



**BRIEFING PAPER**

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# Domestic Abuse Bill 2019-21: Progress of the Bill

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## Summary

The Domestic Abuse Bill 2019-21 was introduced to the House on 3 March 2020. [Second Reading](#) took place on 28 April 2020.

The Bill was considered by a [Public Bill Committee](#) over 12 sittings between 4 – 17 June 2020. The Committee took evidence from expert witnesses for the first two sittings. A range of external stakeholders submitted written evidence to the Committee.

The only significant amendment made during Committee Stage was the Government's New Clause 16 (now clause 66 of the Bill) on homelessness. New Clause 16 was agreed without a vote. A number of minor and technical Government amendments were also agreed without a vote (these are not discussed in this paper).

There was only one division: on an Opposition amendment relating to the definition of "personally connected" in clause 2 of the Bill. The amendment – which would have extended the definition to cover carers – was negatived on division by 9 votes to 6.

Several of the amendments and new clauses debated by the Committee are now the subject of Government new clauses that have been tabled for Report. These cover the definition of domestic abuse as it applies to children, special measures and cross-examination in the family and civil courts, and the so-called 'rough sex defence'.

A wide range of other issues were debated. This paper does not cover these in full, but provides a list of issues and debate references.

The Bill, together with its Explanatory Notes and an overview of its parliamentary progress, is available on the [Parliament website](#). Overarching documents are available on [Gov.uk](#), including two new documents added after Committee Stage:

- [Domestic Abuse Bill: European Convention on Human Rights – Supplementary Memorandum by the Ministry of Justice](#), 30 June 2020
- Home Office, [Draft Statutory Guidance Framework](#), July 2020

Full policy background to the Bill as introduced is set out in [Library Briefing Paper 8787 Domestic Abuse Bill 2019-20](#).

# 1. Background to the Bill

## 1.1 Summary of the Bill

The Domestic Abuse Bill 2019-21 was introduced to the House on 3 March 2020. [Second Reading](#) took place on 28 April 2020.

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## 1.2 Second Reading

Members of all parties welcomed the Bill as introduced. Debate focused on what was missing from the Bill, rather than what was included in it: particularly in relation to children and migrant victims of domestic abuse. Many Members also noted the impact of the coronavirus pandemic on domestic abuse, and highlighted increased demand on services.<sup>1</sup> A letter from the Government to Shadow Home Affairs Minister Jess Phillips summarises many of the issues discussed: see [Domestic Abuse Bill 2020: letter from ministers to Jess Phillips MP](#), 28 May 2020.

Opening the Second Reading debate, Justice Secretary Robert Buckland noted that the coronavirus pandemic – and the instruction to “stay at home” – had highlighted the fact that home is not a refuge for many people:

The phrase “Stay at home”, which we so associate with the directions to deal with covid-19, should be words of reassurance and comfort. The home should be a place of safety, both physical and mental. The concept of the home as a refuge is such a strong one, yet for too many people it is not a refuge. At this time of lockdown, that fear, distress and suffering is multiplied.<sup>2</sup>

He said the Bill had four aims:

...first, to raise awareness of this insidious crime; secondly, to better protect and support victims and their children; thirdly, to transform the response to the criminal, civil and family justice

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<sup>1</sup> See [Commons Library Insight Coronavirus: Domestic abuse](#), 3 April 2020 for an overview of some of the issues

<sup>2</sup> [HC Deb 28 April 2020 c234](#)

systems; and, fourthly, to improve performance across all national and local agencies.<sup>3</sup>

He said that tackling domestic abuse “needs to be everyone’s business”, and that he believed the “landmark Bill” would make a “significant contribution”.

For Labour, Shadow Home Secretary Nick Thomas-Symonds said the Opposition supported the Bill:

... it is entirely right that, even in the midst of this crisis, we send the strongest possible message that tackling the appalling crime of domestic abuse remains a priority and that some of the urgently needed provisions in the Bill can progress.<sup>4</sup>

However, in the context of domestic abuse in the coronavirus pandemic he argued that the Government “have yet to engage fully, and the action does remain too slow”. He called for ring-fenced fast track funding to ensure that frontline services could meet demand.

He said “a victim is a victim” and indicated that during Committee the opposition would focus on issues including disabled victims and victims with an insecure immigration status.

He concluded by saying that Bill is “a real opportunity to consensually make vital changes in the interests of victims and potential victims up and down the country”.

Joanna Cherry, for the SNP, said there was “much to welcome” in the Bill, such as the inclusion of non-physical abuse in the statutory definition of “domestic abuse”, the inclusion of children aged 16 and 17, and the appointment of the domestic abuse commissioner.<sup>5</sup> However, she asked why the Government had “failed to take the opportunity to ensure that this Bill helps all women in the UK, regardless of their immigration status”. She said that the Bill’s lack of provision regarding migrant women would cause difficulties with ratifying the Istanbul Convention.<sup>6</sup>

The Bill received a Second Reading without division.

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<sup>3</sup> Ibid, c235

<sup>4</sup> Ibid, c238

<sup>5</sup> Ibid, c243

<sup>6</sup> See section 4.2 of [Library Briefing Paper 8787 Domestic Abuse Bill 2019-20](#) for full details of the Istanbul Convention

## 2. Public Bill Committee

The only significant amendment made during Committee Stage was the Government's New Clause 16 (now clause 66 of the Bill) on homelessness. New Clause 16 was agreed without a vote. A number of minor and technical Government amendments were also agreed without a vote (these are not discussed in this paper).

