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LEGACY 2014
XX COMMONWEALTH GAMES
SCOTLAND

By email

1st December 2015

Dear Christine,

Ahead of my evidence session with the Committee on 15 December in relation to the Abusive Behaviour and Sexual Harm (Scotland) Bill ("the Bill"), I wanted to provide the Committee with a short overview of what provisions are in the Bill and why we have included the areas we have. I include in the annex brief details of each of the six policy areas contained in the Bill along with an explanation of why the provisions are included in the Bill.

By way of wider context for the Bill, Police Scotland figures show that just under 60,000 incidents of domestic abuse were reported to them in 2014-15, an increase of 2.5% on the previous year. In 79% of the incidents, where the gender was known, the perpetrator was male and the victim was female. However, we also know that the police only become aware of around one in five (12%) of the incidents of partner abuse each year.

There were over 9,500 sexual offences recorded by Police Scotland in 2014-15, an increase of 11% on the previous year. This included 1,900 reported rapes and attempted rapes, 3,700 sexual assaults and over 3,500 other sexual crimes. Whilst there was a 22% increase in the number of successful prosecutions for sexual offences in 2013-14, including a 13% increase in convictions for rape and attempted rape, overall conviction rates remain lower than for other types of crime. In addition, Police Scotland management information figures for the period Apr-June 2015 indicate that 36% of rapes reported to Police Scotland were historic i.e. took place at least 12 months prior to being reported.


In March 2015, following from commitments in the 2014 programme for Government, the Scottish Government published the consultation paper "*Equally Safe - Reforming the criminal law to address domestic abuse and sexual offences*". The responses to the consultation document indicated strong support for measures to better protect the victims of domestic abuse and sexual offences and to help bring the perpetrators of these crimes to justice. A copy of the consultation responses are available through the following link:

<http://www.gov.scot/Publications/2015/10/7350>



The consultation responses and separate dialogue with justice agencies and other relevant stakeholders have informed the preparation of the Bill.

I hope this is helpful and look forward to giving evidence to the Committee on 15 December.

Best wishes

MICHAEL MATHESON

ANNEX

INTRODUCTION OF A STATUTORY DOMESTIC ABUSE AGGRAVATOR

What are we doing

Providing for a new statutory aggravation that an offence involved abuse of a person's partner or ex-partner, and require courts to take account of that fact in sentencing the offender

Why are we doing it

To ensure that victims of domestic abuse can have increased confidence that the courts have taken the fact that an offence occurred in the context of abusive relationship into account when sentencing the offender, as they are required to do by existing legislation concerning, for example, offences aggravated by prejudice.

CREATION OF AN INTIMATE IMAGES OFFENCE

What are we doing

Providing that it is a criminal offence for a person to share, publish or distribute private, intimate images relating to another person without that person's consent where the intent is to cause that person to suffer fear, alarm or distress or else the person is reckless as to the possibility that their behaviour will have this effect, or to threaten to share, publish or distribute such images.

Why are we doing it

To respond to concerns that with behaviour of this type becoming more common in the light of technological developments making it easier to share pictures and videos, clarity in law is important so that both victims and perpetrators understand this behaviour is criminal and that action can be taken using an offence which is specific to the conduct undertaken.

PROTECTION FOR VICTIMS FROM HARASSMENT

What are we doing

Extending the powers of a criminal court to protect victims from further harassment by allowing a criminal non-harassment order to be imposed where a person is acquitted because of not being criminally responsible due to mental disorder or where a court finds a person unfit to stand trial due to mental or physical condition but establishes after hearing evidence that they did something that would constitute an offence involving misconduct towards another person.

Why are we doing it

To reduce the trauma for victims of having to proceed with a separate civil application for a non-harassment order and ensure no delay in putting in place protective measures to allow police to take swift action to protect victims from conduct that otherwise would not be criminal e.g. where a person subject to a non-harassment order approaches the victim's house.

GUIDANCE FOR JURIES WHEN DEALING WITH SEXUAL OFFENCE CASES

What are we doing

Requiring judges to tell juries in certain sexual offence cases how to consider evidence:

- relating to a delay by the victim in reporting the offence, and
- relating to a victim not putting up physical resistance to the perpetrator and/or the perpetrator not using physical force in carrying out the offence.

