



## Domestic Abuse Bill HL Bill 124 of 2019–21

The [Domestic Abuse Bill](#) is a government bill intended to increase awareness of domestic abuse, strengthen support for victims and improve the effectiveness of the justice system. The bill completed its stages in the House of Commons on 6 July 2020. It was introduced in the House of Lords on 7 July 2020. This briefing provides summary information about the bill in advance of its second reading in the House of Lords. At the time of writing, the second reading debate is yet to be scheduled.

The bill includes provisions on several areas. It includes a new definition of domestic abuse, extra protection for victims and witnesses in court, and codifies the principle that consent to offences involving violent or abusive behaviour is not a defence.

The bill received cross-party support in the House of Commons. However, MPs raised concerns about certain matters, including:

- whether carers of persons with disabilities should come under the definition of ‘personally connected’ for the purposes of domestic abuse;
- the duty on local authorities to support victims of domestic abuse;
- whether the ‘carer’s defence’, available for the offence of controlling or coercive behaviour, should be repealed; and
- recourse to public funds for domestic abuse survivors.

The Government defended its position on these issues. It said that carers should not be included within the ambit of ‘personally connected’ as it did not want to dilute the understanding of domestic abuse. In reference to local authorities’ duties, the Government said it aims to publish draft guidance for local authorities, as required in the bill, in time for the Lords committee stage. The Government also said it did not want to make changes to policies on recourse to public funds until further evidence has been gathered.

No opposition amendments were made to the bill during the House of Commons stages. Several government amendments were made, including one new clause on homelessness during committee, and five new clauses at report stage. These covered: including children in the definition of victims of domestic abuse; allowing victims to be protected by special measures in family and civil proceedings; prohibiting cross-examination in person in certain circumstances; and banning the so-called ‘rough sex’ defence. The House agreed to each of these without a vote.

Claire Brader | 15 July 2020

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## 1. Purpose of the bill

The Government was elected in December 2019 on a manifesto commitment to “support all victims of domestic abuse and pass the Domestic Abuse Bill”.<sup>1</sup> The [Domestic Abuse Bill](#) was introduced in the House of Commons on 3 March 2020.

The bill has several purposes, including increasing awareness of domestic abuse and its impact on victims. The explanatory notes to the bill state that it also aims to:

[...] further improve the effectiveness of the justice system in providing protection for victims of domestic abuse and bringing perpetrators to justice, and to strengthen the support for victims of abuse and their children, provided by other statutory agencies.<sup>2</sup>

A similar but not identical version of the bill was introduced in the 2017–19 parliamentary session. The original bill had its second reading on 2 October 2019 and was re-introduced on 15 October 2019. The bill fell when Parliament dissolved in preparation for the December 2019 election.

There are minor differences between the original and latest version of the bill. The latest version includes measures in respect of accommodation-based support by local authorities in England. It also omits the Northern Ireland domestic abuse offence. This is because the Domestic Abuse and Family Proceedings Bill is currently before the Northern Ireland Assembly.

## 2. Policy background

- An estimated 2.4 million adults aged 16 to 74 experienced domestic abuse in the year ending in March 2019.<sup>3</sup> This was 1.6 million women and 786,000 men.
- Police recorded 746,219 domestic abuse-related crimes in the same year—an increase of 24% from the previous year.<sup>4</sup>
- The Office for National Statistics said that this increase may be attributed to improved police recording and increased reporting by victims.<sup>5</sup>

The Government introduced a new non-statutory definition of domestic abuse in March 2013.<sup>6</sup> This covered physical and non-physical abuse, including psychological, financial, and emotional abuse, and controlling and coercive behaviour. The definition remains in place to date.

The Government ran a consultation on domestic abuse between 8 March 2018 and 31 May 2018.<sup>7</sup>

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<sup>1</sup> Conservative Party, [Conservative Party Manifesto 2019](#), November 2019, p 19.

<sup>2</sup> [Explanatory Notes](#), p 4.

<sup>3</sup> Office for National Statistics, [‘Domestic abuse in England and Wales overview: November 2019’](#), 25 November 2019.

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*

<sup>6</sup> Home Office, [‘Circular 003/2013: New Government domestic violence and abuse definition’](#), 14 February 2013.

<sup>7</sup> Ministry of Justice, [‘Transforming the response to domestic abuse’](#), 8 March 2018.

The consultation set out the Government’s proposed domestic abuse strategy. It had four key themes:

- to promote awareness;
- to protect and support victims;
- to pursue and deter perpetrators; and
- to improve performance in local areas, agencies, and sectors.<sup>8</sup>

The Government sought views on legislative and non-legislative measures. The draft version of the bill was published alongside the consultation response on 21 January 2019.<sup>9</sup> It included a government commitment to legislate on several areas including the introduction of a new statutory definition of domestic abuse, establishment of a domestic abuse commissioner, and the creation of domestic abuse protection notices and orders.<sup>10</sup>

### ***Joint committee***

A joint committee of both houses conducted pre-legislative scrutiny of the draft bill in 2019.<sup>11</sup> The committee noted widespread support for the bill from organisations that support and represent domestic abuse survivors. The committee made several recommendations, including the need to ensure that children fell under the bill’s definition of victims of abuse. The committee also urged the Government to address the needs of migrant women who have no recourse to public funds in the bill.