There was only one division: on an Opposition amendment relating to the definition of "personally connected" in clause 2 of the Bill. The amendment – which would have extended the definition to cover carers – was negated on division by 9 votes to 6.

Several of the amendments and new clauses debated by the Committee are now the subject of Government new clauses that have been tabled for Report. These cover the definition of domestic abuse as it applies to children, special measures and cross-examination in the family and civil courts, and the so-called 'rough sex defence'.

A wide range of other issues were debated. These are not covered in full in this paper, but a brief overview and debate references are provided in section 2.4 below.

### 2.1 Government new clause: Homelessness – victims of domestic abuse

The Government tabled New Clause 16 (NC16, Homelessness: victims of domestic abuse) during the [ninth sitting](#) of the Public Bill Committee on 16 June 2020. NC16 was agreed without a vote and now appears as **clause 66** of the Bill.

#### The purpose of the clause

Local authorities in England have a statutory duty to secure housing for unintentionally homeless households who are deemed to be in 'priority need'. Section 189 of the *Housing Act 1996* (as amended) defines priority need for this purpose. Currently, the section provides that a homeless person may be in priority need if they are:

...a person who is vulnerable as a result of ceasing to occupy accommodation because of violence from another person or threats of violence from another person which are likely to be carried out.<sup>7</sup>

Bodies such as Crisis have long argued that survivors of domestic abuse should be treated as 'in priority need' and owed a statutory rehousing duty in the event of them becoming homeless. In 2019 the All-Party Parliamentary Group for Ending Homelessness (APPGEH) published [A Safe Home: Breaking the link between homelessness and domestic abuse](#). The findings were based on Freedom of Information requests returned by 168 local authorities – the report identified that "nearly 2,000 households fleeing domestic abuse in England each year are not being provided help to access a safe home because they are not

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<sup>7</sup> MHCLG, [Homelessness Code of Guidance for Local Authorities](#), para 8.3

considered in ‘priority need’ for housing”.<sup>8</sup> Evidence was found of authorities using the vulnerability test as a gatekeeping tool:

Providing evidence to demonstrate vulnerability can be traumatic and near impossible for people who have experienced domestic abuse. There is evidence of local authorities consistently failing to provide people fleeing from domestic abuse the help they need and of the ‘vulnerability test’ being used as a gatekeeping tool.<sup>9</sup>

On 2 May 2020, the Government announced:

A change to the rules will also mean that those fleeing domestic abuse and facing homelessness as a result will be automatically considered as priority by their council for housing – ensuring more survivors of domestic abuse have access to a safe home.<sup>10</sup>

Clause 66 fulfils this commitment. The clause also amends Part 7 of the Housing Act 1996<sup>11</sup> to change references to “domestic violence” to references to “domestic abuse” within the meaning of clause 1 of the *Domestic Abuse Bill 2019-21*.

### **Debate on New Clause 16 (clause 66 of the Bill)**

Neil Coyle, for Labour, tabled New Clause 13 which would have had the same effect as NC16 but which would have extended priority need status to other persons residing in the same household as a victim of domestic abuse. Victoria Atkins, Minister for Women, responded for the Government:

I want to assure the Committee that such provision is not needed. Where an applicant has priority need, the Housing Act already requires local authorities to provide accommodation that is “suitable” for the household. There is therefore no need for each member of the household to have priority need.<sup>12</sup>

Alex Davies-Jones (Labour) said it was “disappointing” that survivors would be required to physically make an application for assistance themselves and went on:

Allowing a member of another household to make an application for homelessness assistance on behalf of an individual who is the victim of domestic abuse is a vital safeguarding mechanism for those fleeing abuse. The strength it takes to flee an abusive household is undeniable, but it will not always be safe or suitable for victims of abuse to make an application for assistance in person. In many cases it will be too dangerous for them to leave their home until they know that they have somewhere safe to seek refuge, or there could be logistical issues, such as where a victim is receiving hospital treatment. For other groups of people considered to be in automatic priority need for settled housing in England, it is already the case that someone else in the household is able to make the application—for example, if a woman is pregnant, their partner is able to make an application on their

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<sup>8</sup> APPGEH, [Safe Home: Breaking the link between homelessness and domestic abuse](#), May 2019

<sup>9</sup> Ibid, p20

<sup>10</sup> MHCLG, [Emergency funding to support most vulnerable in society during pandemic](#), 2 May 2020

<sup>11</sup> Part 7 governs authorities’ duties towards homeless applicants.

<sup>12</sup> [PBC Deb 16 June 2020 c293](#)

behalf. The same principle must be extended to people who are fleeing domestic abuse.<sup>13</sup>

Victoria Atkins set out the Government's concern that allowing other members of a household to apply for homelessness assistance might be manipulated by an abusive partner.<sup>14</sup> She committed to strengthen the Homelessness Code of Guidance for Local Authorities to make it clear that applications can be made through a variety of means:

We will update the homelessness code of guidance as part of this change coming into effect. We will take the opportunity to ensure that the guidance is clear about the need to ensure that victims are appropriately supported by local authorities to make this application. We will reinforce to all local authorities that all homeless applicants, including victims of domestic abuse, are able to be accompanied by a friend, family member or support worker, if they wish.<sup>15</sup>

## 2.2 Opposition division: carers and the meaning of "personally connected"

**Clause 1** of the Bill would set out the definition of "domestic abuse":

Behaviour of a person ("A") towards another person ("B") is "domestic abuse" if –

- (a) A and B are each aged 16 or over and are personally connected to each other, and
- (b) the behaviour is abusive.

