

**Submission
No 22**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Office of the Justice Minister, Department of Justice, Northern
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FROM THE OFFICE OF THE JUSTICE MINISTER



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Committee Chair Committee on Coercive Control
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1 February 2021

Dear Hon Ward, Committee Chair

INQUIRY INTO COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Thank you for your invitation to provide a submission to your Committee's inquiry into coercive control in domestic relationships.

As you may be aware my Department has been progressing a Domestic Abuse and Civil Proceedings Bill that will create a new domestic abuse offence in Northern Ireland, capturing patterns of abusive behaviour including controlling and coercive behaviour, against a partner, former partner or close family member. The legislation will close a gap in the law and ensure that protection against domestic abuse is not limited to physically violent behaviour, as at present, and will apply where there are two or more occasions of abusive behaviour covering physical, sexual and controlling behaviour. The introduction of the new offence will send a clear message that domestic abuse, whether physical or non-physical, will not be tolerated in any form in Northern Ireland.

The legislation has now completed its passage through the Northern Ireland Assembly (with the content of the Bill now finalised) and should achieve Royal Assent by March. Following this will be a crucial period of public awareness raising and training for our criminal justice partners. Taking account of this our domestic abuse offence should 'go live' by the end of 2021.

I have included some background and detail in relation to our offence below which I trust your Committee will find helpful. I have also included at Appendix 1 responses to the questions posed in your discussion document (as far as these do not relate specifically to New South Wales matters and where I consider that our input may be of use to you in considering further progress in this area).

Background

The need for a specific domestic abuse offence in Northern Ireland was the subject of a public consultation in early 2016 (<https://www.justice-ni.gov.uk/consultations/domestic-abuse-offence-and-domestic-violence-disclosure-scheme>). This was broadly welcomed by respondents and stakeholders. The content of the legislation that was subsequently prepared is similar in extent to the Scottish legislation (one of the key differences being that it applies to not only partner and former partner but also close family members), which is widely seen to be the "gold standard" in the United Kingdom. The legislation in Northern Ireland focuses not simply on 'coercive control' but on abusive behaviours more generally of which this forms one. I am of the view that this is essential in order to ensure that the scope of any domestic abuse offence is as robust as possible and does not allow those carrying out abuse to evade justice as a result of not coming within the scope of a more narrowly defined concept. It was considered by both my Department and stakeholders that this approach was preferable to one in which legislation is limited to coercive control.

The legislation that will govern the domestic abuse offence in Northern Ireland can be found at:

<http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/domestic-abuse/domestic-abuse-bill---bill-as-amended-at-fcs---full-print-version.pdf>

The accompanying Explanatory and Financial Memorandum is available at:

<http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/domestic-abuse/domestic-abuse-bill-efm---as-amended-at-fcs.pdf>

Key aspects of the Domestic Abuse Bill in Northern Ireland

Sections 1 – 5 set of the Bill set out the key elements relating to the new domestic abuse offence. Broadly speaking the domestic abuse offence would occur where the following conditions are met:

- there is abusive behaviour;
- it occurs on two or more occasions;
- the individuals are personally connected – intimate (including previous) relationship or close family members;
- a reasonable person would consider the behaviour likely to cause physical or psychological harm (including fear, alarm and distress);
- the accused intends to cause harm or is reckless as to this; but
- harm does not have to be caused.

Under the legislation abusive behaviour is:

- behaviour (including towards others) that would have the effect of:
 - making the victim dependent on the abuser;
 - isolating them from friends, family members or other sources of social interaction or support;
 - controlling, regulating or monitoring their day to day activities;
 - depriving or restricting their freedom of action; or
 - making them feel frightened, humiliated, degraded, punished or intimidated.
- violent behaviour (includes both physical and sexual); or
- threatening behaviour.

This is not an exhaustive list. Abusive behaviour could include (but is not limited to) coercive control, psychological/emotional abuse, physical abuse, sexual abuse, economic abuse as well as online and technological abuse.

