

Briefing: Domestic Abuse Bill

House of Commons, Second Reading

Wednesday 2 October 2019

Contents

1. Introduction.....	3
2. Summary of recommendations.....	4
3. Cross-Government action and adequate funding for services	6
4. Equal protection for survivors with insecure immigration status	9
5. Removing barriers to justice	12
6. Disproportionate impact on women	16
7. Broadening the definition of domestic abuse	17
8. The Domestic Abuse Commissioner.....	18
The Commission’s work.....	19
Further information	20

1. Introduction

The Equality and Human Rights Commission (the Commission) has been given powers by Parliament to advise Government on the equality and human rights implications of laws and proposed laws and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.

The Government has stated that the Domestic Abuse Bill is a ‘once-in-a-generation opportunity to transform the response’ to domestic abuse. The Commission warmly welcomes the opportunity the Bill presents to ensure better support and protection for survivors of domestic abuse in England and Wales and to improve adherence to our international human rights commitments. However, we consider that significant changes to the Bill are required for it to be the transformative legislation the Government aims it to be and to ensure UK compliance with the Convention on Preventing and Combatting Violence against Women and Domestic Violence (the Istanbul Convention) and with the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). We set out in this briefing our view on the changes required.

The Commission previously provided views to Government and Parliament on the content of the Draft Domestic Abuse Bill and welcomed the pre-legislative scrutiny it was afforded, including the resulting comprehensive report of the Joint Committee on the Draft Domestic Abuse Bill (the draft Bill Committee).¹ We are concerned that the Government has declined to adopt the many of recommendations put forward by that Committee.

¹ House of Lords, House of Commons, Joint Committee on the Draft Domestic Abuse Bill, [First Report of Session 2017-19, HL Paper 378, HC 2075](#), 11 June 2019.

2. Summary of recommendations

Our six recommendations are as follows.

Cross-Government action and adequate funding for services

Domestic abuse is a multi-faceted crime and an effective response requires cooperation across the breadth of government. We therefore recommend a statutory duty on Ministers across Government requiring them to have due regard to the need to prevent domestic abuse and protect victims.

It is particularly important that services for survivors of domestic abuse, including provision of refuge accommodation and advice and advocacy services, be adequately funded by central Government. We therefore also recommend a statutory duty on the Secretary of State² to adopt appropriate and effective measures to prevent and respond to domestic abuse, including a duty to adequately fund services for all survivors, regardless of immigration status. This should include specialist and single-sex services, in line with the gendered nature of domestic abuse and the provisions of the Istanbul Convention.

Equal protection for survivors with insecure immigration status

To realise the Government's vision of landmark domestic abuse legislation, this Bill must ensure equal protection for survivors with insecure immigration status.

The Bill must be amended to prohibit discrimination in the provision of services to survivors of domestic abuse, including on grounds of immigration status, in line with Article 4(3) of the Istanbul Convention.

Further, the Domestic Violence Rule, which allows migrant survivors on spousal visas to apply to regularise their immigration status, should be extended to all migrant survivors with insecure immigration status. The Destitute Domestic Violence Concession, which permits survivors applying under the DV Rule three months'

² With reference to the relevant Secretary of State(s) with responsibility for implementation of the Bill.

temporary access to public funds, should also be extended to all migrant survivors with insecure immigration status, and from three to six months.

We further recommend the Bill prohibits the sharing of an individual's personal data for the purposes of immigration enforcement where the data was collected in the course of the person accessing essential public services (including education, healthcare and policing). The threat of information-sharing by a range of public service providers for the purposes of immigration enforcement acts as a deterrent on survivors of domestic abuse from reporting crimes and seeking the support of these services.

Removing barriers to justice

To ensure access to justice for all survivors and consistency of approach in the criminal, family and civil courts, new provisions for special measures should be extended to the family and civil courts and the prohibition against cross-examination in person by an alleged perpetrator should be strengthened and extended to family and civil proceedings.

Recognition of disproportionate impact on women

The Bill should explicitly recognise in its text the disproportionate impact of domestic abuse on women. We do not consider the introduction, in section 79(3), of a requirement that any guidance issued by the Secretary of State concerning domestic abuse should take account of the fact that the majority of victims of domestic abuse in England and Wales are female, to be sufficient.