The Government responded to the committee’s report in July 2019.<sup>12</sup>

### ***Reaction to bill and recent developments***

When the Government introduced the most recent version of the bill, the charity Women’s Aid said the bill has the potential to create a “step change” in the national response and encourage more effective approaches to tackling domestic abuse.<sup>13</sup> The charity vowed to continue its campaign to ensure that the bill improves the response to domestic abuse across sectors, including housing, health, social care and family courts. Referring to the impact of the Covid-19 pandemic, the charity said:

It is vitally important to ensure survivors are able to escape to safety and access the support they need to cope and recover from abuse. Covid-19 has laid bare the lack of protection and support for women and children experiencing domestic abuse and demonstrated the urgent need for change. Survivors are telling us that abuse is escalating during the pandemic, yet 85% of domestic abuse services responding to our survey have had to reduce or cancel one or more of

<sup>8</sup> Ministry of Justice, [‘Transforming the response to domestic abuse’](#), 8 March 2018.

<sup>9</sup> HM Government, [‘Transforming the Response to Domestic Abuse: Consultation Response and Draft Bill’](#), January 2019.

<sup>10</sup> Home Office and Ministry of Justice, [‘Domestic abuse consultation response and draft bill’](#), updated 24 May 2019.

<sup>11</sup> Joint Committee on the Draft Domestic Abuse Bill, [‘Draft Domestic Abuse Bill’](#), 14 June 2019, HL Paper 378 of session 2017–19, p 86.

<sup>12</sup> Home Office, [‘Government Response to the Report from the Joint Committee on the Draft Domestic Abuse Bill’](#), July 2019, CP 137, p 42.

<sup>13</sup> Women’s Aid, [‘Domestic Abuse Bill’](#), accessed 9 July 2020.

their services. The bill must be underpinned by sustainable funding for life-saving specialist support services if it is to make a real difference to survivors' lives.<sup>14</sup>

In January 2020, the national Drive Project called on the Government to publish a strategy on perpetrators of domestic abuse.<sup>15</sup> The call to action was co-signed by over 70 signatories, including charities, academics and police and crime commissioners. The Government has since awarded £10 million for new approaches to preventing domestic abuse, including the expansion of the Drive prevention programme.<sup>16</sup>

More recently, support organisation Refuge launched 'The Naked Threat' campaign on 6 July 2020.<sup>17</sup> The campaign calls for the Government to use the bill to make threats to share intimate or sexual images or films a criminal offence. The Victims' Commissioner for England and Wales, Dame Vera Baird QC, in support of the campaign, said it is "imperative" that it is made a criminal offence.<sup>18</sup> The designate domestic abuse commissioner, Nicole Jacobs, also shared support and called on the Government to use the bill to criminalise the behaviour.<sup>19</sup>

### 3. What the bill does

The bill contains 80 clauses split into seven parts. It also has two schedules.

#### **Part I: Definition of 'domestic abuse'**

Part I provides the statutory definition of domestic abuse. This definition underpins the remaining provisions contained within the bill.

Clause 1 states that behaviour of a person towards another person will be domestic abuse where both individuals are 16 years or over and personally connected to each other, and the behaviour is abusive. Abusive behaviour includes but is not limited to physical or sexual abuse, violent or threatening behaviour, and economic or psychological abuse.

Clause 2 provides the definition of 'personally connected'. Individuals will be deemed personally connected in several circumstances, including where they are or have been married, in a civil partnership, in an intimate personal relationship, or where they are relatives. This is not an exhaustive list.

Clause 3 ensures that children can fall under the definition of a victim of domestic abuse. This includes a child who sees, hears, or experiences the effects of the abuse and is related to the individuals. The Government tabled clause 3 at report stage, in furtherance of a non-government amendment tabled

<sup>14</sup> Women's Aid, '[Domestic Abuse Bill](#)', accessed 9 July 2020.

<sup>15</sup> Drive Project, '[A Domestic Abuse Perpetrator Strategy for England and Wales](#)', January 2020.

<sup>16</sup> HM Treasury, '[Budget 2020](#)', 12 March 2020.

<sup>17</sup> Refuge, '[The Naked Threat](#)', 6 July 2020.

<sup>18</sup> Refuge, '[Refuge launches 'The Naked Threat' campaign](#)', 6 July 2020.

<sup>19</sup> *ibid.*

during the committee stage.<sup>20</sup>

## **Part 2: Domestic abuse commissioner**

Part 2 provides the statutory framework for the establishment of a domestic abuse commissioner ('the commissioner'). The commissioner's remit will extend to England and Wales, however certain powers will apply to England only.<sup>21</sup> This is because certain matters within the commissioner's remit relate to a combination of reserved and devolved matters in Wales. Matters that the commissioner will cover in Wales include services that are provided by statutory agencies which are reserved, principally criminal, civil, and family justice agencies such as the courts. The commissioner will not monitor services provided by devolved agencies in Wales, such as those responsible for social care and education. The commissioner's budget will be £1 million per annum.<sup>22</sup> The Government appointed the UK's first commissioner, Nicole Jacobs, in September 2019.<sup>23</sup> Ms Jacobs will remain a commissioner designate, with no statutory powers, until the bill receives royal assent.

Clauses 4 to 7 provide the statutory basis for the establishment, funding, staffing, and functioning of the commissioner's office. General functions include to encourage good practice in the prevention of domestic abuse and the provision of support to victims.

Clause 8 gives the commissioner the power to report on any matter relating to domestic abuse to the secretary of state. The commissioner will be required to publish such reports, subject to certain omissions that may prejudice a prosecution or risk the safety of a person.

Clause 9 permits the secretary of state and any other person to request advice or assistance from the commissioner on matters relating to domestic abuse. Whilst it is open to anyone to request the commissioner's assistance, the commissioner will focus on agencies where the provision of advice will have the greatest impact, such as police forces, local authorities, and NHS bodies.<sup>24</sup>

Clauses 10 and 11 provide incidental powers to the commissioner and make provision for the creation of a framework document to determine how the Home Secretary and domestic abuse commissioner propose to work together.

Clause 12 gives the commissioner the statutory power to establish an advisory board. The board will be responsible for providing advice to the commissioner about the exercise of the commissioner's functions.