**Clause 2(1)** would define "personally connected" as covering the following:

- persons who are (or have been) married to one another or civil partners of each other;
- persons who have agreed to marry one another (whether or not the agreement has been terminated);
- persons who have entered into a civil partnership agreement (whether or not the agreement has been terminated);
- persons who are (or have been) in an intimate personal relationship with one another;
- persons who each have (or have at some time had) a parental relationship in relation to the same child;<sup>34</sup> and
- relatives.

During Committee, Jess Phillips moved an amendment that would have added "one person is a provider of care to the other" to the list of clause 2 relationships. Speaking to the amendment, she said:

The amendment is a response to calls from people with disabilities and organisations within the disability rights sector that have been

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<sup>13</sup> Ibid, c295

<sup>14</sup> Ibid, c297

<sup>15</sup> Ibid, cc297-8



in touch with us to express their concerns about whether they are seen in the Bill.<sup>16</sup>

She went on:

People who very much rely on others for their care might not currently be covered by what is outlined in the Bill as a connected party. They might never have been married or had a civil partnership. They might never have been divorced ... and they might not be related.<sup>17</sup>

She expressed concern that clause 2 as drafted “fails to recognise the lived experiences of disabled victims of domestic abuse”, and that she wanted the Bill to “make it easier for disabled victims of domestic abuse to be recognised”. Ms Phillips cited a number of case studies she had been sent by [Stay Safe East](#), an organisation that works to support disabled survivors of abuse. She argued that the women in those studies “experienced abuse by people who had in effect become their family, and with whom they had a close personal connection”.

In response, Home Office minister Victoria Atkins said that the clause 2 definition – and its focus on “two individuals who are or have been in an intimate relationship or have a familial relationship” – was central “not just to our understanding in the Bill but, frankly, to the public’s understanding of what domestic abuse is”.<sup>18</sup>

She agreed that the abuse of a disabled person by their carer was “as unacceptable as any other form of abuse”. However, she considered that the impact of the amendment would be to unduly broaden the scope of the new domestic abuse definition:

...we have tried to guard against addressing all forms of exploitative behaviour in the Bill, because we do not want inadvertently to dilute that central golden thread that runs through all of our understanding of domestic abuse: namely, that it is focused around a significant personal relationship, whether as a family member or as a partner. That is the core of the definition. If an unpaid carer is a family member, they will be caught by the definition. If they are a partner – as she said, many people have taken on caring responsibilities in the last couple of months because of the covid-19 crisis – they are covered by the Bill. I would not want anyone to think that carers per se are excluded from the Bill, but we have focused the definition around the central point of the personally connected relationship.<sup>19</sup>

She referred to existing legislation that could be used to prosecute abuse of disabled people by their carers, such as the Theft Act 1968 and the offence of ill treatment or wilful neglect under the [Criminal Justice and Courts Act 2015](#). She also noted that the “plight of disabled victims of domestic abuse will feature in the statutory guidance”.

Jess Phillips pressed the amendment to a division. It was defeated by 9 votes to 6.<sup>20</sup>

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<sup>16</sup> [PBC Deb 9 June 2020 c102](#)

<sup>17</sup> Ibid

<sup>18</sup> Ibid, c106

<sup>19</sup> [Ibid, c109](#)

<sup>20</sup> Ibid, c110

## 2.3 Report stage: Government new clauses

The Government has tabled a number of new clauses for consideration at Report. The new clauses cover a variety of issues that were debated during Committee. An overview of the new clauses is set out in the following letters from Government ministers Alex Chalk and Victoria Atkins to Jess Phillips:

- [Domestic Abuse Bill 2020: letter from ministers to Jess Phillips MP on the first tranche of amendments](#), 29 June 2020
- [Domestic Abuse Bill 2020: letter from Minister Chalk to Jess Phillips MP on the second tranche of amendments](#), 30 June 2020

### The definition of domestic abuse: children

**Clause 1** of the Bill would set out a new statutory definition of “domestic abuse”. During Committee Jess Phillips moved the following amendment, which would have extended the definition to recognise children who witness domestic abuse as victims:

For the purposes of this Act, people affected by domestic abuse may include any child (such as a child in relation to whom A or B has a parental relationship) who sees, hears or is otherwise exposed to domestic abuse within the meaning of this section.

Speaking to the amendment, she said its aim was

to ensure that children who see, hear or are otherwise affected by domestic abuse – in other words, who themselves experience the domestic abuse – perpetrated by one person aged 16 or over against another, are recognised in the proposed statutory definition of domestic abuse.<sup>21</sup>

She highlighted research from Women’s Aid that indicated more children than women were using refuge and community-based services.<sup>22</sup>

She said that the Joint Committee on the Draft Domestic Abuse Bill had raised the issue:

[The Joint Committee] highlighted concerns that if children’s status as victims of domestic abuse that occurs in their household – rather than that which occurs to them as individuals in their own relationships or directly at the hands of the perpetrator in their home – was not recognised, the Bill could have a negative impact on the level and quality of specialist support available to children.<sup>23</sup>

She noted that the Bill included a duty on the Home Secretary to issue guidance on the effect of domestic abuse on children (in what is now clause 68 of the Bill). However, she said the Government had not yet published a draft of the guidance, and that in any event she “would probably still want to see it on the face of the Bill”.