Broadening definition of domestic abuse

The statutory definition of domestic abuse should be sufficiently inclusive, such that survivors do not face unnecessary barriers when seeking support or justice. We recommend that the proposed statutory definition also include: forced marriage, female genital mutilation, slavery, sexual exploitation, coercive control over a person's immigration status and online abuse.

Domestic Abuse Commissioner

The role of the Domestic Abuse Commissioner should be strengthened by: requiring appropriate funding for the role; empowering the Commissioner to collect data; and requiring them to take account of the disproportionate impact of abuse on women.

3. Cross-Government action and adequate funding for services

The Bill must ensure a robust framework for cross-government action, including adequate funding for services.

Funding for support services

The Bill is currently silent with regards to the funding available to support services for survivors of domestic abuse.

We urge the Government to amend the Bill to make the necessary policy and practice changes, and allocate sufficient and sustainable resources, to ensure UK compliance with CEDAW³ and with the Istanbul Convention.⁴ This includes ensuring specialist support services are provided, and addressing the chronic shortage of refuge spaces. The cost pressures faced by local authorities and partners, and the vital importance of adequate funding for local services, has been highlighted as a particular concern by the Local Government Association.⁵

As recognised by the draft Bill Committee,⁶ the evidence shows that currently too few support services are available, and that provision is inconsistent. A recent Women's Aid survey of domestic abuse services showed that, since 2014, just under a third (30.6%) of services have had to reduce the amount of support (in terms of staff time) that they are able to give to each service user due to funding. Over half of services responding to the survey cited funding uncertainty as the biggest challenge

³ The CEDAW Committee has set out that States parties "should provide accessible, affordable and adequate services to protect women from gender-based violence, prevent its reoccurrence and provide or ensure funding for reparation to all its victims/survivors". See CEDAW Committee, 'General Recommendation 35', 2017, para 26.

⁴ See Istanbul Convention, Article 8 – Financial Resources and Article 20 – General Support Services.

⁵ Local Government Association, '[Local Government Association briefing: Domestic Abuse Bill, Second Reading, House of Commons, 2 October 2019](#)'.

⁶ House of Lords, House of Commons, Joint Committee on the Draft Domestic Abuse Bill, '[First Report of Session 2017-19, HL Paper 378, HC 2075](#)', 11 June 2019, para 213

in 2017.⁷ A 2015 report by the All-Party Parliamentary Group (APPG) on domestic and sexual violence concluded that ‘the current model for funding specialist domestic and sexual violence services is not fit for purpose.’⁸

Adequate funding is particularly important for those survivors who face additional barriers when trying to access support. This includes ethnic minority and migrant women, who have been reported to experience a disproportionate rate of domestic homicide.⁹ The APPG on domestic violence reported in 2015 that funding cuts by statutory agencies to violence against women services have had a disproportionate impact on BME-led VAWG organisations.¹⁰ Disabled women, who experience disproportionate levels of all forms of violence, also face additional barriers to accessing support: for example, a recent report showed that less than 2% of refugees are wheelchair accessible.¹¹

We welcome recent government proposals to introduce a statutory duty on local authorities to provide accommodation-based domestic abuse services.¹² However, we raised concern about the narrow focus on accommodation-based services. Additionally, in order for the duty to be effective, it is critical that local action is underpinned by effective central Government coordination and funding commitments, including a commitment to provide local authorities with adequate, ring-fenced and sustained funding, including funding for specialist provision. We also raised the need for the Government to review and ensure funding mechanisms for migrant survivors with insecure immigration status and no recourse to public funds.

We therefore recommend that the Bill includes statutory duties on the Secretary of State to: (i) adopt appropriate and effective measures aimed at preventing and responding to domestic abuse, including a duty to provide

⁷ Women’s Aid, [‘The Domestic Abuse Report 2019: The Annual Audit’](#), pp.33 and 38, 2019.

⁸ APPG on Domestic and Sexual Violence, Women’s Aid and Rape Crisis, ‘The Changing Landscape of Domestic and Sexual Violence Services All-Party Parliamentary Group on Domestic and Sexual Violence Inquiry,’ 2015.