Clauses 13 and 14 require the commissioner to publish a strategic plan and annual reports. The strategic plan must state the commissioner's objectives and priorities, amongst other things.

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<sup>20</sup> [Public Bill Committee, Domestic Abuse Bill, 9 June 2020, session 2019–21, p 3.](#)

<sup>21</sup> [Explanatory Notes](#), p 19.

<sup>22</sup> Home Office, '[Domestic Abuse Commissioner factsheet](#)', 3 March 2020.

<sup>23</sup> Home Office, '[The UK's first Domestic Abuse Commissioner announced as Government pledges to tackle crime](#)', 18 September 2019.

<sup>24</sup> [Explanatory Notes](#), p 19.

Clauses 15 and 16 provide a duty on public authorities to cooperate with the commissioner and respond to recommendations.

Clause 17 enables the commissioner to disclose information to a person for a purpose connected with a commissioner's function.

Clauses 18 and 19 provide miscellaneous and supplementary provisions, including a restriction on the commissioner from acting in relation to individual cases.

### **Part 3: Powers for dealing with domestic abuse**

Part 3 of the bill provides new powers for dealing with domestic abuse.

Clause 20 gives police officers the power to issue a domestic abuse protection notice (DAPN). The purpose of a DAPN is to protect a victim from future domestic abuse by prohibiting the perpetrator from abusing the victim.<sup>25</sup> In some instances, where the victim and the perpetrator cohabit, a DAPN can require the perpetrator to leave the premises. The issuance of a DAPN would trigger a police-led application in the magistrates' court for a domestic abuse protection order (DAPO). A DAPO can include prohibitions and requirements necessary to protect the victim.

Clauses 21 to 24 set out how DAPNs would be issued. This includes a list of provisions that could be included in a DAPN and powers of arrest if a DAPN is breached.

Clauses 25 to 47 provide details on DAPOs. This includes the application process, issuance, variation, breach, and appeal of a DAPO. Clause 38 provides the powers of arrest of a person who is in breach of a DAPO. Clause 38 also introduces schedule 1 of the bill which provides further provisions about remand under clause 38. Clause 47 ensures that victims of domestic abuse would be eligible for special measures, such as the use of screens in court, when giving evidence in relation to proceedings in respect of a DAPO.

Clause 48 would require the secretary of state to issue guidance on the exercise of powers relating to DAPNs and DAPOs. For individuals who are subject to electronic monitoring because of a DAPO requirement, clause 49 would require the secretary of state to issue a code of practice on the processing of data gathered by the electronic monitoring.

Clause 50 would amend the Children Act 1989 to enable a judge, when hearing an application to make or vary a DAPO, to make an interim care order under the Children Act 1989 during the same proceedings. The purpose of this clause is to extend the court's ability to protect children who are exposed to domestic abuse without requiring separate proceedings (as would otherwise be the case).<sup>26</sup> The clause makes similar amendments to the Family Law Act 1996.

Clause 51 amends section 58A of the Courts and Legal Services Act 1990 to ensure that proceedings that take place under part 3 of the bill in the family court or family division of the high court, are not

<sup>25</sup> [Explanatory Notes](#), p 23.

<sup>26</sup> *ibid*, pp 34–5.

subject to enforceable conditional fee agreements.<sup>27</sup>

Clause 52 makes two consequential amendments to the sentencing code (the code), inserting the relevant references to the bill into the code. Clause 53 repeals provisions in the Crime and Security Act 2010 about domestic violence protection notices (DVPN) and domestic violence protection orders (DVPO). DVPNs and DVPOs, implemented across England and Wales in 2014, are issued in cases involving violence or the threat of violence.<sup>28</sup> The new DAPN and DAPO, introduced by part 3 of the bill, would be available in a wide range of domestic abuse-related circumstances and not just those involving violence.<sup>29</sup> The interpretation of the terms used within part 3 of the bill is found within clause 54.

#### **Part 4: Local authority support**

Clause 55 prescribes the support that local authorities must provide to victims of domestic abuse. This includes an obligation to publish and monitor a strategy for the provision of support in the local authority's area. Several non-government amendments were tabled during the committee and report stage to amend the duties of local authorities within the bill.

Clause 56 would require local authorities in England to appoint a domestic abuse local partnership board. The purpose of the board would be to provide advice to the authority about the exercise of the authority's functions.

Clauses 57 and 58 would require relevant local authorities in England to submit annual reports to the secretary of state at the end of each financial year. The secretary of state must also issue guidance for local authorities in England as to the exercise of their functions.

The interpretation of terms within part 4 is found within clause 59.

#### **Part 5: Protection for victims and witnesses in court**

Part 5 provides new measures to support victims of domestic abuse during court proceedings.

Clauses 60 to 62 would extend the eligibility for access to special measures in criminal, family, and civil proceedings to victims of domestic abuse.<sup>30</sup> Clauses 61 and 62 were new clauses introduced by the Government during report stage. The provisions within clause 61 were originally tabled as a non-government amendment during the bill's committee stage. The amendment was later withdrawn following a government commitment to consider the proposals.

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<sup>27</sup> A conditional fee agreement (CFA) enables clients to agree with their legal representatives that their representatives will not receive all or part of their usual fees/expenses if the case is lost. CFAs also mean that, where the case is won, the client pays an uplift to the solicitor in addition to the usual fee.

<sup>28</sup> [Explanatory Notes](#), pp 6–7.

<sup>29</sup> *ibid.*

<sup>30</sup> Special measures are a series of provisions that help vulnerable and intimidated witnesses to give their best evidence in court. They can include the erection of screens in court, the option to give evidence in private without members of the public or press being present, and the removal of wigs and gowns by judges and barristers. This is not an exhaustive list and other special measures are available.

