

Draft Domestic Violence and Abuse Bill Scrutiny

British Pregnancy Advisory Service submission to the
Joint Committee on Draft Domestic Abuse Bill

The British Pregnancy Advisory Service (BPAS) is a British reproductive healthcare charity that offers pregnancy counselling, abortion care, miscarriage management, contraception and STI testing to 85,000 women from across the UK, and advocate on behalf of the women we see. We run the Central Booking Service, funded by the Government and Equalities Office, to provide support for women in Northern Ireland experiencing an unplanned pregnancy or a pregnancy that they feel unable to continue.

Overview

This submission addresses the Committee's questions of '*whether the measures in the Bill ensure that the UK is compliant with the Istanbul Convention*' and '*issues [that are] raised in relation to the interface between reserved and devolved powers within the United Kingdom*'.

BPAS believes that the current draft bill will not ensure that the UK is compliant with the Istanbul Convention. There are a number of ways in which the current bill would leave the UK in contravention of the Istanbul Convention.

Compliance with the Istanbul Convention

The Government has made repeatedly clear, most recently in the *Ratification of the Council of Europe Convention on combating violence against women and girls and domestic violence – report on progress 2018*, that the Domestic Violence and Abuse Bill is, in part, designed to ensure that the UK is in compliance with the Istanbul Convention prior to ratification.

However, the current drafting of the Bill is insufficient in relation to a number of Convention articles and would result in the UK being in breach of the Convention from the moment of ratification:

- **Article 4 (fundamental rights, equality, and non-discrimination).**

Article 4(3) requires that "*The implementation of the provisions of this Convention by the Parties...shall be secured without discrimination on any ground such as...national or social origin...[or] migrant or refugee status.*"

The draft Bill specifically does not extend to Northern Irish women the rights under multiple articles of the Convention, which amounts to discrimination on the grounds of national origin. Similarly, the Bill has been criticised by multiple VAWG groups for failing to address the issues identified by the government for women with irregular immigration status to report abuse and receive support. They argue that this also amounts to contravention of this Article.

- **Articles 33 (psychological violence), 34 (stalking), 35 (physical violence), 36 (sexual violence, including rape), and 39 (forced abortion and forced sterilisation).**

These articles require that states are able to prosecute perpetrators who commit certain crimes abroad. For this, governments need to ensure that extra-territorial jurisdiction is in place.

The draft Bill extends extra-territorial jurisdiction for only English and Welsh courts – meaning that women resident in Northern Ireland would have no power to enforce their rights under the Istanbul Convention. Under the current draft, we would be introducing the unacceptable situation in which a woman from Bristol who is the victim of a sexual

assault abroad could have the perpetrator prosecuted in England, while a woman from Belfast could not have the perpetrator prosecuted in Northern Ireland.

- **Article 34 (stalking)**

This Article requires that *'the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised'*.

Northern Ireland has no legal definition of stalking and continues to rely on the Protection from Harassment (NI) Order 1997. The Northern Ireland Department of Justice is currently consulting on the need for stalking legislation (for instance, like that progressed as a Private Member's Bill in Westminster by Sarah Wollaston MP), but without a devolved assembly in place, this legislation will not progress.

- **Article 44 (jurisdiction)**

Article 44(3) requires that *'For the prosecution of the offences established in accordance with Articles 36, 37, 38, and 39 of this Convention, Parties shall take the necessary legislative or other measures to ensure that their jurisdiction is not subordinated to the condition that the acts are criminalised in the territory where they were committed'*.

S55 of the draft Bill, on the contrary, requires dual criminality – that is, an offence can only be prosecuted under extra-territorial jurisdiction if it is also illegal in the country in which it is committed.

The requirement of dual criminality to prosecute perpetrators is diametrically opposed to the provisions of Article 44 of the Convention.

Issues [that are] raised in relation to the interface between reserved and devolved powers within the United Kingdom.

Compliance with human rights obligations under international treaties is the responsibility of the state party without regard to the provisions of devolution, and so the UK government has responsibility to ensure that Northern Irish law is in line with our international obligations. A number of bodies have specifically called for the UK government to act to address breaches of human rights in Northern Ireland. The UN Committee on the Elimination of Discrimination Against Women has called on the UK government to amend UK-wide legislation (the 1861 Offences Against the Person Act) to address breaches of NI women's human rights. It is therefore entirely appropriate to include Northern Ireland in this bill.

It is important to recognise that civil servants in Northern Ireland have signalled to the government that Northern Ireland could be included in this Bill. In his 11th February 2019 letter to the Chairs of the Northern Ireland Assembly's All-Party Group on Domestic and Sexual Violence, the Permanent Secretary of the Northern Ireland Department of Justice (Peter May) said *"While legislating at Westminster is not the preferred approach, in this area we have a significant gap in our legislation. In the absence of a functioning Assembly, we want to explore the potential for inclusion of provision of a comparable offence [of domestic abuse] in Northern Ireland in the Home Office Bill on a without prejudice basis."*

Devolution is not an excuse for Westminster to not act. There has been no Assembly in Northern Ireland for over two years. The UK government remains responsible for the human rights of all its citizens, including those resident in Northern Ireland.