⁹ [UN Special Rapporteur on violence against women, its causes and consequences. Statement at the conclusion of a country mission to the United Kingdom 2014, 15 April 2014.](#)

¹⁰ APPG on Domestic and Sexual Violence, Women’s Aid, Rape Crisis England & Wales, ‘The Changing Landscape of Domestic and Sexual Violence Services: APPG on Domestic and Sexual Violence Inquiry’, 2015.

¹¹ Women’s Aid, ‘Survival and Beyond: The Domestic Abuse Report 2017’, 2018.

¹² Ministry of Housing, Communities & Local Government, Consultation, [‘Support for victims of domestic abuse in safe accommodation’](#), May 2019.

adequate funding for domestic abuse services (including specialist provision for ethnic minorities, disabled people, LGBT people, and individuals with complex needs, as well as single-sex services); and (ii) ensure services are available to all survivors, regardless of immigration status.

Such duties would reflect the gendered nature of domestic abuse and help the UK to meet the requirements of the Istanbul Convention, which requires States to '[t]ake the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence'.¹³

Joined up, cross-Government working

Effective prevention of, and response to, domestic abuse requires joined-up, strategic cross-UK and cross-Government action. The need for joined up action to address VAWG is well-recognised and reflected in international standards.¹⁴ The draft Bill Committee asserted 'that the aims of this Bill can be achieved only if there are changes in both policy and legislation relating to other areas of government activity ... [and] we urge more active participation from all relevant government departments and a far more vigorous multi-agency response from those providing frontline public services.'¹⁵

We welcome the duty, set out in the Bill¹⁶, for specified public authorities to cooperate with the Domestic Abuse Commissioner. However, this cannot replace coordination and action by central Government departments. **We therefore also propose a statutory duty for Ministers across Government to have due regard to the need to prevent domestic abuse and protect victims.** This would require Ministers to consider how Government policy in other areas may increase vulnerability or create obstacles for those attempting to escape domestic abuse.

¹³ Council of Europe, 'Convention on preventing and combating violence against women and domestic violence', 2011, Article 20.

¹⁴ The Istanbul Convention, article 7 requires states parties to 'to adopt and implement State-wide effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence ... and offer a holistic response to violence against women'.

¹⁵ House of Lords, House of Commons, Joint Committee on the Draft Domestic Abuse Bill, [First Report of Session 2017-19, HL Paper 378, HC 2075](#), 11 June 2019, para 6.

¹⁶ Domestic Abuse Bill 2019, s.14, Duty to Cooperate with the Commissioner.

Further, any action under this Bill must be informed by the Government's wider VAWG strategy and national and regional strategies in Wales, recognising that domestic abuse is part of the continuum of violence against women and girls and cannot be effectively combatted in isolation. This would address the requirement under the Istanbul Convention to put in place effective and coordinated policies to prevent and combat violence.¹⁷

The Commission has previously recommended that the Government publish a broader Bill that covers all forms of violence against women and girls. We are disappointed that the Government has not taken the opportunity to publish such a Bill, which would in line with the Istanbul Convention, the recommendations of the Home Affairs Committee¹⁸, the existing legal and policy framework¹⁹ and legislative developments in Wales.²⁰

4. Equal protection for survivors with insecure immigration status

As recognised by the draft Bill Committee,²¹ migrant survivors of domestic abuse face particular barriers to accessing support. They are less likely to seek help for fear of deportation and the threat of immigration enforcement is in itself used by perpetrators as a form of coercive control. They can also face destitution as a result of lack of entitlement to welfare support due to their immigration status.²² Despite recommendations from the draft Bill Committee,²³ the Bill does not address these barriers faced by migrant women at all. Instead, [the Government has committed](#) to undertake a review into the statutory response to migrant victims of domestic abuse.²⁴ We are concerned that this piecemeal approach does not take on board the serious and urgent concerns raised during the pre-legislative scrutiny phase of the

¹⁷ Article 7, Istanbul Convention.

¹⁸ House of Commons Home Affairs Committee, 'Domestic Abuse', Ninth Report of Session 2017–19, October 2018.