Clauses 63 and 64 would make provision to prohibit cross-examination in person, in certain circumstances, during family and civil proceedings. The clauses provide the court with the power to appoint a publicly funded qualified legal representative in the interest of the party prohibited from cross-examining in person. The Government introduced clause 64 during the report stage.

### **Part 6: Offences involving violent or abusive behaviour**

Part 6 concerns offences involving violent or abusive behaviour.

Clause 65 would provide a statutory footing for the principle that a person may not consent to the infliction of serious harm, and by extension, is unable to consent to their own death. The clause would see that consent to causing serious harm for sexual gratification would not be a defence. Often referred to as the ‘rough sex defence’, this was a principle established in the case of *R. v Brown* [1993] 2 W.L.R 556. The clause was originally tabled as a non-government amendment. It was withdrawn during committee stage following a government commitment to consider the proposals in time for report stage. The Government introduced the new clause at report stage.

Clauses 66 to 67 relate to offences that are committed outside of the UK. Clause 66 would extend the circumstances in which certain offences, committed abroad by UK nationals, or those habitually resident in England and Wales, can be prosecuted within England and Wales. Clause 67 provides analogous provisions for Northern Ireland.

Clause 68 introduces schedule 2, extending the circumstances in which certain sexual and violent offences, committed overseas by a UK national or a person habitually resident in the UK, can be prosecuted in England and Wales, Scotland, or Northern Ireland.

### **Part 7: Miscellaneous and general provisions**

Part 7 provides several miscellaneous provisions, including those relating to the management of offenders, homelessness, secure tenancies, and the bill’s territorial extent and commencement.

Clause 69 would enable the secretary of state to include polygraph testing as a condition in the licence of a person released from prison following a conviction of a domestic abuse-related offence.<sup>31</sup> The Government said this would assist the National Probation Service offender managers by providing additional information about an offender’s risk.<sup>32</sup>

Clause 70 would require the secretary of state to issue guidance to police forces about the disclosure of police information. This is for the purpose of preventing domestic abuse. The clause requires chief officers of police to have regard to guidance issued.

Clause 71 would amend the Housing Act 1996 to give eligible people who are homeless because of fleeing domestic abuse ‘priority need’ status for accommodation secured by a local authority. The Housing Act 1996 outlines those who are deemed to have a priority need and therefore do not need to fulfil the vulnerability test. The clause adds “a person who is homeless as a result of that person

<sup>31</sup> Home Office, ‘[Mandatory polygraph tests factsheet](#)’, 3 March 2020.

<sup>32</sup> [Explanatory Notes](#), p 48.

being a victim of domestic abuse” to the Act, meaning that such a person would not need to fulfil the vulnerability test to be considered in priority need for accommodation.<sup>33</sup>

Clause 72 would require local authorities to grant a new lifetime secure tenancy in certain circumstances where a person, or member of their household, is or has been a victim of domestic abuse.

Clause 73 would confer powers on the secretary of state to issue guidance about any provisions within the bill that extend to England and Wales. Clauses 74 and 75 would provide the secretary of state with powers to make consequential, transitional, and saving provisions.

Clause 76 would permit that any power of the secretary of state or Lord Chancellor to make regulations under the bill can be exercised by statutory instrument. Clause 77 would provide financial provision for expenditures incurred by a Minister of the Crown under or by virtue of the bill.

Clause 78 would provide the bill’s territorial extent. Most of the bill extends to England and Wales only. The exceptions are:

- Any amendment or repeal made by part 2 or 3 will have the same extent as the provision amended or repealed.
- Clause 68(2) and part 2 of schedule 2 extend to Scotland only.
- Clauses 67, 68(3) and part 3 of schedule 2 extend to Northern Ireland only.
- Clauses 37(7) and clauses 74 to 80 extend to the UK. Clauses 37(7), 74 to 76, 78(6) and 79 to 80 extend to the Isle of Man and British Overseas Territories, except Gibraltar. The Armed Forces Act 2006 can be exercised to extend clause 37(7) to any of the Channel Islands or modify it as it extends to the Isle of Man or British overseas territory.

Clauses 79 and 80 provide the bill’s commencement provisions and short title.

## 4. Commons stages

### 4.1 Second reading

Second reading of the bill in the House of Commons took place on 28 April 2020. The Lord Chancellor and Secretary of State for Justice, Robert Buckland, described the bill as strengthening protection and support for victims.<sup>34</sup> Mr Buckland spoke of cross-party support, describing the bill’s aims as fourfold:

[...] 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 systems; and, fourthly, to improve performance across all national and local agencies [...].<sup>35</sup>

<sup>33</sup> [Explanatory Notes](#), p 49.

<sup>34</sup> [HC Hansard, 28 April 2020, col 235](#).

<sup>35</sup> *ibid.*

Mr Buckland described domestic abuse as one of the most prevalent crimes in society, citing some 2.4 million individuals who experience it each year.<sup>36</sup> He said:

Tackling domestic abuse needs to be everyone’s business, from prevention to protection to prosecution to support. Legislation alone can never have all the answers, but I believe that this landmark bill will make a significant contribution [...].<sup>37</sup>

Nick Thomas-Symonds, Shadow Home Secretary, spoke in support for the bill.<sup>38</sup> With reference to a Metropolitan Police report that showed an increase in domestic abuse during the Covid-19 lockdown, Mr Thomas-Symonds said that 14,093 arrests for domestic abuse offences had been reported in the six weeks up to 19 April 2020.<sup>39</sup> He also referred to reports from the national domestic abuse helpline that showed a 25% increase in calls and online requests for help.<sup>40</sup>