Domestic Abuse Aggravators

Under the Domestic Abuse Bill there are aggravators associated with both the domestic abuse offence as well as other offences where domestic abuse is present, which will enable the sentencing given to be increased up to the maximum that would otherwise be available.

Child aggravators

There are two child aggravators that may apply where the domestic abuse offence is brought forward. The domestic abuse offence may be aggravated if:

- (i) the victim is under 18 at any time of the abusive behaviour, in the context of a young person in (or previously in) a relationship or against a close family member (excludes child parent relationship where the child is under 16); and/or
- (ii) at any time, where the domestic abuse offence occurs, and where the child is not the direct victim:
 - the child saw, heard or was present, during an incident of abusive behaviour that forms part of the domestic abuse offence;
 - abusive behaviour was directed at, or threatened to be directed at, the child;
 - the child was used to direct abusive behaviour at the victim; or
 - a reasonable person would consider the course of behaviour, or an incident of behaviour which forms part of the course of behaviour, to be likely to adversely affect the child.

The child does not need to be aware of the abusive behaviour and it does not need to cause them harm. Where both the domestic abuse offence and child aggravator(s) is proved, the court may increase the sentence given.

Domestic abuse aggravator

A general domestic abuse aggravator may also apply to any other offence that is not the domestic abuse offence. Any offence (except the domestic abuse offence) may be aggravated by reason of involving domestic abuse e.g. criminal damage of a partner's car or assault of a partner. This aggravator would apply to single incidents of abusive behaviour, rather than ongoing abusive behaviour which should be captured by the domestic abuse offence.

For this aggravation to apply:

- a reasonable person would need to consider the offence likely to cause physical or psychological harm (including fear, alarm and distress) to the victim;
- the individuals would need to be personally connected – intimate (including previous) relationship or family members; and
- the accused would need to intend to cause harm or be reckless as to this.

The offence can be aggravated whether or not the offence is directly against the victim e.g. in the criminal damage example, the car could belong to the victim's parent. As with the domestic abuse offence harm (either physical or psychological) does not have to be caused.

Information sharing with schools (Operation Encompass)

This provision enables information to be shared by police for the purpose of advising a school that there has been a domestic abuse incident the night before, to support the school to provide a secure and sympathetic response and assisting them in addressing the broader effects of abuse.

Extra-territorial jurisdiction

The Bill puts measures in place for procedural matters linked specifically to the offence (and criminal court), meaning that abusive behaviour committed abroad may be brought within the remit of the domestic abuse offence locally.

Domestic Abuse Protection Orders/Notices

The Bill provides that the Department may, by regulations, bring forward new domestic

abuse protection notices and orders, but is not necessarily limited to these in terms of protection measures. A consultation is currently underway on this matter.

Measures to prevent further abuse through the Criminal Justice System

The Bill also includes safeguards to prevent an abuser using the criminal justice process to further exert control and influence over their victim. For example, the accused will be prevented from electing for trial by jury at Crown Court, in summary proceedings, in relation to the domestic abuse offence.

Those subject to the domestic abuse offence, or an aggravated offence, will be automatically eligible for consideration of special measures when giving evidence, which could include the use of live links or screens.

The provisions would also prohibit the cross examination of an individual in a criminal court by the accused, where this relates to the domestic abuse offence or an offence aggravated by domestic abuse.

This currently applies for offences relating to sexual and trafficking offences and is being extended to domestic abuse related offences.

Preparations for the new offence

A multi-agency task and finish group including criminal justice partners (Police, Public Prosecution Service and Northern Ireland Courts and Tribunals Service) has been convened to look at the technical operationalisation of the offence. There will also be a crucial period of training and awareness raising in the run up to the offence going live by the end of the year.