¹⁹ HM Government, 'Strategy to end violence against women and girls: 2016 to 2020', March 2016.

²⁰ [Violence against Women, Domestic Abuse and Sexual Violence \(Wales\) Act 2015](#).

²¹ House of Lords, House of Commons, Joint Committee on the Draft Domestic Abuse Bill, [First Report of Session 2017-19, HL Paper 378, HC 2075](#), 11 June 2019, para 232.

²² Research from Bristol University details the vulnerabilities faced by migrant survivors: see [Bates, L., Gangoli, G., Hester, M. and Justice Project Team \(2018\), Policy Evidence Summary 1: Migrant Women. University of Bristol, Bristol](#).

²³ House of Lords, House of Commons, Joint Committee on the Draft Domestic Abuse Bill, [First Report of Session 2017-19, HL Paper 378, HC 2075](#), 11 June 2019, paras 232 – 259.

²⁴ HM Government, "[Landmark moment" as Domestic Abuse Bill introduced to Parliament](#)", 16 July 2019.

Bill. We recommend the Government introduce legislative changes to the Bill to ensure equal protection for migrant survivors.

Access to support services

Migrant survivors face particular barriers in accessing support for domestic abuse.²⁵ The barriers are especially acute for women with insecure immigration status and no recourse to public funds (NRPF) seeking life-saving support. For example, Women's Aid identified that an average of only one refuge space per region in England is available for a woman with NRPF.²⁶

We have recommended that statutory duties are placed on the Secretary of State with respect to funding for, and provision of, services. These duties should require non-discrimination in the provision of services including on grounds of immigration status, in line with CEDAW²⁷ and the Istanbul Convention.²⁸

Domestic Violence Rule and Destitute Domestic Violence Concession

As set out above, migrant survivors on visas which require NRPF are generally unable to access key support services such as refuges and are not entitled to other welfare benefits. This can leave these survivors facing the choice of destitution or staying with a perpetrator. The Domestic Violence Rule (DV Rule) – an application under the Immigration Rules - provides a way out for survivors of domestic abuse on a spousal visa, allowing them to regularise their status by applying for indefinite leave to remain. However, it is not currently available to other survivors subject to

²⁵ See [Bristol University Justice Project](#) (2018).

²⁶ EAW, 'Women living in a hostile environment - Increasing justice and protection for migrant women in the Domestic Violence and Abuse Bill', 2018.

²⁷ CEDAW Committee, General Recommendation 28, para 24-26 calls on states to: adopt a policy 'towards the goal of fully eliminating all forms of discrimination against women and achieving women's substantive equality with men.' And that the 'policy must identify women within the jurisdiction of the State party (including non-citizen, migrant, refugee, asylum-seeking and stateless women) as the rights-bearers, with particular emphasis on the groups of women who are most marginalized and who may suffer from various forms of intersectional discrimination'.

²⁸ The Istanbul Convention requires states to implement its provisions without discrimination, including on grounds of migrant or refugee status. Article 4(3) provides that the '[i]mplementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status. ('Council of Europe Convention on preventing and combating violence against women and domestic violence', 2011.)

immigration control and the NRPF rule. **We recommend that the DV Rule should be extended to all migrant survivors of domestic abuse with insecure immigration status.**

The Destitute Domestic Violence Concession (DDVC) permits survivors applying under the DV Rule three months' temporary access to public funds, as well as allowing them to enter into employment. However, the three-month time limit has been found to be a major barrier to women in obtaining accommodation, accessing support and obtaining legal advice and representation.²⁹ Further, as with the DV Rule, the DDVC is limited to those on spousal visas. **We recommend an extension of the timeframe for the DDVC from three to six months, and that it should, like the DV Rule, be extended to all migrant survivors of domestic abuse with insecure immigration status.**

Prohibition on data sharing

We consider that it is inappropriate for victims of crime, or users of healthcare or other support services, to have their information shared for the purposes of immigration enforcement. Such information-sharing acts as a deterrent on survivors of domestic abuse from reporting crimes and seeking the support of these services. Further, as highlighted above, the threat of immigration enforcement is in itself used by perpetrators as a form of coercive control. We therefore recommend that information-sharing in these contexts be prohibited. The CEDAW Committee has called on states, in the context of gender-based violence, to repeal "...restrictive immigration laws that discourage women, including migrant domestic workers, from reporting this violence...".³⁰ With respect to the UK in particular, the Committee recommended in March this year that "asylum-seeking women, migrants and women with insecure immigration status are able to seek effective protection and

²⁹ Southall Black Sisters, 'The Domestic Abuse Bill: A Briefing Paper by Southall Black Sisters', 2019.