Liz Twist (Labour) considered that statutory guidance would not be enough to ensure children received appropriate support:

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<sup>21</sup> [Ibid.](#), cc79-80

<sup>22</sup> Women’s Aid, [The Domestic Abuse Report 2020: The Annual Audit](#)

<sup>23</sup> [PBC Deb 9 June 2020 c81](#). See pages 21 to 23 of [Library Briefing Paper 8787 Domestic Abuse Bill 2019-20](#) for full background.

Inevitably, people looking at what service they need to provide, especially in times of financial constraint, will ask, "What does the law require us to do?". That is why it is important to have the amendment in the Bill. It will mean that statutory authorities must address the needs of those children.<sup>24</sup>

Members from all parties spoke in support of the principles set out in the amendment, and noted that the idea had support from numerous stakeholders.

In response, Home Office minister Victoria Atkins said she "wholeheartedly agreed that it is vital that we recognise that children are direct victims of domestic abuse".<sup>25</sup> She acknowledged that "growing up in a household of fear and intimidation can affect children's wellbeing and development with lasting effects into adulthood".

She said the basis of the clause 1 definition was "to focus on the relationship between the abuser and the direct victim, and to define the categories of behaviour", rather than addressing the impact of abuse on victims (adult or child). This would instead be picked up in the statutory guidance. She explained that covid-19 had caused delays in publishing the draft guidance, which was why it was not available in time for the Committee.

The minister said that the need for statutory agencies to recognise and respond to the impact of domestic abuse on children "is already embedded in the Bill". However, she said that she would "reflect carefully on this debate". Jess Phillips withdrew her amendment on this basis, but said she would return to the issue before the whole House.

The Government has now tabled its own new clause on the issue for consideration at Report ([New Clause 15](#)), which reads as follows:

**"Children as victims of domestic abuse"**

(1) This section applies where behaviour of a person ("A") towards another person ("B") is domestic abuse.

(2) Any reference in this Act to a victim of domestic abuse includes a reference to a child who—

(a) sees or hears, or experiences the effects of, the abuse, and

(b) is related to A or B.

(3) A child is related to a person for the purposes of subsection (2) if—

(a) the person is a parent of, or has parental responsibility for, the child, or

(b) the child and the person are relatives.

(4) In this section—

"child" means a person under the age of 18 years;

"parental responsibility" has the same meaning as in the Children Act 1989 (see section 3 of that Act);

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<sup>24</sup> Ibid, c95

<sup>25</sup> Ibid, c98

“relative” has the meaning given by section 63(1) of the Family Law Act 1996.”

### **Member’s explanatory statement**

*This new clause provides that references in the Bill to a victim of domestic abuse include children who see or hear, or experience the effects of, the abuse.*

## **Family and civil proceedings: special measures**

**Clause 59** of the Bill (clause 58 of the Bill as introduced) would extend the availability of ‘special measures’ for intimidated witnesses in criminal cases to complainants of any offence involving allegations of domestic abuse. Special measures – such as screening the witness from the accused or giving evidence via live link – are intended to improve the quality of their evidence.<sup>26</sup>

During Committee, Liberal Democrat Home Affairs Spokesperson Christine Jardine moved an amendment that would have extended statutory eligibility for special measures to the family court in cases where domestic abuse is involved.<sup>27</sup> The Committee also considered a new clause to similar effect tabled by the Opposition, which would have extended special measures eligibility to domestic abuse cases in both the civil and family courts.

Speaking to the amendment, Christine Jardine said that the provision of special measures in the family court was currently governed by the [Family Procedure Rules 2010](#) and associated Practice Directions. However, she said there was evidence that special measures were “perhaps not effective, and many women who appear in the family court in domestic cases are not aware of them”.<sup>28</sup> She therefore considered that “it must be written in the legislation that special measures are available”.

Jess Phillips supported these comments, and called for parity of approach across different courts:

Automatic eligibility, which new clause 45 and the amendment would allow for, would place special measures on a statutory footing and ensure that family and civil courts make structural changes to safeguard victims, thereby removing the burden on victims to have to request special measures. We want a situation similar to the criminal courts, where such measures are offered in a very proactive way. In fact, long before someone even knows that they will ever be in court or has been given a court date, they are asked about special measures. The amendments are just about equalising that system across our justice estate, to reduce the variation in judicial approach and provide much-needed predictability for victims.<sup>29</sup>

In response, Justice Minister Alex Chalk acknowledged the concerns about inconsistency:

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<sup>26</sup> See section 9 of [Library Briefing Paper 8787 Domestic Abuse Bill 2019-20](#) for full background

<sup>27</sup> [PBC Deb 11 June 2020 c256](#)

<sup>28</sup> Ibid c257

<sup>29</sup> Ibid, c259

Although special measures are already generally available in jurisdictions, the Government recognise that how they are applied can be inconsistent, which can in turn have a negative impact on the experience of vulnerable witnesses in each jurisdiction. It is important to note that we are not moving from night into day, in so far as the measures have been available; it is a question of what this place can do to prompt that – in other words, to indicate or give a steer to the courts that we expect and hope them to be imposed more readily than perhaps was the case.<sup>30</sup>

He noted that the Ministry of Justice's expert panel on harm in the family courts had been examining the issue, and was due to report in the coming weeks. He said he was sympathetic to the intention behind the amendment and new clause, and committed to carefully consider the proposals before Report. Christine Jardine withdrew the lead amendment on this basis.

