

## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately



### 1. Name/Organisation

Victim Support Scotland

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

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### 3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public? (on the Scottish Government Consultation Hub)

Please tick as appropriate

Yes  No

(b) If you answered yes, please select an option below.

Please tick **ONE** of the following boxes

(c) Do you agree to your organisation's **details** and **response** being made available to the public? (on the Scottish Government Consultation Hub)

Please tick as appropriate

Yes, publish my response and details  
 No, do not publish my response

(form continues below)

Yes, make my response  
and name all available

**or**

Yes, make my response  
Available without my  
name (anonymously)

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**  **Yes**  **No**

## CONSULTATION QUESTIONS

**1. Are you content that any specific offence of domestic or partner abuse should be drawn so as to encompass both conduct, such as threats or physical abuse, which is currently criminal, and psychological abuse & coercive control?**

Yes  No

The nature of domestic abuse is that it is on-going, repeated and cumulative; if this is not taken into consideration during investigation and prosecution, the severity and impact of the crimes cannot be understood and dealt with appropriately. Victim Support Scotland welcomes the approach taken with the draft offence in encompassing conduct and psychological abuse/control as this will enable the justice system to appropriately deal with this crime, allowing domestic abuse to be viewed and treated as a course of conduct, rather than using the current narrow approach of prosecuting individual offences or the alternative approach of separating types of abuse.

**2. Do you have any comments on the general structure of the offence set out above, in particular:**

- **the requirement that a reasonable person would consider the accused's behaviour would be likely to cause the victim to suffer physical or psychological harm;**
- **the requirement for a course of behaviour consisting of behaviour on at least two occasions;**
- **the mental element of the offence to be intention to cause harm or recklessness as to harm being caused?**

VSS agrees with the approach taken. We welcome the fact that the court will not require to hear evidence relating to the reaction of the victim. Each victim may react differently, and often may not realise the extent of the harm caused until a much later date. This approach moves us away from expecting certain emotional reactions to victimisation, and removes the need for such reactions to be present for the behaviours to be prosecuted.

We believe it to be reasonable for a course of conduct to consist of at least two occasions of harm.

We agree that the mental element of the offence should be the intention to cause harm or recklessness to harm being caused as this removes the requirement for the prosecution to prove the intent of the accused to cause such harm. Proving intent to harm is challenging as the accused can easily argue that they did not *intend* to cause harm, therefore creating a barrier to prosecution. In fact, many offenders of domestic abuse use the pretence of the abuse being unintentional as part of their controlling behaviour.

**3. Do you have any comments on the definition of ‘abusive behaviour’ contained in the draft offence?**

We welcome the draft offence’s definition of ‘abusive behaviour’ as this includes both behaviours that could be prosecuted through previous legislation, and the elements of controlling and coercive behaviour that cannot currently be prosecuted. This would allow all types of abusive behaviour to be prosecuted together, as a course of conduct. We welcome that sexual violence is included within the definition of violent behaviour, as this type of abuse is often found amongst a pattern of abuse perpetrated against partners or ex-partners. We question how the offending of repeat offenders of sexual offences will be monitored if prosecuted through this offence, and how it can be ensured that Sex Offender Notification requirements are triggered by this offence.

**4. Do you have any comments on the relationships the offence should apply to?**

We agree that the offence should be restricted to people who are partners or ex-partners. It is our view that the current law can provide the means to investigate and prosecute those who abuse vulnerable individuals within a familial relationship.

**5. Do you have any comments on the proposed defence to the offence?**

We have no current objections to the proposed defence.

**6. Do you have any comments on the proposed maximum penalty for the offence?**

The draft offence includes sexual violence as well as physical violence in the definition of “behaviour directed at B that is violent” within section 2(1)(a). As aforementioned, we welcome the recognition within the draft offence of the sexual element of domestic abuse.

We question whether the proposed maximum penalty on indictment for this offence is high enough, considering that the maximum penalty on indictment for rape is life imprisonment. If the maximum penalty is set at 10 years imprisonment for the domestic abuse offence, we look for reassurance that if there has been a complaint of a sexual offence that is of a higher tariff, that this offence will be libelled separately (with a domestic abuse aggravation), in addition to the domestic abuse offence.

**7. Do you have a view on whether provision should be made to enable a court to convict the offender of ‘alternative’ offences without the need for these to be libelled in the complaint or indictment? If so, what offences do you think should be included as ‘alternative offences’?**

We would welcome provision within the offence to enable a court to convict the accused of 'alternative' offences without the need for these to be labelled. This would maintain a consistency with similar legislation that is already in practice, namely the stalking offence (s.39 of the Criminal Justice and Licensing (Scotland) Act 2010). It is crucial that prosecutions do not fail because a course of conduct could not be proved. Any alternative offence that is prosecuted in this situation should be done so using the domestic abuse aggravation as provided for through the Abusive behaviour and Sexual Harm (Scotland) Bill.

It is reasonable that the following offences should be included as alternatives:

- assault;
- threatening and abusive behaviour;
- sexual offences;
- s.127 of the Communications (Scotland) Act 2003;
- disclosing, or threatening to disclose, an intimate photograph or film
- abduction;
- breach of bail;
- breach of non-harassment order or other civil protection order;
- vandalism;
- attempts to defeat or pervert the course of justice.

#### **8. Do you have any other comments on the draft offence attached to this consultation?**

Each criminal justice agency must have regard to the general principles of the Victims and Witnesses (Scotland) Act 2014 when carrying out functions that relate to victims or witnesses in criminal proceedings. One such general principle is that victims should be protected from secondary and repeat victimisation, intimidation and retaliation.

In drafting the domestic abuse offence, the Scottish Government should follow the spirit of this legislation in putting in place adequate protections measures for victims and witnesses. We suggest two amendments to the draft offence to ensure that this occurs.

Firstly, VSS suggests that the draft offence should include a restriction on self-representation by the accused, equivalent to that contained within section 6 of the Vulnerable Witnesses (Scotland) Act 2004, which amends section 288(f) of the Criminal Procedure (Scotland) Act 1995. This provision is applicable in cases involving vulnerable witnesses and given the status of victims of domestic abuse under the Victims and Witnesses (Scotland) Act 2014, it would be appropriate to provide this protection to victims, in order to avoid abusers using the process to further intimidate and abuse them.

If the 1995 Act is not amended to prohibit the self-representation of the accused in domestic abuse offences as well as sexual offences, then there may be an inconsistency in the protections provided to vulnerable witnesses, considering that some cases of domestic abuse will contain sexual offences and others will not.

Secondly, we suggest that the draft offence is amended to include a requirement for the court to consider, in every case, whether the making of a non-harassment order would be appropriate. This would remove the need for victims to enter into the civil justice system, and ensure that the courts consider the protection of the victim in every domestic abuse case.