³⁰ CEDAW, General Recommendation 35, para 31(c).

support services without fear of having their immigration status reported to authorities.”³¹

We therefore recommend that the Bill prohibits the sharing of an individual’s personal data for the purposes of immigration enforcement where the data was collected in the course of the person accessing essential public services (including education, healthcare and policing).

5. Removing barriers to justice

Article 56 of the Istanbul Convention requires States to ‘[t]ake the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings.’

The government must (*inter alia*):

- provide for victims’ protection from intimidation, retaliation and repeat victimisation (Article 56 1(a));
- provide victims with appropriate support services so that their rights and interests are duly presented and taken into account (Article 56 1(e));
- ensure that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible (Article 56 1(g);
- enable victims to testify in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available (Article 56 1(i)).

Special measures

The Bill creates a presumption that victims of domestic abuse are eligible for special measures in the criminal court, but does not extend this presumption to the family court. Special measures can include separate waiting rooms, separate entrance and exit times for the parties, screens and video-links; these serve to protect the survivor

³¹ CEDAW, ‘Concluding observations on the eight periodic report of United Kingdom of Great Britain and Northern Ireland’, Advance Unedited Version, CEDAW/C/GBR/CO/8, 14 March 2019, p. 7.

and go some way to reducing the re-traumatising effect of the court process. The Bill is silent as regards the provision of special measures outside the criminal courts. Part 3A of the Family Procedure Rules, together with Practice Direction 3AA (introduced in 2017), gives the court discretion to order special measures where a party's participation in proceedings and the quality of their evidence is likely to be diminished by reason of vulnerability.

However, it is widely reported that special measures in the family court are not being provided often enough, and, when they are provided, they are often inadequate. Recent Women's Aid research reported that 61% of domestic abuse survivors had not had any form of special measures in the family court.³² Of the 35% who had accessed some type of special measure, the measures were only in place in some of the hearings they attended, rather than all.³³ The research also reveals inconsistent judicial attitudes where requests for special measures are made.³⁴ Prominent members of the judiciary have long been calling for protections for victims of domestic abuse in the family courts to be aligned with those in the criminal courts³⁵ and yet witnesses to the draft Bill Committee in May this year gave evidence that special measures in the family courts were still "not satisfactory or on a par with those facilities available in the criminal courts."³⁶ The Draft Bill Committee called for a 'single consistent approach' to be taken across all criminal and civil jurisdictions.³⁷

We therefore recommend that the presumption of eligibility for special measures for victims of domestic abuse must be extended to the family courts and the civil courts. This would remove the potential for inconsistencies arising from differing judicial attitudes to domestic abuse and/or lack of resources. The provision of special measures in the family courts and civil courts should be prioritised under the current court reform programme.

³² Women's Aid, "[What about my right not to be abused? Domestic abuse, human rights and the family courts](#)", 2018.

³³ Ibid.

³⁴ Ibid, p.28.

³⁵ See for example, [Cobb J, Review of Practice Direction 12J FPR 2010, Child Arrangement and Contact Orders: Domestic Violence and Harm, Report to the President of the Family Division, November 2018](#) (in particular paragraphs 15-18).

³⁶ House of Lords, House of Commons, Joint Committee on the Draft Domestic Abuse Bill, [First Report of Session 2017-19, HL Paper 378, HC 2075](#), 11 June 2019, para 140.

Cross examination

The number of unrepresented parties in domestic abuse cases in the family courts has been increasing year-on-year. In 2017, 28 per cent of applicants and 88 per cent of respondents were unrepresented, compared with 15 and 77 per cent respectively in 2011.³⁸ The Bill's current provisions introduce in the family courts an automatic prohibition of cross-examination in person of a victim by a perpetrator in domestic abuse cases, but only where that perpetrator has been convicted, cautioned or charged with a "specified offence" (to be defined in secondary legislation) or where there is a with-notice protective injunction in place.³⁹ In other cases, prohibition of cross-examination will be left to the discretion of the judge.