The judge must explain there may be good reasons why a delay took place and good reasons why no physical resistance was put up/physical force used by the perpetrator and that therefore it does not necessarily mean the allegation that the offence took place is false.

Why are we doing it

By encouraging juries to consider only relevant evidence in sexual offence cases, and not to be influenced by any pre-conceived and ill-founded ideas they may have taken into the juror's room, this will help ensure victims of sexual offences are better able to access justice.

There is evidence that some jurors may allow pre-conceived ill-founded ideas as to how sexual offences are committed to cloud their consideration of evidence in a case – that sexual assault is almost always violent; that if attacked a victim would generally offer physical resistance, or that victims would always report an offence to the police immediately.

In recent years, there has been a big increase in the reporting of historic sexual offences to the police ('historic' means an offence reported at least 12 months after it has taken place) so the relevance of such a provision is becoming ever more apparent as historic sexual offence cases are prosecuted through our courts.

PROSECUTION OF CHILD SEXUAL OFFENCES IN SCOTLAND

What are we doing

Extending the law concerning sexual offences committed against children so that Scottish courts can prosecute offences committed elsewhere in the United Kingdom.

Why are we doing it

To reduce the potential trauma of victims having to face more than one trial in relation to connected events (by allowing a trial to take place in Scotland of offences that may have occurred in England and Scotland) and generally improve access to justice for those who suffer from a sexual offence being committed against them.

The current law operates so that if a UK national does an act in a country outside the United Kingdom which would, if it had been done in Scotland, constitute certain sexual offences (as specified in the Sexual Offences (Scotland) Act 2009), then the UK national commits the relevant offence under Scots law. This applies irrespective of whether the conduct constituted an offence under the laws of the country in which it took place. The Bill will make similar provision for acts elsewhere in the UK.

In 2013, as part of their inquiry into Child Sexual Exploitation arising from consideration of public petition PE1393, the Public Petitions Committee took evidence from the Lord Advocate about the prosecution of child sexual exploitation offences and he raised concerns about the fact that, while extra-territorial jurisdiction for sexual offences against children extends to the rest of the world, the Scottish courts have no jurisdiction to prosecute sexual offences against children committed elsewhere in the United Kingdom.

CIVIL ORDERS TO PROTECT COMMUNITIES FROM SEXUAL HARM

What are we doing

Replacing the three existing civil orders (sexual offences prevention orders and foreign travel orders, which can be imposed on sex offenders, and risk of sexual harm orders which can be imposed on anyone thought to pose a risk of sexual harm to a child under 16) with two new civil orders – the Sexual Harm Prevention Order and Sexual Risk Order.

The grounds on which the new Sexual Harm Prevention Orders and Sexual Risk Orders will be made are wider than those for the current orders, so they could be used by the police to manage risk against adults as well as children. The available conditions are also wider so, foreign travel restrictions could be imposed under either order.

The existing test of “serious sexual harm” is being replaced. So a court will be able to grant a new order if it is satisfied that it is necessary to protect a person from “sexual harm”.

The condition whereby the subject of a risk of sexual harm order must have done a specified act in relation to a child on at least 2 occasions is also being removed, as is the need for evidence from within the last 3 months to form the basis of an application for a Sexual Risk Order.

Why are we doing it

By increasing the flexibility and scope of these civil orders, this will ensure courts have appropriate powers to protect communities from those who pose a risk of sexual harm.

The provisions are responding to feedback from experts, including Police Scotland, Barnardos and the Child Exploitation and Online Protection Centre. The UK Government introduced similar reforms in 2014. There has been a parallel regime for sex offenders north and south of the border for many years until the recent UK Government reforms and one of the benefits of reforms being progressed in Scotland is to re-introduce this parallel regime. For example, those individuals who may be subject to the orders may well seek to take advantage of a less robust regime operating in Scotland.

Also delivers on aspects of the SG’s National Action Plan to Tackle Child Sexual Exploitation (November 2014). The Ministerial Working Group overseeing implementation of the plan

highlighted the need to see progress in this area. Both the Public Petitions Committee and the Justice Committee have echoed these calls for change.