The Department is also working closely with key stakeholders to develop statutory guidance that will:

FROM THE OFFICE OF THE JUSTICE MINISTER

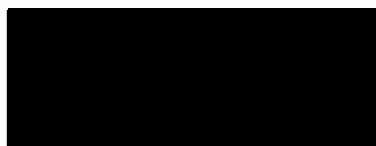
- be used by the police and criminal justice agencies in investigating offences;
- assist the work of non-governmental organisations and voluntary organisations;
and
- provide information to those interested in the subject area, including members of the public who may be affected by domestic abuse.

While this guidance has not yet been published a copy of this could be shared in confidence if you would find that is helpful.

My lead official in this area is [REDACTED] and she would be more than happy to discuss any of these aspects with you, or your staff, in greater detail. You can contact her directly by email at [v \[REDACTED\]](mailto:), or by phone on [REDACTED]
[REDACTED]

I wish you and your Committee well in your endeavours.

Yours sincerely,



NAOMI LONG MLA
Minister of Justice

Please ensure that you quote our reference number in any future correspondence.

NI RESPONSE TO QUESTIONS POSED IN THE NEW SOUTH WALES DISCUSSION DOCUMENT

1. What would be an appropriate definition of coercive control?

Rather than a definition of coercive control it may be helpful to consider what constitutes abusive behaviour, of which this may form part. The approach taken in Northern Ireland has been to cover as wide a range of abusive behaviours as possible while ensuring that safeguards are built in. As a result the offence covers behaviour that includes, but is not limited to:

- controlling or coercive behaviour;
- psychological/emotional abuse;
- physical abuse (including violent – physical and sexual – or threatening behaviour);
- sexual abuse;
- economic and financial abuse;
- online and technological abuse;
- abusive behaviour (which may encapsulate the above):
 - making the victim dependent on the abuser;
 - isolating them from friends, family members or other sources of social interaction or support;
 - controlling, regulating or monitoring their day to day activities;
 - depriving or restricting their freedom of action; or
 - making them feel frightened, humiliated, degraded, punished or intimidated.

2. How should it distinguish between behaviours that may be present in ordinary relationships with those that taken together form a pattern of abuse?

At the crux if the offence in Northern Ireland is the question of whether or not the behaviour was abusive, would it be considered likely to cause harm and did the accused intend to cause harm (or was reckless as to this). It is important to ensure that safeguards and protections are built into an offence. In Northern Ireland for the domestic abuse offence to occur:

- abusive behaviour on two or more occasions;
- a reasonable person would consider the behaviour likely to cause physical or psychological harm (including fear, alarm and distress); and
- the accused intends to cause harm or is reckless as to this.

The legislation creates a defence where a course of behaviour, which might otherwise be deemed abusive, is, in the particular circumstances, reasonable. This is an important safeguard to ensure that those acting in the best interests of others are not criminalised. It is intended that this would only be used in a very limited range of circumstances. The defence may be applicable where a

concerned son or daughter restricts the movement of a parent who has a medical condition, for both their safety and the safety of others. It may also apply if, for example, an individual prevents a partner, who has a gambling or alcohol addiction, from associating with certain people, going to certain places where they may be present or having control of the household finances.

3. Does existing criminal and civil law provide the police and courts with sufficient powers to address domestic violence, including non-physical and physical forms of abuse?

What is key is to ensure that both physical and as a wide a range of non-physical abusive behaviours as possible can be captured. The domestic abuse offence in Northern Ireland will have to ability to capture both, albeit that it is likely that the most serious physical and sexual offences will continue to be captured in their own right, accompanied by a domestic abuse aggravator (for example homicide, rape or serious physical violence). These may also be charged alongside the domestic abuse offence depending on the particular circumstances of the case.

Consideration could also be given to the protections and support that are offered to individuals. For example, in all parts of the United Kingdom legislation is being brought forward for new domestic abuse protection notices and orders. These are intended to protect victims from domestic abuse, including physical violence and the threat of violence as well as non-physical abuse and coercive control. These will enable both short term and longer term protection to be afforded to individuals and will replace legislation for Domestic Violence Protection Notices and Orders which are considered to be limiting in that physical violence or a threat of violence must be present.