The expert panel published its final report on 25 June 2020.<sup>31</sup> One of its recommendations was to extend the Bill's provisions on special measures to cover family courts:

The provisions in the Domestic Abuse Bill concerning special measures in criminal courts for victims of domestic abuse should be extended to family courts. The Bill should also be amended to bar direct cross-examination in any family proceedings in which there is evidence of domestic abuse, or in which domestic abuse is the subject of proceedings.<sup>32</sup>

In its response to the report, the Government committed to amend the Bill "so that victims of domestic abuse will be automatically eligible for special measures in the family court".<sup>33</sup>

The Government has tabled [new clauses 16 and 17](#) for consideration at Report, which would provide for special measures in family and civil proceedings where domestic abuse is involved.

### Civil proceedings: cross-examination

**Clause 60** of the Bill (clause 59 as introduced) would introduce a new automatic ban on perpetrators of abuse cross-examining their victims in the family courts (and vice versa), in certain circumstances. The courts would have discretion to prohibit cross-examination in other circumstances.<sup>34</sup>

The clause received cross-party support during the clause stand part debate. Justice Minister Alex Chalk said:

Victims have told us that being subject to cross-examination in person ... can be retraumatising, and judges have told us that the

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<sup>30</sup> Ibid, c265

<sup>31</sup> Ministry of Justice, [Assessing Risk of Harm to Children and Parents in Private Law Children Cases Final Report](#), June 2020. See also [HCWS313 Final Report of the MoJ Expert Panel on Harm in the Family Courts and Implementation Plan: Written statement](#), 25 June 2020 and Ministry of Justice, [Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Implementation Plan](#), June 2020

<sup>32</sup> Ministry of Justice, [Assessing Risk of Harm to Children and Parents in Private Law Children Cases Final Report](#), June 2020, p10

<sup>33</sup> Ministry of Justice, [Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Implementation Plan](#), June 2020, p11

<sup>34</sup> See section 10 of [Library Briefing Paper 8787 Domestic Abuse Bill 2019-20](#) for full background

situation is an impossible one for them to manage. I entirely sympathise. We are determined that the court should never be used as a forum to perpetuate further abuse, and that it should have sufficient powers in all cases to prevent abuse from being perpetrated through court processes.<sup>35</sup>

The Government has now tabled [new clause 18](#) for consideration on Report, which would further extend the provisions on cross-examination to the civil courts. New clause 18 would give the civil courts the power to prohibit cross-examination in person where either the quality of the witness's evidence would otherwise be diminished, or such cross-examination would be likely to cause significant distress to the witness or party. This gives effect to recommendations made by the [Civil Justice Council](#) in relation to vulnerable witnesses in the civil courts.<sup>36</sup>

### **Consent to death or serious injury: the 'rough sex defence'**

One of the most high-profile areas of debate has related to the so-called 'rough sex defence'. The debate has been prompted by reports of prosecutions where defendants charged with homicide have argued that their actions were the result of 'rough sex gone wrong'. The campaign group [We Can't Consent To This](#) has been leading calls for a change in the law.

At Second Reading, Harriet Harman (Labour) said:

I strongly support the Bill, but there is one glaring omission, and that is what I want to speak about this afternoon. We need the Bill to tackle the problem of the defence being used by men who kill women and then say, "It's a sex game gone wrong". This is where a man kills a woman by strangling her or by forcing an object up inside her that causes her to bleed to death, and he acknowledges that these injuries killed her and that he caused them, but says it is not his fault—it is her fault; he was only doing what she wanted; it was a sex game gone wrong—and he literally gets away with murder. That is a double injustice. Not only does he kill, but he drags her name through the mud. It causes indescribable trauma for the bereaved family, who sit silently in court with the loss of a beloved daughter, sister and mother, to see the man who killed her describe luridly what he alleges are her sexual proclivities. She, of course, is not there to speak for herself. He kills her and then he defines her.

That is what happened to Natalie Connolly. I see that the hon. Member for Wyre Forest (Mark Garnier) is in his place and will be speaking shortly. He was Natalie's family's MP. I urge everybody to listen very carefully to what he says about what happened in that case. Her brutal killer, John Broadhurst, escaped a murder charge by saying that it was what she wanted. We can stop that injustice. We can prohibit the rough sex gone wrong defence. We must do that by saying that if it is his hands on her neck strangling her, if it is his hands that are pushing the object up inside her, then he must take responsibility. That is not a sex game gone

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<sup>35</sup> [PBC Deb 11 June 2020 cc267-268](#)

<sup>36</sup> [Civil Justice Council, \*Vulnerable Witnesses and Parties within Civil Proceedings: Current Position and Recommendations for Change\*, February 2020](#)

wrong; that is murder and he cannot blame her for her own death.<sup>37</sup>

Mark Garnier (Conservative) said he and Harriet Harman would be seeking to amend the Bill:

The right hon. and learned Lady and I propose to table three amendments. The first would ensure that there are no errors of judgment by the prosecuting barrister. Any potential dropping of the charge by the prosecuting barrister needs to be checked by the Director of Public Prosecutions or a peer review. The second amendment would stop once and for all the defence of “rough sex gone wrong”, and the third would stop post-mortem abuse similar to that suffered by Natalie. That could include the judge issuing reporting restrictions.<sup>38</sup>

A group of new clauses was duly tabled for Committee Stage. The new clauses sought to do the following:

- prevent the consent of the victim from being used as a defence to a prosecution in domestic homicides and cases of domestic abuse resulting in serious injury;
- require the consent of the Director of Public Prosecutions if, in any domestic abuse homicide case, the Crown Prosecution Service proposes to charge (or accept a guilty plea to) any offence less than murder;
- require the Director of Public Prosecutions to consult with the victim’s family in a domestic homicide case before deciding whether to give consent to charging an offence less than murder;
- prohibit reference to the victim’s previous sexual history during a domestic homicide case; and
- provide anonymity for victims of domestic homicides and for domestic abuse survivors.