Mr Thomas-Symonds said that the opposition would like to improve the bill during the committee stage, in particular pressing the Government on items such as a statutory duty on public authorities to commission specialist domestic abuse support.<sup>41</sup> Mr Thomas-Symonds also argued, amongst other things, that the Government should suspend the system of no recourse to public funds during the Covid-19 pandemic to support victims with insecure migrant status.<sup>42</sup>

Joanna Cherry, the Shadow Scottish National Party (SNP) Spokesperson for Justice and Home Affairs, welcomed the bill on behalf of the SNP. Ms Cherry supported the inclusion of non-physical abuse in the statutory definition and the appointment the domestic abuse commissioner.<sup>43</sup> Ms Cherry also spoke of “omissions” from the bill, such as the provision of services for migrant individuals as recommended by the joint committee that preceded the first iteration of the bill.<sup>44</sup> Ms Cherry said that such omissions would mean the UK was unable to ratify the Istanbul Convention.<sup>45</sup>

## 4.2 Committee stage

A public bill committee sat twelve times between 4 and 17 June 2020. Several government amendments were agreed to without a vote during the sittings, including the introduction of a new clause on homelessness. A division was also held on a non-government amendment to the definition of ‘personally connected’. Several minor and technical government amendments were also agreed to without vote.

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<sup>36</sup> [HC Hansard, 28 April 2020, col 237.](#)

<sup>37</sup> *ibid.*

<sup>38</sup> *ibid.*, col 238.

<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.*

<sup>41</sup> *ibid.*, cols 240–1.

<sup>42</sup> *ibid.*

<sup>43</sup> *ibid.*, cols 243–4.

<sup>44</sup> *ibid.*, col 245.

<sup>45</sup> *ibid.*, col 244. The Istanbul Convention, signed by the UK in 2012, outlines the minimum standards for a state’s response to violence against women and girls. The UK is yet to ratify the convention.

## **Homelessness**

The Government introduced new clause 16 on homelessness (clause 71 of the bill as introduced in the House of Lords). This would amend the Housing Act 1996 to give individuals who are homeless because of domestic abuse priority need for local authority-secured accommodation.<sup>46</sup>

Neil Coyle (Labour MP for Bermondsey and Old Southwark) tabled a similar but not identical clause during committee. The clause would have extended priority need status to other persons residing in the same household as the victim of domestic abuse.<sup>47</sup> Victoria Atkin, Minister for Safeguarding, said the Government's primary concern with the clause was the potential for an abusive partner to apply for new housing and gain advantage.<sup>48</sup>

## **Definition of personally connected**

One division was held during committee on an opposition amendment to clause 2 of the bill. Clause 2 sets out the circumstances in which individuals are deemed 'personally connected' for the purposes of clause 1. The amendment proposed to include carers of persons with disabilities under the definition of personally connected.

The amendment was defeated by nine votes to six.<sup>49</sup> Jess Phillips, Shadow Minister for the Home Office, said that the amendment was in response to concerns from the disability rights sector, amongst others. Ms Phillips referred to several reports, including a 2016 Office for National Statistics report on intimate personal violence, that showed 16 percent of women with long-term illness or disabilities had experienced domestic abuse.<sup>50</sup> In response, the Government said it did not want to address all forms of exploitive behaviour in the bill and subsequently dilute the understanding of domestic abuse and its focus around a significant personal relationship.<sup>51</sup>

## **Duty of local authorities**

There were several non-government amendments withdrawn during the committee stage. This included multiple amendments to clause 53 (clause 55 of the bill as introduced in the House of Lords) on the statutory duty placed on local authorities to support victims of domestic abuse, including children.

Jess Phillips referred to that disparity of access to community-based domestic abuse services between areas and said that clause 53, initially, looked to address that point.<sup>52</sup> However, Ms Phillips spoke of concerns, shared by certain charities and representative organisations, that it could lead to a two-tier system.<sup>53</sup> Ms Phillips said that whilst the clause benefits victims who can access refuge, the clause did

<sup>46</sup> [Public Bill Committee, Domestic Abuse Bill, 16 June 2020, session 2019–21, 9th sitting, col 293.](#)

<sup>47</sup> [ibid](#), col 293.

<sup>48</sup> [ibid](#), cols 296–7.

<sup>49</sup> [Public Bill Committee, Domestic Abuse Bill, 9 June 2020, session 2019–21, 4th sitting, col 110.](#)

<sup>50</sup> [Public Bill Committee, Domestic Abuse Bill, 9 June 2020, session 2019–21, 3rd sitting, cols 102–3.](#)

<sup>51</sup> [Public Bill Committee, Domestic Abuse Bill, 9 June 2020, session 2019–21, 4th sitting, cols 110–11.](#)

<sup>52</sup> [Public Bill Committee, Domestic Abuse Bill, 11 June 2020, session 2019–21, 7th sitting, col 239.](#)

<sup>53</sup> [ibid](#).

not address “the majority of victims [...] who are supported by community-based services”.<sup>54</sup>

The Government provided an explanation of the duty within clause 53 specifically, saying that it would place a duty on local authorities to assess the need for domestic abuse support for victims and children within its area.<sup>55</sup> On behalf of the Government, Ms Atkins referred to clause 57 (clause 58 in the bill introduced in the House of Lords), which would place a duty on the secretary of state to issue guidance to local authorities in England on how to exercise their statutory functions in this part of the bill.<sup>56</sup> The Government aims to have the draft guidance published in time for the Lords committee stage.<sup>57</sup>

Ms Phillips, withdrawing the amendment, said that the duty on community services is something that she believed MPs and the Lords would wish to see discussed during amendment stages in the Lords.<sup>58</sup>

### ***Controlling or coercive behaviour defence***

A non-government clause (new clause 25), supported by Labour MPs and others, sought to repeal the ‘carers defence’ for the offence of controlling or coercive behaviour in intimate or family relationships. This offence is found within the Serious Crime Act 2015 (the SCA). Section 76(8) of the SCA provides a defence where a person believed they were acting in the victim’s best interest.

