

**Women's Aid Consultation Response
Reform of Offences against the Person: A Scoping Consultation Paper
January 2015**

Introduction

Women's Aid is the national charity for women and children working to end domestic abuse. We empower survivors by keeping their voices at the heart of our work, listening and responding to their needs. We are a federation of over 220 organisations who provide more than 300 local lifesaving services to women and children across the country. We provide expert training, qualifications and consultancy to a range of agencies and professionals working with survivors or commissioning domestic abuse services, and award a National Quality Mark for services which meet our quality standards. Our campaigns achieve change in policy, practice and awareness, encouraging healthy relationships and helping to build a future where domestic abuse is no longer tolerated. The 24 Hour National Domestic Violence Helpline on 0808 2000 247 (run in partnership with Refuge) and our range of online services, which include the Survivors' Forum, help hundreds of thousands of women and children every year.

Women's Aid welcomes the opportunity to respond to the Law Commission's scoping consultation on Reform of Offences against the Person. We restrict our consultation response to our specific areas of expertise.

Consultation Question 27:

Do consultees consider that there is benefit in examining whether reform of offences against the person should include specific offences of domestic violence?

Women's Aid does not believe that the development of specific offences of domestic violence will be in the best interests of survivors of domestic violence or that it will reflect the gendered nature of domestic violence.

The key issue with current legislation pertaining to domestic violence is that presently it only recognises and effectively prosecutes single incidents of physical abuse that occur within a relationship. We have identified the key gap in legislation in relation to domestic violence; there is no specific criminal offence of coercive control or psychological abuse and the law does not reflect the cumulative effect of domestic violence. At the time of responding to this consultation legislation does not recognise the pattern of coercive control as detailed in the cross-Government definition of domestic violence.¹

There is currently no legal mechanism for capturing patterns of power and control within an ongoing relationship. However, in December 2014 the Government announced that they intended to criminalise coercive control in domestic violence. Women's Aid warmly welcomed this announcement. There is currently an amendment creating an offence of Coercive Control in the Serious Crime Bill which is going through its Parliamentary stages at this time. Women's Aid is working with the Government to ensure that the dangerous nature of coercive and controlling behaviour, the very essence of domestic violence, is reflected in legislation.

Women's Aid believes that with the amendment currently tabled in the Serious Crime Bill will effectively close the current legislative omissions around domestic violence. This new offence should be implemented alongside high quality face to face training to ensure a good response to domestic violence across the Criminal Justice System.

¹ <https://www.gov.uk/domestic-violence-and-abuse#domestic-violence-and-abuse-new-definition>

The scoping paper outlines several arguments in support of the creation of specific offences of domestic violence. The first suggest that the offender will be labelled as a domestic violence perpetrator and this will show on their criminal record giving notice to other statutory agencies. However, the police already notify social services to an incident of domestic violence where there are children present or in the family who may be at risk. Police forces should also work with multi-agency partnerships made up of state agencies and charities to ensure a joined-up response to tackling domestic violence.

The second argument is that, in addition to the wrong implicit in all unjustified acts of violence, domestic violence involves wrongs peculiar to it: abuse of trust and destruction of the sanctity of a relationship. Women's Aid believes that the criminalisation of coercive and controlling behaviour will ensure that the whole lived-experience of domestic violence is recognised by the Criminal Justice System and outlawed.

A further argument tabled in the scoping paper is that the prosecution of offences of domestic violence has a part to play in correcting the power imbalance between the sexes. Conversely Women's Aid believes that the creation of a gender neutral offence of domestic violence may further discriminate against women as it will not recognise the gendered nature of domestic violence.

Issues with creating a specific offence of domestic violence

Women's Aid does not believe that the introduction of a generic offence of domestic violence will reflect the gendered nature of intimate partner violence. Therefore it will not address the root causes of this form of violence. Violence against women both a cause and a consequence of discrimination, inequality and a violation of women's human rights. It is recognised as a form of discrimination against women internationally by the United Nations (UN), the European Union and the Council of Europe in the new Convention to Prevent and Combat Violence against Women and Domestic Violence (Istanbul 2011) ².

The UN Handbook on Legislation on Violence against Women recommends that "legislation explicitly recognize violence against women as a form of gender-based discrimination and a violation of women's human rights"³. Gender based violence means violence that is directed against a person because of that person's gender, gender identity or gender expression, or that affects persons of a particular gender disproportionately.

Women are overwhelmingly the victims of repeated incidents of violence by their partner or former partner and men are overwhelmingly the perpetrators. Men are also much more likely to be repeat perpetrators and twice as likely to use physical violence, to threaten or to harass their partners⁴. However UK law takes a gender neutral approach failing to recognise the gender based nature of violence in intimate relationships.

While the term domestic violence or domestic abuse is often used to mean intimate partner violence, it actually encompasses a range of different types of violence. It identifies the location of the violence - within the family - not the type of violence. The Istanbul Convention defines domestic violence as "*all acts of physical, sexual, psychological or economic violence that*

² General recommendations made by the Committee on the Elimination of Discrimination against Women. General Recommendation No. 19 (11th session, 1992). Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011, (Istanbul Convention) Article 3 - Definitions. The Istanbul Convention was signed by the UK Government in June 2012.

³ Handbook for Legislation on Violence against Women United Nations Department of Economic and Social Affairs Division for the Advancement of Women, United Nations, New York 2010, p2. See also p13.

⁴ Hester, Marianne (2009) Who does what to whom? Gender and domestic violence perpetrators (University of Bristol VAWRG).

*occur within the family or domestic unit or between former or current spouses or partners*⁵. The UK Government definition of domestic violence covers *"Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality"*⁶. Thus domestic violence includes child abuse, elder abuse, sibling abuse, child to parent abuse, so called 'crimes of honour', female genital mutilation, forced marriage and other violent acts within the family.

In including any form of violence that occurs within a particular location - the family - the gendered based nature of violence against women in intimate partner violence is ignored. Examples of this can be found in other European countries where a specific offence of domestic violence or violence against a close person has been introduced into criminal law. The result of this approach is that the discriminatory nature of domestic violence against women is ignored and it has led to violence within the family being defined as a private matter and less serious than public violence⁷.

Summary

Women's Aid believes that the introduction of the new clause on coercive and controlling behaviour through the Serious Crime Bill will close the legislative gaps around domestic violence. There is neither an evidence base to suggest, nor expert support for, the introduction of a specific offence of domestic violence more widely.

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⁵ Opcit, Istanbul Convention 2011, Article 3.

⁶ <https://www.gov.uk/government/publications/new-government-domestic-violence-and-abuse-definition>.

⁷ Logar, R. (2008). Good Laws are not enough. Experiences from Austria in Developing a Comprehensive Intervention System to Prevent Violence against Women and support Survivors, OSCE Conference on Violence against Women, Dushanbe, Tajikistan.