During Committee, Jess Phillips spoke to the new clauses on behalf of Ms Harman and Mr Garnier. She gave the following overview:

Women are being murdered and the men who killed them are exploiting a loophole in the law. The “rough sex defence”, as it has become known, is when a woman is killed in what the perpetrator defends as consensual violence. That means that, if your partner left you with 40 separate injuries, dreadful blunt force injuries to your head, a fractured eye socket and vaginal arterial bleeding, but explained that you had consented to such acts and that your death was simply a sex game gone wrong, there is a good chance that your murderer will end up with a lesser charge or a lighter sentence, or your death may not even be investigated.<sup>39</sup>

She went on:

Currently, if a man assaults a woman during sex but falls short of killing her, she is in a much stronger position. She can tell the court that she did not consent, and the law gives her anonymity as a victim of a sex offence. The law bans him from using her previous sexual history in evidence of his defence, although that

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<sup>37</sup> [HC Deb 28 April 2020 cc249-50](#)

<sup>38</sup> [Ibid, c265](#)

<sup>39</sup> [PBC Deb 16 June 2020 c315](#)

does not always work. But if he goes the whole way and kills her, she cannot give evidence, she has no anonymity, and his version of her previous sexual history is splashed all over the papers and compounds the grief of her relatives. This is a double injustice: not only does the man kill her, but he drags her name through the mud.<sup>40</sup>

She noted that the case law – in [R v Brown \[1993\] UKHL 19](#) – had made it clear that a person cannot consent to injury or death during sex. However, she said that a review of cases carried out by the group We Can't Consent To This suggested that this defence was nevertheless still working.<sup>41</sup>

In response, Justice Minister Alex Chalk said there was “a worrying and increasing normalisation of acts that are not just degrading but dangerous”. He went on:

...it is unconscionable for defendants to suggest that the death of a woman – it is almost invariably a woman – is justified, excusable or legally defensible simply because that woman consented in the violent and harmful sexual activity that resulted in her death. That is unconscionable, and the Government are committed to making that crystal clear.<sup>42</sup>

He said the Government would be formulating its own approach prior to Report, and wanted to ensure that any new legislation would not inadvertently “create loopholes or uncertainties in the law that may be exploited by unscrupulous individuals who seek to carry out the type of crimes that we are talking about”.

However, the Minister resisted calls to include oversight of prosecution decisions in any new legislation. He said that a statutory requirement for the personal involvement of the Director of Public Prosecutions in prosecution decisions “is, and should be, extremely rare”. He argued that such a requirement should only be imposed “where a prosecution touches on sensitive issues of public policy, not simply sensitive issues, which are legion in the criminal justice system”. He considered that the “real remedy” lay in good prosecutors liaising with family members “in a compassionate and inclusive way”.

The Minister also resisted calls to legislate for anonymity for deceased victims. He said that reporting restrictions were “an exceptional interference with open justice”.

The Government has tabled new clause 20 for consideration at Report. New clause 20 provides as follows:

**“Consent to serious harm for sexual gratification not a defence**

(1) This section applies for the purposes of determining whether a person (“D”) who inflicts serious harm on another person (“V”) is guilty of a relevant offence.

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<sup>40</sup> Ibid

<sup>41</sup> We Can't Consent To This, [Does Claiming a “Sex Game Gone Wrong” Work?](#), 18 February 2020

<sup>42</sup> [PBC Deb 16 June 2020 cc320-321](#)



(2) It is not a defence that V consented to the infliction of the serious harm for the purposes of obtaining sexual gratification (but see subsection (4)).

(3) In this section— “relevant offence” means an offence under section 18, 20 or 47 of the Offences Against the Person Act 1861 (“the 1861 Act”); “serious harm” means—

- (a) grievous bodily harm, within the meaning of section 18 of the 1861 Act,
- (b) wounding, within the meaning of that section, or
- (c) actual bodily harm, within the meaning of section 47 of the 1861 Act.

(4) Subsection (2) does not apply in the case of an offence under section 20 or 47 of the 1861 Act where—

- (a) the serious harm consists of, or is a result of, the infection of V with a sexually transmitted infection in the course of sexual activity, and
- (b) V consented to the sexual activity in the knowledge or belief that D had the sexually transmitted infection.

(5) For the purposes of this section it does not matter whether the harm was inflicted for the purposes of obtaining sexual gratification for D, V or some other person.

(6) Nothing in this section affects any enactment or rule of law relating to other circumstances in which a person’s consent to the infliction of serious harm may, or may not, be a defence to a relevant offence.”

**Member’s explanatory statement**

*This new clause legislates for the principle (established in the case of R. v. Brown [1993] 2 W.L.R. 556) that, for the purposes of determining whether someone is guilty of an offence under section 18, 20 or 47 of the Offences Against the Person Act 1861, a person may not consent to the infliction of serious harm for the purposes of obtaining sexual gratification. The clause also reflects the exception for cases involving the transmission of sexually transmitted infections, established by the cases of R. v. Dica ([2004] 3 All ER 593) and R. v. Konzani ([2005] EWCA Crim 706).*

The Government’s ECHR memorandum on the new clause states:

New clause *Consent to serious harm for sexual gratification not a defence* is intended to clarify the law, particularly in relation to the so called “rough sex” defence, to make clear that a victim cannot consent to the infliction of serious harm for the purposes of obtaining sexual gratification and, by extension, nor would consent apply where such sexual activity resulted in the victim’s death. It represents a codification of the general proposition of law in this area set out in the case of *R v Brown* [1993] 2 WLR 556, namely, that where an assault occasioning actual bodily harm, or worse, takes place, then public policy requires that society be protected by criminal sanctions notwithstanding the victim consented to the acts inflicted on them.<sup>43</sup>

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<sup>43</sup> [Domestic Abuse Bill: European Convention on Human Rights – Supplementary Memorandum by the Ministry of Justice](#), 30 June 2020, para 34

Ms Harman and Mr Garnier have also re-tabled their original new clauses for consideration at Report, including the provisions relating to the Director of Public Prosecutions and anonymity for deceased victims.