Peter Kyle, Shadow Minister for Justice, spoke of data suggesting that disabled adults are at least 1.5 times more likely to be a victim or survivor of violence than non-disabled adults.<sup>59</sup> Mr Kyle said:

The [new clause 25] reflects 10 years’ worth of casework by Stay Safe East, one of only two organisations in England and Wales led by disabled women supporting disabled survivors, and its partner organisations, in an advisory group on domestic abuse and disability.<sup>60</sup>

The Parliamentary Under Secretary of State for Justice, Alex Chalk, did not support the amendment:

If an individual does not have that defence, considering the elements of section 76 [of the SCA], we would be left with a person who is apparently being caused some distress—as would be evident to the first responder, or indeed to a police officer, who might have to effect an arrest—and the distress would appear to have been caused by that person’s liberty having been restricted. In those circumstances, unless the individual has the defence that they were exercising proper control in the interests of the other person, they are at risk of being arrested and prosecuted.<sup>61</sup>

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<sup>54</sup> [Public Bill Committee, \*Domestic Abuse Bill\*, 11 June 2020, session 2019–21, 7th sitting, col 239.](#)

<sup>55</sup> *ibid.*

<sup>56</sup> *ibid.*, col 246.

<sup>57</sup> *ibid.*, col 247.

<sup>58</sup> *ibid.*, cols 251–2.

<sup>59</sup> [Public Bill Committee, \*Domestic Abuse Bill\*, 17 June 2020, session 2019–21, 11th sitting, col 383.](#)

<sup>60</sup> *ibid.*

<sup>61</sup> *ibid.*, col 386.

Mr Kyle subsequently withdrew the new clause. He said he hoped it would be considered again in the House of Lords.<sup>62</sup>

### **Joint tenancies**

A non-government clause (new clause 42), tabled by Jess Phillips, would have facilitated occupiers of social housing to remove one joint tenant from the tenancy agreement where there has been domestic violence. Ms Phillips said that the current tenancy law leaves survivors of domestic abuse vulnerable to homelessness and further abuse.<sup>63</sup>

The Government acknowledged the rationale but raised several concerns about the drafting of the clause. The Government committed to continuing to consider the issues with the domestic abuse sector.<sup>64</sup> New clause 42 was subsequently withdrawn following this commitment and on the understanding that the issues may be discussed during the Lords stages.<sup>65</sup>

### **4.3 Report stage**

Report stage was held in the House of Commons on 6 July 2020. Several government amendments were made to the bill.<sup>66</sup> This included the addition of the following new clauses:

- New clause 15 (clause 3 of the House of Lords bill) to enable references in the bill to a “victim of domestic abuse” to include children who see, hear, or experience the effects of the abuse.
- New clause 16 (clause 61 of the House of Lords bill) to ensure that victims of domestic abuse are automatically eligible for access to special measures in family proceedings.
- New clause 17 (clause 62 of the House of Lords bill) to ensure victims of certain offences have access to special measures in civil proceedings where their vulnerability is likely to diminish the quality of their evidence.
- New clause 18 (clause 64 of the House of Lords bill) to enable a court in civil proceedings to prohibit a party from cross-examining a witness in person in certain circumstances.
- New clause 20 (clause 65 of the House of Lords bill) to legislate the principle that a person cannot consent to the infliction of serious harm for the purposes of obtaining sexual gratification.

The new clauses were agreed to without division.<sup>67</sup>

<sup>62</sup> [Public Bill Committee, \*Domestic Abuse Bill\*, 17 June 2020, session 2019–21, 11th sitting, col 388.](#)

<sup>63</sup> [Public Bill Committee, \*Domestic Abuse Bill\*, 17 June 2020, session 2019–21, 12th sitting, col 452.](#)

<sup>64</sup> *ibid*, cols 458–60.

<sup>65</sup> *ibid*, col 461.

<sup>66</sup> House of Commons, [Votes and Proceedings](#), 6 July 2020.

<sup>67</sup> [HC Hansard, 6 July 2020, cols 770–5.](#)

Several non-government amendments were considered during the report stage. Divisions were held on two new clauses:

- New clause 22's purpose was to ensure that certain provisions under immigration legislation, including exclusion from public funds, certain types of support, and the right to rent, did not apply to survivors of domestic abuse. The clause was defeated on division by 330 votes to 207.<sup>68</sup>
- New clause 23's purpose was to establish a statutory duty on relevant public authorities to commission specialist support and services for all persons affected by domestic abuse. The clause was defeated on division by 338 votes to 200.<sup>69</sup>

The five government clauses and two non-government clauses are considered below.

### ***New clause 15: Children as victims of domestic abuse***

New clause 15 (clause 3 of the House of Lords bill) ensures that references in the bill to a “victim of domestic abuse” include children who see, hear, or experience the effects of the abuse.

The Government said it had listened to concerns raised by MPs during the committee stage about the importance of recognising the impact that domestic abuse has on children.<sup>70</sup> In 2019, the charity NSPCC led a campaign for the Government to recognise children as victims when living with domestic abuse.<sup>71</sup>

Ms Atkins said the Government had been encouraged to do more in this area.<sup>72</sup> She referred to MPs such as Nickie Aiken (Conservative MP for Cities of London and Westminster), Liz Twist (Opposition Whip) and former prime minister Theresa May (Conservative MP for Maidenhead). Ms Atkins said it was vital for locally commissioned services to consider and address the impact of domestic abuse on children.<sup>73</sup>

Ms Twist said that new clause would help local authorities to recognise the importance of ensuring that child victims have access to support.<sup>74</sup>

### ***New clauses 16 and 17: Special measures in family proceedings and civil proceedings***

The original version of the bill, as introduced by the Government on 3 March 2020, included provisions to ensure that victims of domestic abuse are automatically entitled to special measures during criminal proceedings. New clauses 16 and 17 (clauses 61 and 62 of the bill as introduced into

<sup>68</sup> [HC Hansard, 6 July 2020, cols 775–80.](#)

<sup>69</sup> *ibid*, cols 780–5.

