only.

I attach a supplementary ECHR memorandum in respect of these amendments and those tabled yesterday relating to the prohibition of cross-examination in person in civil proceedings and automatic eligibility for special measures in the civil and family courts.

Creating a stand-alone offence of non-fatal strangulation

Although we understand the strength of feeling on creating a new offence of non-fatal strangulation, this type of conduct is already captured under offences from common assault and battery to attempted murder. It can also be captured under the coercive and controlling behaviour offence in section 76 of the Serious Crime Act 2015 and there is also the specific offence under section 21 of the Offences against the Person Act 1861, which covers choking, suffocation and strangulation. The Government is not therefore currently persuaded that a specific offence of non-fatal strangulation is needed but we will keep the matter under review and assess any evidence that emerges (including from experience in other jurisdictions) that a new specific offence is required.

Anonymity for victims in domestic homicides

Discouraging defendants from pursuing a rough-sex defence by underlining that it will not succeed is the most effective way of sparing victims' families from being distressed by salacious allegations, but where such allegations are nevertheless made, we sympathise with the aim of restricting what can be reported. Unfortunately, our efforts to find such a solution have met with some problems that are intractable in the context of this Bill, but for the future we will keep the matter under review.

I am copying this letter to members of the Public Bill Committee, Theresa May, Harriet Harman (Chair, Joint Committee on Human Rights), Yvette Cooper (Chair, Home Affairs Committee), Sir Robert Neill (Chair, Justice Committee), Caroline Nokes (Chair, Women and Equalities Committee), Maria Miller and Mark Garnier. I am also placing a copy of this letter and attachments in the library of the House.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alex Chalk'.

ALEX CHALK MP