



Abusive Behaviour and Sexual Harm (Scotland) Bill

Bill Number:	SP Bill 81
Introduced on:	08 October 2015
Introduced by:	Michael Matheson MSP (Government Bill)
Passed:	22 March 2016
Royal Assent:	28 April 2016

Passage of the Bill

The Abusive Behaviour and Sexual Harm (Scotland) Bill was introduced in the Parliament on 8 October 2015 by the Cabinet Secretary for Justice, Michael Matheson MSP. The Justice Committee was designated lead committee on the Bill and issued a [call for evidence](#) on the general principles of the Bill which closed on 17 November 2015. In response, the Committee received [36 submissions](#).

The Committee took oral evidence on the Bill at its meetings on [27 October, 17](#) and [24 November, 8 December](#) and [5 January](#) and published its [stage 1 report on 21 January 2016](#). Consideration of the Bill at stage 1 concluded with the [stage 1 debate on 28 January 2016](#). Consideration of amendments at stage 2 took place at the Committee meetings on [1](#) and [8](#) March 2016. Following the [stage 3 debate on 22 March 2016](#) the Bill was passed and received Royal Assent on 28 April 2016.

Purpose and objectives of the Bill

The Scottish Government stated that the provisions in the Bill would help to improve how the justice system responds to abusive behaviour, including domestic abuse, and sexual harm, thereby helping to improve public safety through ensuring perpetrators are appropriately held to account.

Provisions of the Bill

Amongst other things, the Bill provides a new domestic abuse aggravator that an offence is aggravated where it involves abuse of a person's partner or ex-partner. It also provides a new specific offence for non-consensual sharing of private, intimate images (often referred to as "revenge porn"). The Bill also

provides for juries in sexual offence cases to be given specific directions as to how evidence in such cases is to be considered.

Parliamentary consideration

A number of key issues emerged during stage 1 consideration.

The inclusion of jury directions proved to be the most contentious aspect of the Bill. Opinion was split between those stakeholders who felt that jury directions were wrong in principle in that they forced judges to give particular directions in particular circumstances, rather than letting the judge decide whether directions were appropriate given the circumstances of the case. It was also suggested that the introduction of statutory jury directions represented an unprecedented intrusion into the long held constitutional separation of powers. Supporters of statutory directions tended to say that there was no good reason why they should be opposed, because all they did was provide information to the jury that is factual, uncontroversial, and unobjectionable.

An amendment brought forward by Margaret Mitchell MSP sought to remove the section in the Bill on jury directions in its entirety. Ms Mitchell repeated the arguments put forward by those stakeholders opposed to their introduction and stated that the introduction of jury directions represented a “dangerous precedent”. In response, the Cabinet Secretary for Justice stated that the provisions had been included in the Bill to deal with the important underlying issue that some members of the public, and thus, some members of a jury, will hold preconceived and ill-founded attitudes towards how sexual offences are committed and how someone who is subjected to a sexual offence is likely to act both when the offence takes place and afterwards.

He went on to say that the intent behind the introduction of jury directions was that the Government wanted the focus of the jury to be on the evidence before them and that any preconceived and ill-founded attitudes that may be held should not play a part in the jury’s decision.

Following a division, Ms Mitchell’s amendment was disagreed to.

With regard to the non-consensual sharing of private, intimate images, the Bill provides that it would be a criminal offence to share, publish or distribute private, intimate images in the form of a photograph or film relating to another person without that person’s consent. It will also be an offence to threaten to disseminate intimate images. During stage 1 consideration some witnesses considered it important that the focus of the offence remain on images of the body which, they considered, had particular power to humiliate. Others saw merit in including, for instance, text or voice recordings of intimate conversations. A clear majority of the Committee supported the approach set out in the Bill.

However, amendments to expand the scope of the disclosure offence in the Bill were brought forward at stage 2 by Margaret McDougall MSP. The amendments sought to have sound recordings containing intimate content or

intimate written communications included within the scope of the offence. Ms McDougall argued that by including only images within the scope of the offence, a loophole would be created whereby someone could share intimate written texts or recorded conversations without consent and escape punishment. In response, the Cabinet Secretary for Justice reiterated the Scottish Government's view that almost all the cases which it was aware of have involved the sharing of images which may enable a complete stranger to identify the victim, and that this is especially likely to cause distress. The Cabinet Secretary also stated that the Government's understanding was that the amendments brought forward by Margaret McDougall may unintentionally criminalise behaviour in certain circumstances.

Following a division, the amendments were not agreed to.