<sup>70</sup> *ibid*, col 700.

<sup>71</sup> NSPCC, ‘[Government must recognise children as victims when living with domestic abuse](#)’, 10 January 2019.

<sup>72</sup> [HC Hansard, 6 July 2020, cols 700–1.](#)

<sup>73</sup> *ibid*, col 701.

<sup>74</sup> *ibid*, col 749.

the House of Lords) extended the eligibility to family and civil proceedings.<sup>75</sup>

Tonia Antoniazzi (Labour MP for Gower) welcomed the new clauses.<sup>76</sup> Caroline Nokes (Conservative MP for Romsey and Southampton North and chair of the House of Commons Women and Equalities Committee) also spoke in support and noted the importance of making the court system support the victims of domestic abuse.<sup>77</sup>

### ***New clause 18: Prohibition of cross-examination in person in civil proceedings***

When the Government introduced new clause 18 (clause 64 of the bill introduced into the House of Lords), it spoke of trauma that can be caused to victims during cross-examination by or of the perpetrator.<sup>78</sup> On behalf of the Government, Ms Atkins said that the clause would not only prohibit cross-examination in person by the perpetrator where it is likely to diminish the quality of a witness's evidence, but would also prevent the victim having to cross-examine the alleged perpetrator in person.<sup>79</sup>

Maria Miller (Conservative MP for Basingstoke) supported the new clause. Ms Miller said it reflected that the Government had listened to the opposition front benchers and joint committee recommendations on blocking cross-examination of victims by alleged perpetrators.<sup>80</sup>

Chris Bryant (Labour MP for Rhondda) also supported the clause (and others), but said:

[...] one additional factor that can make it more difficult for a victim of domestic violence to feel secure in this system is that they have had a brain injury which might not have been diagnosed. So all the anxiety, loss of memory and loss of executive function may be completely misunderstood by many other people around her. Is it not time that we made sure, as my new clause 13 would do, that all victims of domestic violence and abuse are screened for acquired brain injury?<sup>81</sup>

The Government responded with concerns to Mr Bryant's proposals. It said that any clinical need of individuals should be a matter for health clinicians.<sup>82</sup>

### ***New clause 20: Consent to serious harm for sexual gratification not a defence***

New clause 20 (clause 65 in the bill as introduced into the House of Lords) provides a statutory basis for the principle that a person may not consent to the infliction of serious harm. The clause would ensure that consent to causing serious harm for sexual gratification would not be a defence.

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<sup>75</sup> [HC Hansard, 6 July 2020, col 701.](#)

<sup>76</sup> *ibid*, col 727.

<sup>77</sup> *ibid*, col 717.

<sup>78</sup> *ibid*, col 701.

<sup>79</sup> *ibid*.

<sup>80</sup> *ibid*, cols 727–8.

<sup>81</sup> *ibid*, col 702.

<sup>82</sup> *ibid*.

The clause received widespread cross-party support. The Government paid tribute to Harriet Harman (Labour MP for Camberwell and Peckham) and Mark Garnier (Conservative MP for Wyre Forest) for their campaign to codify the law in relation to the use of violence in consensual sadomasochistic sexual acts (also referred to as the ‘rough sex defence’).<sup>83</sup> Tribute was also paid to the work of the 18-month [We Can’t Consent to This](#) campaign.

Victoria Atkins provided an explanation of the new clause:

[...] the new clause aims to make it clear that consent to serious harm for sexual gratification is not a defence in law. The new clause codifies, and therefore restates, the general proposition of law expressed in the case of *R v. Brown*, which is that a person may not consent to the infliction of serious harm and, by extension, their own death. Those interested in such matters will note that we have been careful to preserve the position in relation to sexually transmitted infections, but we have done so in a way very much in keeping with current case law. [...]<sup>84</sup>

Tracy Brabin (Labour/Co-op MP for Batley and Spen) said that the Labour Party strongly supported the new clause, stating:

I am grateful that the Government have listened to the demands here and in the wider community for major new inclusions, because 60 women in the UK have died, with more being injured, in what men claim is violence that “she asked for”. No one can fail to be moved by the courage of the parents of those who have been brutally murdered by so-called lovers, only for the abuser to use the rough sex excuse to lessen their sentence. Like so many others in the House, I thank the campaign group ‘We Can’t Consent To This’ for the work that it has done to ensure that justice is served, and support its request that the Crown Prosecution Service and the director of public prosecutions collect and evaluate data on this issue and report back on any use of rough sex claims. The Government say that they will continue to keep the criminal law under review. We must see a clear statement of how that will be done.<sup>85</sup>

### ***Non-government new clause 22: Recourse to public funds for domestic abuse survivors***

New clause 22 was defeated on division by 330 votes to 207 at report stage. Supported by members of several parties, it sought to ensure that certain provisions under immigration legislation, including exclusion from public funds, did not apply for survivors of domestic abuse. Most non-EEA national migrants with temporary permission to remain in the UK have ‘no recourse to public funds’.<sup>86</sup> This condition prevents them from accessing most state-funded benefits, tax credits and housing assistance. The clause included a provision to require the secretary of state to commission a review into the operation of the provision within 12 months of the bill being passed.