## 2.4 Other areas of debate

The Committee considered a long list of amendments and new clauses covering a wide range of other issues. None of these were pressed to a division, although in several cases Members indicated they might return to the issue on Report. A list of issues discussed and links to relevant Committee debates is set out below:

- various issues relating to the new Domestic Abuse Commissioner, including her relationship with the Home Office and her relationship with victims and authorities in Wales;<sup>44</sup>
- proposals to extend domestic abuse protection orders to the workplace as well as the home;<sup>45</sup>
- proposals for requirements imposed as part of a domestic abuse protection order to meet statutory quality standards;<sup>46</sup>
- various issues relating to Part 4 of the Bill (local authority support), including proposals for a national oversight group and a broader duty on local authorities to commission specialist support services;<sup>47</sup>
- requirements for the statutory guidance to be issued under clause 68 of the Bill (clause 66 as introduced) to cover additional specific issues including employer support (and paid leave), teenage relationship abuse, and the relationship between domestic abuse and offences involving hostility based on sex;<sup>48</sup>
- new offences of non-fatal strangulation and non-fatal strangulation in a domestic abuse context;<sup>49</sup>
- a new domestic abuse register to record the personal details of any person convicted of any offence that amounts to domestic abuse as defined in clause 1;<sup>50</sup>
- a new duty for local authorities in England to deliver a “Local Welfare Provision scheme” to provide financial assistance to victims of domestic abuse;<sup>51</sup>
- statutory guidance relating to the payment of child support maintenance in a domestic abuse context;<sup>52</sup>
- a statutory duty for the Secretary of State to take account of the point that domestic abuse is a subset of violence against women and girls, which affects women disproportionately;<sup>53</sup>

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<sup>44</sup> [PBC Deb 9 June 2020 cc116-148](#) and [PBC Deb 10 June 2020 cc153-161](#)

<sup>45</sup> [PBC Deb 10 June 2020 cc172-181](#)

<sup>46</sup> Ibid, c198-211

<sup>47</sup> [PBC Deb 11 June 2020 cc223-252](#)

<sup>48</sup> [PBC Deb 16 June 2020 cc298-309](#)

<sup>49</sup> [Ibid, cc331-340](#)

<sup>50</sup> Ibid, cc340-347

<sup>51</sup> Ibid, cc347-350

<sup>52</sup> Ibid, cc350-354

<sup>53</sup> Ibid, cc355-358

- provision to ensure that children who move to a different area due to domestic abuse are not disadvantaged in respect of their position on NHS waiting lists or in relation to school admissions;<sup>54</sup>
- various provisions relating to welfare reform and the benefits system as it relates to domestic abuse survivors;<sup>55</sup>
- amending the offence of controlling or coercive behaviour in [section 76 of the Serious Crime Act 2015](#) to remove the so-called 'carers' defence' and to extend the offence to cover coercive and controlling behaviour that occurs post-separation where the couple no longer live together;<sup>56</sup>
- various provisions relating to migrant survivors of domestic abuse, including access to legal aid, changes to the Immigration Rules regarding leave to remain, recourse to public funds, and data-sharing for immigration purposes;<sup>57</sup>
- the use of bail in domestic abuse cases;<sup>58</sup>
- the procedure for serving a court order on a person residing at a refuge;<sup>59</sup>
- the degree of force which is reasonable under the common law of self-defence where the defendant is a survivor of domestic abuse;<sup>60</sup>
- changes to proceedings under the Children Act 1989, in particular removing the presumption that parental involvement furthers the child's welfare when there has been domestic abuse, and prohibiting unsupervised contact for a parent in certain cases involving domestic abuse;<sup>61</sup>
- changes to social housing procedures on joint tenancies and the need for a local connection when applying for housing;<sup>62</sup> and
- a new statutory defence for survivors of domestic abuse who have been compelled to commit an offence (where that compulsion is attributable to their being a victim of domestic abuse), based on similar provision for modern slavery victims set out in [section 45 of the Modern Slavery Act 2015](#).<sup>63</sup>

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<sup>54</sup> Ibid, cc358-365

<sup>55</sup> Ibid, cc365-378

<sup>56</sup> [PBC Deb 17 June 2020 cc383-394](#)

<sup>57</sup> Ibid, cc395-418, [cc421-427](#) and cc445-450

<sup>58</sup> Ibid, cc428-433

<sup>59</sup> Ibid, cc433-436

<sup>60</sup> Ibid, cc436-440

<sup>61</sup> Ibid, cc440-445

<sup>62</sup> Ibid, cc450-461

<sup>63</sup> Ibid, cc461-473

## 3. Post-Committee developments

There have been two significant post-Committee developments, the first relating to family justice and the second to migrant victims of domestic abuse.