Cross-examination in person in cases where domestic abuse is an issue is well-recognised as being re-traumatising for survivors⁴⁰ and a means by which perpetrators can continue their abuse.⁴¹ It remains a significant problem for domestic abuse survivors in the family courts, with a recent survey by Women's Aid finding that 24% of respondents had been cross-examined by a perpetrator.⁴² The provisions in the Bill are insufficient to protect survivors from this continued abuse. Specialist organisations believe that the majority of women facing family law proceedings against perpetrators of domestic abuse will fall into the discretionary category, due to the high levels of domestic abuse which goes unreported to police. A report by SafeLives showed only 8% of women had a police report made either before or after they entered a refuge and arrests were made in only 65% of these cases.⁴³

³⁸ Ministry of Justice, 'Family court statistics quarterly: January to March 2018', table 11, 2018.

³⁹ Section 75, [Domestic Abuse Bill](#).

⁴⁰ [All-Party Parliamentary Group on Domestic Violence, Domestic Abuse, Child Contact and the Family Courts, 2016](#), p 4; and [House of Commons Home Affairs Committee, Domestic Abuse: Government Response to the Committee's Ninth Report of Session 2017–19, 7 May 2019, HC 2172 of session 2017–19](#), p 7.

⁴¹ Rights of Women, Written Evidence to the Joint Committee on Human Rights on the draft Domestic Violence and Abuse Bill, 15 February 2019, para 3.

⁴² Women's Aid, "[What about my right not to be abused? Domestic abuse, human rights and the family courts](#)", 2018.

⁴³ 'Insights refuge England and Wales dataset 2015-18: Adult refuge services' Safelives (2018), p.18, as quoted in Rights of Women, Written Evidence to the Joint Committee on Human Rights on the draft Domestic Violence and Abuse Bill, 15 February 2019, para 10.

Relying on the court's discretion in this context leads to inconsistency in application, as highlighted by Ministry of Justice research conducted in 2017, which found a wide range of differing views among the judiciary as to the correct approach to take to cross-examination in person in family law cases.⁴⁴ Such inconsistency of application, which was recognised by the draft Bill Committee,⁴⁵ causes confusion and uncertainty for survivors, and will leave too many survivors unprotected.

We therefore recommend that the automatic prohibition of cross-examination in person of a victim by a perpetrator be extended to all cases where domestic abuse is alleged. We also recommend that this prohibition be extended to the civil courts as well as the family courts, to ensure protection is extended no matter where victims have to face their perpetrators in litigation.⁴⁶

We are troubled by the Government's response to concerns raised about cases where there is no conviction, caution, charge or injunction. During oral evidence before the Joint Committee on the Domestic Abuse Bill, the Minister set out that the Government "did consider the option in this context of extending the automatic ban on cross-examination in person to cover all instances where there are allegations of domestic abuse. However, given the wide definition of domestic abuse being introduced in this Bill, we felt that a blanket, automatic prohibition against cross-examination in person where domestic abuse is alleged could risk extending the provision further than where it is necessary."⁴⁷ The Commission is concerned that this approach contradicts the positive steps taken to adopt a statutory definition of domestic abuse that reflects the seriousness and wide range of domestic abuse in all its forms.

⁴⁴ N. E. Corbett and A. Summerfield, [Alleged perpetrators of abuse as litigants in person in private family law: The cross-examination of vulnerable and intimidated witnesses](#), Ministry of Justice Analytical Series, 2017, Section 4.1

⁴⁵ House of Lords, House of Commons, Joint Committee on the Draft Domestic Abuse Bill, [First Report of Session 2017-19, HL Paper 378, HC 2075](#), 11 June 2019, paragraph 173.

⁴⁶ [Letter from Rt Hon Harriet Harman MP, Chair of the Joint Committee on Human Rights, to Victoria Atkins MP, and Edward Argar MP](#), 10 April 2019.