The Government did not agree that the no recourse to public funds condition should be lifted.<sup>87</sup> It said it was “absolutely committed” to supporting all migrant victims of domestic abuse but argued that

<sup>83</sup> [HC Hansard, 6 July 2020, col 702.](#)

<sup>84</sup> *ibid*, 704.

<sup>85</sup> *ibid*, col 756.

<sup>86</sup> House of Commons Library, [Coronavirus: Calls to Ease No Recourse to Public Funds Conditions](#), 27 April 2020.

<sup>87</sup> [HC Hansard, 6 July 2020, cols 704–5.](#)

more evidence was needed to identify the groups of migrants most in need of support. This would ensure that additional funding or support services could be targeted “correctly and effectively”.<sup>88</sup> To address the evidence gap, the Government plans to launch a £1.5 million pilot scheme: the support for migrant victims scheme. The Government aims to publish the framework of the scheme ahead of the Lords second reading debate.<sup>89</sup> The Government said the purpose of the pilot is to determine how it can ensure victims can obtain immediate access to support and ensure any future strategy is fit for purpose:

Support for migrant victims is a very important issue for all of us. [The Government] recognise[s] that, which is why we are committed to launching the pilot project as quickly as possible. We are currently reviewing the options for implementing the pilot and expect to make further announcements in the summer, ahead of its launch in the autumn. We must resist the urge to act before we have the evidence on which to base comprehensive proposals, to ensure that measures are appropriate.<sup>90</sup>

Jess Phillips said the clause sought to trial the end of no recourse to public funds for victims of domestic abuse for the year of the pilot scheme.<sup>91</sup> Ms Phillips referred to information supplied by West Midlands Police, which said it had spent £23,161 last year on temporary accommodation.<sup>92</sup> Ms Phillips understood from the force that a common reason for use of such police resource was to accommodate victims with no recourse to public funds.<sup>93</sup>

Liz Saville Roberts (Plaid Cymru MP for Dwyfor Meirionnydd) agreed with Ms Phillips, stating that to temporarily remove no recourse to public funds would bring people forward in the confidence that they would not be penalised.<sup>94</sup> Yvette Cooper, chair of the Home Affairs Committee, did not accept the Government’s view that pilot responses were needed before the issue of no recourse to public funds for migrant women could be addressed. Ms Cooper said that action should be being taken while the pilot concludes.<sup>95</sup> Caroline Lucas (Green Party MP for Brighton, Pavilion) also urged the Government to look at the issue, stating that removing the existing law on no recourse to public funds would be a positive way to deal with the crisis right now.<sup>96</sup>

The former prime minister, Theresa May (Conservative MP for Maidenhead), recognised a common intention between the Government’s view and those in favour of the new clause, but agreed with the Government’s approach.<sup>97</sup> Mrs May acknowledged it was a “difficult area” and said:

It is important, therefore, that the Government put the pilot together in a way that ensures they can identify the evidence they are looking for and then take the measures necessary on the

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<sup>88</sup> [HC Hansard, 6 July 2020, cols 704–5.](#)

<sup>89</sup> *ibid*, col 767.

<sup>90</sup> *ibid*, cols 705–6.

<sup>91</sup> *ibid*, col 708.

<sup>92</sup> *ibid*.

<sup>93</sup> *ibid*.

<sup>94</sup> *ibid*.

<sup>95</sup> *ibid*, cols 714–15.

<sup>96</sup> *ibid*, col 741.

<sup>97</sup> *ibid*, col 712.

basis of that evidence in a timely fashion.<sup>98</sup>

Since the new clause defeat, several domestic abuse campaigners have raised concerns. The Step Up Migrant Women coalition are quoted in the *Guardian* to have said that the bill provides no support for abused migrant women who have no recourse to public funds.<sup>99</sup> Pragna Patel, the director of Southall Black Sisters, is also cited by the *Guardian* to have said:

The decision to leave migrant women out of this bill sends the message that their lives are not valued, they are disposable, they are second-class people, they are invisible.<sup>100</sup>

### **Non-government new clause 23: Commissioning specialist domestic abuse services for victims and perpetrators of domestic abuse**

New clause 23 would expand the duty on local authorities to provide accommodation-based services. It was defeated on division by 338 votes to 200.<sup>101</sup> Jess Phillips explained the purpose of the clause:

70% of domestic abuse victims do not receive services in refuge; instead, they are supported in community-based services. The victims in those services are often at highest risk of harm and homicide, and we want the same level of sustainability and strategy there as in refuge services.<sup>102</sup>

Ms Phillips highlighted that the clause would place a duty on all relevant public bodies to assist in commissioning domestic abuse services in the community.<sup>103</sup> On behalf of the Government, Victoria Atkins acknowledged a common desire to support domestic abuse victims but stated that any new statutory duties should be “properly considered, costed and robust”.<sup>104</sup>

## **4.4 Third reading**

The bill had its third reading on 6 July 2020 and was passed without division.

## **5. Read more**

- Home Office, ‘[Domestic Abuse Bill 2020: Factsheets](#)’, March 2020
- House of Commons Library, [Domestic Abuse Bill 2019–21: Progress of the Bill](#), 3 July 2020

<sup>98</sup> [HC Hansard, 6 July 2020, col 712.](#)

<sup>99</sup> Alexandra Topping, ‘[Migrant women deliberately left out of abuse bill, say campaigners](#)’, *Guardian*, 6 July 2020.

<sup>100</sup> *ibid.*

<sup>101</sup> [HC Hansard, 6 July 2020, cols 780–5.](#)

<sup>102</sup> *ibid.*, col 709.

<sup>103</sup> *ibid.*

<sup>104</sup> *ibid.*, cols 767–8.