### 3.1 The MoJ Expert Panel on Harm in the Family Courts

Regarding family justice, on 25 June 2020 the Government published the outcome of an expert panel review into the risk of harm to children and parents in private law children cases. The following material provides further details:

- [HCWS313 Final Report of the MoJ Expert Panel on Harm in the Family Courts and Implementation Plan: Written statement](#), 25 June 2020
- Ministry of Justice, [Assessing Risk of Harm to Children and Parents in Private Law Children Cases Final Report](#), June 2020
- Ministry of Justice, [Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Implementation Plan](#), June 2020

Justice Minister Alex Chalk used his Written Statement to give the following overview of the review's findings and the Government's plans:

The Domestic Abuse Bill will enable us to make some of the immediate changes called for in the panel's report, alongside other measures which will help to ensure that victims have the confidence to come forward and report their experiences. As recommended by the panel, we will use the Bill to extend automatic eligibility for special measures to victims of domestic abuse in the family courts. The Bill will also ban cross-examination by perpetrators of domestic abuse in the family courts.

We also have committed to invest more widely in support for victims of domestic abuse, including £35 million announced alongside the Bill to support victims and their children, and an additional £76 million of extra funding that we announced to support survivors of domestic abuse, sexual violence, modern slavery and vulnerable children and their families during the current pandemic.

But we acknowledge that, in light of the panel's findings, this does not go far enough. And that is why we are publishing an Implementation Plan alongside this report. This details the first steps we will take across the family justice system to take forward the recommendations of the panel and make the changes that are needed.

In response to hearing that the adversarial nature of the family courts can contribute to further harm to victims of abuse or their children, I am pleased to announce that we will trial a different 'investigative' approach within our forthcoming pilot of Integrated Domestic Abuse Courts. This approach will seek to ensure that all parties in proceedings are safe and able to provide evidence on an equal footing, without the retraumatising effects of being in court with an abusive ex-partner.

We are committed to making it easier for judges to apply ‘barring orders’, under section 91(14) of the Children Act 1989, to prevent abusive ex-partners repeatedly dragging a victim back to court.

We will also look to improve how the family courts gather the wishes and feelings of the children at the heart of proceedings, to ensure no child is overlooked during the process. Alongside this, I acknowledge the panel’s conclusion that the presumption of parental involvement can detract from the child’s welfare and safety, and so will review this urgently.

Finally, we are working with colleagues across the family justice system to improve training on domestic abuse, to address gaps where appropriate, and to provide professionals with the tools to effectively support vulnerable parties.<sup>64</sup>

## 3.2 Migrant victims of domestic abuse

On 3 July 2020 the Home Office published the findings of a review of migrant victims of domestic abuse, which it had committed to carrying out in its responses to the Joint Committee on the Draft Domestic Abuse Bill.<sup>65</sup> The following material provides further details:

- [Migrant Victims of Domestic Abuse: Review Findings](#), July 2020
- [Research and analysis: Migrant victims of domestic abuse: review factsheet](#), 3 July 2020

The review factsheet indicates that the Government is launching a pilot fund to cover the cost of accommodation support for migrant victims who are unable to access public funds:

From the evidence provided, it was unclear which groups of migrants are likely to be most in need of support and how well existing arrangements may address their needs, as well as how long they might need support for and how they could be supported to move on from safe accommodation. It was clear that a better evidence base was needed to ensure that funding is appropriately targeted to meet the needs of migrant victims.

Therefore, at Second Reading of the Domestic Abuse Bill, the Parliamentary Under Secretary of State for Safeguarding announced that later this year the government will invite bids for grants from a £1.5 million pilot fund to cover the cost of support in a refuge or other safe accommodation for migrant victims who are unable to access public funds.

The findings from the Support for Migrant Victims (SMV) pilot will be used to inform future decisions about support for migrant victims of domestic abuse.

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<sup>64</sup> [HCWS313 Final Report of the MoJ Expert Panel on Harm in the Family Courts and Implementation Plan: Written statement](#), 25 June 2020

<sup>65</sup> [The Government Response to the Report from the Joint Committee on the Draft Domestic Abuse Bill](#), Session 2017-19, HL Paper 378/HC 2075, July 2019, paras 141-151 and [Further Government Response to the Report from the Joint Committee on the Draft Domestic Abuse Bill](#), Session 2017-19, HL Paper 378/HC 2075, March 2020, pp13-14

## 4. Annex: Committee Members

**Chairs:** [Mr Peter Bone](#), [Ms Karen Buck](#)

**Members:**

- [Aiken, Nickie](#) (Cities of London and Westminster)
- [Atkins, Victoria](#) (Louth and Horncastle)
- [Bowie, Andrew](#) (West Aberdeenshire and Kincardine)
- [Chalk, Alex](#) (Cheltenham)
- [Coyle, Neil](#) (Bermondsey and Old Southwark)
- [Crosbie, Virginia](#) (Ynys Môn)
- [Davies-Jones, Alex](#) (Pontypridd)
- [Gibson, Peter](#) (Darlington)
- [Harris, Rebecca](#) (Castle Point)
- [Jardine, Christine](#) (Edinburgh West)
- [Jones, Fay](#) (Brecon and Radnorshire)
- [Kyle, Peter](#) (Hove)
- [Marson, Julie](#) (Hertford and Stortford)
- [Phillips, Jess](#) (Birmingham, Yardley)
- [Saville Roberts, Liz](#) (Dwyfor Meirionnydd)
- [Twist, Liz](#) (Blaydon)
- [Wood, Mike](#) (Dudley South)

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