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Margaret Mitchell MSP
Convener
Justice Committee
The Scottish Parliament
EDINBURGH
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Our ref: A 19311977
6th November 2017

Dear Margaret,

DOMESTIC ABUSE (SCOTLAND) BILL: EMERGENCY BARRING ORDERS

I am writing following the oral evidence that your Committee received from stakeholders on 31 October on possible new measures to allow people suspected of domestic abuse to be removed from their homes for a temporary period.

The evidence given set out some potential benefits of seeking to introduce new powers in this area. However, I also consider a number of important questions were raised which argue against seeking to legislate without having gone through a proper and full consultation process to seek the formal views of all key interests. Such an approach would also allow a full assessment of the legal issues that would need to be considered prior to new powers in this area being legislated for.

With that in mind, I can advise that the Scottish Government intends to formally consult on the introduction of new powers in this area in Scotland. This consultation will run parallel to the consultation we intend to issue in early 2018 on the review of Part 1 of the Children (Scotland) Act 1995 (on matters such as contact) with a view to informing consideration of development of future legislation within this session of Parliament.

It is clear that the consultation on new powers to remove people suspected of domestic abuse from their homes would need to consider a range of matters, including:

- Whether the issuing of such an order would be a matter for the police and/or a court or some other authority.
- Should there be two types of order as exists in England – an initial order for a very brief period issued by the police and then an order for a longer period that could be issued by the court.
- What level of authorisation would be needed before the police could issue an EBO.

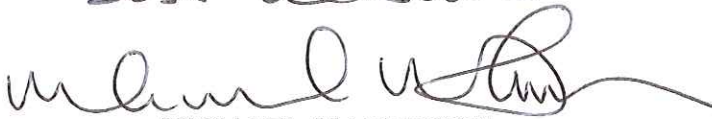
- What criteria the police would follow when considering whether to issue an EBO.
- Whether the person causing the harm would need to be a minimum age (e.g. 18) before the police could issue the person with an EBO.
- What risk assessments the police would carry out when considering whether to issue an EBO.
- Exactly what an EBO could cover (e.g. excluding the person causing the harm from the family home; banning the person causing the harm from contacting the person at risk; specific provisions to protect any children).
- Whether the police could issue an EBO without the consent of the person at risk (or whether consent would be required or the person at risk should be consulted).
- Whether the police should be under an obligation to refer the person at risk to support services.
- Whether the police should be under any obligation to provide information (eg on emergency accommodation; legal aid etc) to the person causing the harm.
- How soon after the EBO has been issued by the police it would need to be confirmed (or overturned) by the courts.
- What rights of appeal the person causing the harm would have.
- How long an EBO would last.
- Monitoring the effectiveness or otherwise of EBOs.
- Costs of EBOs, to the police, legal aid, to support services, to the courts and to any other bodies.

This consultation will also consider exclusion orders, applied for by a person at risk to exclude the person causing the harm from the family home.

I welcome the Committee's consideration of this important area in the context of your scrutiny of the Domestic Abuse Bill. I support any new evidence-based and fully considered measures that will help improve protection for victims of domestic abuse over and above what is contained in the Bill.

I would reflect that the process of developing the new offence of domestic abuse included extensive and detailed consultation with stakeholders which I firmly believe has led to the development of such a good and workable offence. I consider the lesson of that is to engage formally with all key interests to answer the questions raised at your evidence session about what new powers in this area may look like so that provisions can be developed. That reflects the clear view offered at the evidence session from members of your panel that there is no one existing similar system operating elsewhere that could simply be introduced in Scotland without having to answer the detailed questions noted above.

I hope this is helpful in outlining the Scottish Government's position in respect of this important issue.

Best wishes

MICHAEL MATHESON