⁴⁷ House of Lords, House of Commons, Joint Committee on the Draft Domestic Abuse Bill, [First Report of Session 2017-19, HL Paper 378, HC 2075](#), 11 June 2019, para 170.

6. Disproportionate impact on women

The disproportionate impact of domestic abuse on women is very well documented and violence against women and girls is both a cause and a consequence of women's inequality. Women⁴⁸ are around twice as likely as men to experience domestic violence, and men are far more likely to be perpetrators.⁴⁹

The continuum of violence against women, in its many forms, reflects the wider structural gender inequalities that make it 'one of the most pervasive human rights issues in the UK.'⁵⁰ It impacts on women's health and independence, reduces their ability to work and creates a cycle of economic dependence. Women's inequality limits their ability to escape from abusive relationships; it can make it more difficult for them to enforce their rights and mean they are more likely to experience sexual harassment and violence.⁵¹ The majority of domestic homicide victims are women, killed by men. On average, two women are killed each week by their current or former partner in England and Wales, a figure that has changed relatively little in recent years.⁵² In recognition of this, the Istanbul Convention⁵³ covers both sexes, but highlights that violence against women is a form of gender-based violence that is committed against women, because they are women.⁵⁴

We do not consider the introduction, in s79(3) of the Bill, of a requirement that any guidance issued by the Secretary of State concerning domestic abuse must take account of the fact that the majority of victims of domestic abuse in England and Wales are female, to be sufficient.

⁴⁸ Under the current cross-Government definition of domestic abuse, 'women' also includes 16 and 17 year olds.

⁴⁹ Office for National Statistics, 'Domestic Abuse in England and Wales', 2017; Crown Prosecution Service 'Violence against women and girls report, 10th edition', 2017.

⁵⁰ Equality and Human Rights Commission, '[Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights](#)', 2014.

⁵¹ Equality and Human Rights Commission, 'Women's rights and gender equality in 2018', Annex submission to the UN Committee on the Elimination of All Forms of Discrimination Against Women to inform the UK List of Issues, 2018.

⁵² Office for National Statistics 'Crime Statistics, Focus on Violent Crime and Sexual Offences, Year ending March 2016, Chapter 2: Homicide', 2016.

⁵³ The Council of Europe advises that 'parties to the Convention are encouraged to apply the protective framework it creates to men who are exposed to violence within the family or domestic unit. Nevertheless, it should not be overlooked that the majority of victims of domestic violence are women and that domestic violence against them is part of a wider pattern of discrimination and inequality.' See, Council of Europe, 'Convention on preventing and combating violence against women and domestic violence', 2011.

⁵⁴ Council of Europe '[About the Convention](#).'

We therefore urge the UK Government to recognise the disproportionate impact of domestic violence on women and girls clearly within the text of the Bill, rather than only in relation to guidance issued under the Act. We recommend that such recognition be contained within the proposed statutory duty on the Secretary of State, as recommended above. This is particularly important in a context where the UN Special Rapporteur on violence against women reports that there has been a growth in commissioning of gender-neutral services, which disregard the specific needs of women and girls.⁵⁵

The legislative framework for equality in Great Britain (the Equality Act 2010) does not preclude a reference to the gendered impact of abuse within the Bill. The Public Sector Equality Duty (PSED) requires public authorities to have due regard to the need to tackle unlawful discrimination and advance equality of opportunity. Compliance involves consideration of positive action measures to overcome disadvantage experienced by, and meet the different needs of, particular protected groups.⁵⁶

7. Broadening the definition of domestic abuse

We welcome the introduction of a statutory definition of domestic abuse to clearly guide policy and practice. However, we share the concerns shared by specialist support organisations that unless certain forms of violence are included in the definition, public bodies may not immediately recognise them as domestic abuse.⁵⁷

We recommend that the statutory definition also includes: forced marriage, female genital mutilation, slavery and sexual exploitation, in line with the Istanbul Convention and recommendations of the Joint Committee on the Draft Domestic Abuse Bill.⁵⁸ We note that the definition of domestic abuse under the

⁵⁵ UN Human Rights Council, 'Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo: Mission to the United Kingdom of Great Britain and Northern Ireland', 2015.