A Domestic Abuse Protection Notice will allow the police to provide immediate protection to victims. This could require an individual to not contact the victim, to stay away from their home or have to leave the home. It will provide short term emergency protection and a breathing space for the victim which would not require the victim to go to court. Domestic Abuse Protection Orders can apply for a longer period, will not necessarily require the co-operation or input from the victim and can be applied for by the police or potentially specified third parties. As well as protections it will be possible in the longer term to stipulate requirements around measures to address the abusive behaviour.

4. Could the current framework be improved to better address patterns of coercive and controlling behaviour? How?

See response to question 4 above.

5. Does the law currently provide adequate ways for courts to receive evidence of coercive and controlling behaviour in civil and criminal proceedings?

In a Northern Ireland context it is intended that a wide range of evidence will be considered as part of the new domestic abuse offence as well as any

aggravated offences. Evidence gathering may cover a wide range of aspects including records of communication, online and technological activity, audio and video recordings, local enquiries, witness testimony, records of lifestyle and household activities, interaction with services.

There is a need to focus on establishing a course of behaviour, or abuse related to any other offence, across different types of evidence. Much of it will be evidence of the victim and abuser's day to day living and their interaction. Types of evidence which may be useful include:

- the victim's account of what happened to police;
- records of communication between the victim and abuser e.g. emails, phone records or text messages;
- evidence of abuse over the internet, digital technology and social media platforms;
- audio or visual recordings of interaction between the victim and suspect, demonstrating body language and tone e.g. 999 recordings, CCTV, body worn video footage;
- local enquiries e.g. neighbours, regular deliveries, postal services, window cleaner;
- witness testimony e.g. from family and friends as to observed behaviour by both individuals and its effect and impact;
- diaries kept e.g. by the victim and/or children;
- records of lifestyle and household, including photographic evidence;
- evidence of isolation e.g. lack of contact with family and friends, withdrawal from social activities and clubs;
- records of interaction with services which show the suspect adopting a dominant role e.g. always accompanying the victim to banking or medical appointments;
- bank records showing restricted financial management;
- medical evidence including records of visits to a doctor or other medical practitioner, or of visits to a hospital out-patients' clinic or casualty department. These visits could include visits for both physical and non-physical abuse. Evidence of treatment of other members of the family may also be presented to support a claim that behaviour has been directed at others to abuse the victim;
- GPS tracking on mobile phones, tablets, vehicles; or
- care plans, where the suspect has caring responsibilities

Evidence, which does not focus on the victim's statement, might include:

- 999 recordings;
- abuse over the internet, digital technology and social media platforms;
- social media, text messages and emails;
- mobile phone records;
- bank records;
- statements from third party witnesses;
- records of interaction with services such as support services;
- evidence relating to isolation, control, humiliation, dependency, etc.

- CCTV footage;
- footage from police body-worn cameras;
- forensic evidence;
- photographs of any visible/immediate injuries and the scene;
- medical evidence; and
- police observation at the scene (such as furniture overturned, any damage to property, etc.).

6. Does the law currently allow evidence of coercive control to be adequately taken into account in sentence proceedings? If the answer is no to questions 5 or 6, how could the law be improved to ensure the evidence is admissible and is given adequate weight in civil and/or criminal proceedings?

This is not considered something that the Department of Justice in Northern Ireland can comment on in any detail.

However, consideration could be given to sentencing guidance for the judiciary or the use of statutory aggravators that would enable the judiciary to increase the sentencing given, up to the maximum that would otherwise be available, where a domestic abuse offence is aggravated by the involvement of a child or where an offence, other than the domestic abuse offence, is aggravated by domestic abuse.