⁵⁶ Positive action can include providing additional or bespoke services, separate facilities, accelerated access to services and targeting resources to benefit a particular disadvantaged group. See s.158 Equality Act 2010, and EHRC [Statutory Code of Practice for Services, public functions and associations](#), Chapter 10.

⁵⁷ Southall Black Sisters, 'The Bach Commission: Evidence Submitted by Southall Black Sisters', 2016.

⁵⁸ House of Lords and House of Commons, Joint Committee on the Draft Domestic Abuse Bill, '[Domestic Abuse Bill – First report of session 2017-19](#)', 11 June 2019, para 28. .

Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 includes FGM and forced marriage.⁵⁹

The Istanbul Convention requires victims of violence against women and girls to be protected, regardless of their immigration status.⁶⁰ Domestic abuse can include threats about women's immigration status and control of their documents and applications. Specialist support and advocacy organisations have reported about how fear of their own or their children's deportation prevents migrant women from reporting abuse, and seeking protection and justice⁶¹. **We therefore recommend that coercive control over a person's immigration status is expressly included in the statutory definition.**⁶²

The APPG on domestic violence examined online abuse in 2017, and advised that online abuse and harassment often reflect a pattern of coercive and controlling behaviour⁶³. **We therefore recommend that online abuse is included in the statutory definition.**

8. The Domestic Abuse Commissioner

We welcome the introduction of an independent commissioner to tackle domestic abuse. However, in light of the Istanbul Convention and the existing policy framework, we are disappointed that the Government has not created a 'VAWG and Domestic Abuse' Commissioner. We recommend that:

- **The Commissioner's role should be full time.** Comparable roles, such as the Independent Anti-Slavery Commissioner and the Victims' Commissioner, are full time roles.

⁵⁹ Welsh Government, Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

⁶⁰ Council of Europe, 'Convention on preventing and combating violence against women and domestic violence', 2011.

⁶¹ EVAW, 'Women living in a hostile environment. Increasing justice and protection for migrant women in the Domestic Violence and Abuse Bill', 2018.

⁶² This was also recommended by the Joint Committee for the Draft Domestic Abuse Bill.

⁶³ The APPG on domestic Violence and Women's Aid, 'Tackling domestic abuse in a digital age: A Recommendations Report on Online Abuse by the All-Party Parliamentary Group on Domestic Violence'. 2017.

- **The Bill ‘requires’ rather than ‘allows’ the Secretary of State to provide funding for the Commissioner.**
- **The Commissioner should have the following functions, in addition to the proposed general functions:**
 - **Collect disaggregated statistical data on all forms of domestic abuse⁶⁴.**
 - **Take account of the particular impact of domestic abuse on women, and on others groups sharing a protected characteristic/s.**

Further information should be provided about how the Commissioner will work with the VAWG National Adviser in Wales, as well as with any relevant bodies in Scotland.

We support the proposed establishment of a victims and survivors’ advisory group, to ensure that the Commissioner engages directly with this group.

The Commission’s work

The Commission has made detailed submissions on the subject of the UK Government’s response to domestic abuse to the following recent consultations and inquiries:

- [Submission to Government Consultation on Transforming the response to domestic abuse, 31 May 2018.](#)
- [Written evidence to the Home Affairs Committee Inquiry into domestic abuse, 5 July 2018.](#)

⁶⁴In our [2018 report to CEDAW](#), we recommended that the UK Government supports the collection of data on femicide, and ensure that national homicide data reflects the gendered nature of crimes by collecting data on the sex and age of the perpetrator and victim, their relationship and previous domestic abuse convictions, and by disaggregating this data across police force areas.

- [Written evidence to the Joint Committee on the draft Domestic Abuse Bill, 26 April 2019.](#)
- [Letter to the Chair of the family justice panel about the call for evidence on assessing the risk of harm to children and parents in private law children cases, 21 August 2019.](#)

Further information

For more information, please contact:

Emily Hindle (Senior Associate, Policy)

Email: emily.hindle@equalityhumanrights.com

Tel: 0207 832 7895

Katherine Perks (Principal, Policy)

Email: Katherine.perks@equalityhumanrights.com

Tel: 02078327813