7. What are the advantages and/or disadvantages of creating an offence of coercive control?

The key advantage is to ensure that not only physical abuse is captured but that also non-physical abuse is brought within any offence. Given that for many domestic abuse may not necessarily include violence (physical or sexual) it is important that all abusive behaviours can be captured by any offence. There is a need to ensure that it is framed in such way that the use of certain terms does not prevent new types of, or emerging, abusive behaviours being captured in the future. This can be seen with developments over the last number of decades in issues such as digital and technological abuse, child abuse, gaslighting etc. which a number of years ago it may not have been considered necessary to capture by the criminal law.

While it is not considered that there are disadvantages to a new offence what is key is to ensure that what may otherwise be considered normal tensions in relationships are not captured by any new offence. It is also important that safeguards are built in to ensure that behaviour which may otherwise be deemed to be abusive, but which is necessary in order for the protection of safety of others, is not criminalised. It is considered that this is provided for within the construct of the domestic abuse offence in Northern Ireland whereby there has to be abusive behaviour, a reasonable person would have to consider it likely to cause physical or psychological harm (including fear, alarm and distress) and the accused intends to cause harm or is reckless as to this. It would also be important that a defence is available whereby the behaviour would be considered reasonable in the particular circumstances order that such

behaviour is not criminalised.

8. How might the challenges of creating an offence of coercive control be overcome?

See response to question 7 above.

9. If an offence of coercive control were introduced in NSW, how should the scope of the offence be defined, what behaviours should it include and what other factors should be taken into account?

See the earlier overview of the legislation in Northern Ireland which focuses on abusive behaviours, a reasonable person test, safeguards and a defence. Inherent to this is that:

- there is abusive behaviour;
- it occurs on two or more occasions;
- a reasonable person would consider the behaviour likely to cause physical or psychological harm (including fear, alarm and distress);
- the accused intends to cause harm or is reckless as to this; and that a defence is available where the behaviour would otherwise be considered reasonable.

10. Could the current legislative regime governing ADVOs better address coercive and controlling behaviour? How?

See response to question three above.

11. Should the common law with respect to context and relationship evidence be codified within the CPA (or other relevant NSW legislation) to specifically govern its admissibility in criminal proceedings concerning domestic and family violence offences? If yes, how should this be framed?

This is not considered something that the Department of Justice in Northern Ireland can comment on in any detail.

12. Would jury directions specifically addressing domestic and family violence be of assistance in criminal proceedings? If so, what should a proposed jury direction seek to address?

In Northern Ireland research has been commissioned in relation to this matter. The research is still ongoing with the findings to be considered in due course.

13. Should provisions with respect to sentencing regimes be amended? If so, how?

See response to question 6 above.

14. Are there any other potential avenues for reform that are not outlined or included in the questions above?

If not already in place consideration could be given to the following:

- **Advocacy support service** to provide victims of domestic abuse with access to support through their criminal justice system journey.
- **Domestic Homicide Reviews** which seek opportunities for learning from tragic cases of homicide resulting from domestic abuse and to share best practice. These are intended to identify learning to improve responses to domestic abuse. They can also help to identify early warning signs that experts working in this field can look out for, providing for earlier interventions.
- **Behavioural change programmes**, including for those demonstrating concerning behaviour but who may not yet have reached the criminal justice system.
- **Domestic Violence and Abuse Disclosure Scheme** aimed at keeping people safe and protecting victims, or potential victims, from the risk of abuse and harm. The scheme, which is operated by the police, enables a person to make inquiries about the abusive past of their partner or former partner. It also provides a third party who has a concern with the ability to make an enquiry on their behalf. The information provided through the scheme (that is whether or not there is a risk) helps victims or potential victims make an informed choice on whether to stay in their relationship.
- A multi media **advertising campaign** across TV, radio and social media to raise awareness about domestic abuse and any new offence.
- A **non-fatal strangulation offence**.
- A **rough sex defence**.
- Workplace domestic abuse policies

15. What non-legislative activities are needed to improve the identification of and response to coercive and controlling behaviours both within the criminal justice system and more broadly?

Awareness raising (of both the public and professionals) and training are critical in this regard.