

Prison Reform Trust briefing on the Draft Domestic Abuse Bill: Pre-legislative scrutiny, April 2019

1. About the Prison Reform Trust

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. Our Transforming Lives programme to reduce the unnecessary imprisonment of women in the UK is supported by the National Lottery Community Fund.

2. Executive summary

- 2.1 A new clause should be added to the draft Bill creating a statutory defence for women whose offending is driven by their experience of domestic abuse.¹ Our proposal for the new clause is supported by the Criminal Bar Association (CBA).
- 2.2 The title and scope of the draft Bill should be expanded to include all forms of violence against women and girls, and amended so that it:
 - (a) Establishes a statutory framework for a comprehensive public sector response to violence against women and girls, including a requirement on criminal justice agencies to make routine enquiry of women suspects/defendants as to whether they are victims/survivors of domestic abuse.
 - (b) Protects all victims/survivors including BAME women, foreign national women, women of minority faiths, LGBT women and disabled women.
- 2.3 The draft Bill must be accompanied by a sustainable, long term funding plan for specialist services.
- 2.4 The draft Bill raises civil liberties issues in relation to the proposed criminalisation of breach of civil Domestic Abuse Protection Orders.²

3. Need for a new statutory defence

Women in prison who are victims of domestic abuse

- 3.1 The following proposal for a new statutory defence is supported by the CBA.
- 3.2 Women in prison in England and Wales have often been victims of more serious offences than those they are accused of committing:
 - (a) More than half (53%) report having experienced emotional, physical or sexual abuse as a child compared to 27% of men.³ 57% of women report having been

¹ See PRT's recommendations in: [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending, London: PRT](#) and the accompanying [briefing by the Criminal Bar Association](#).

² See [PRT's submission to the government's consultation on the draft Domestic Abuse Bill, May 2018](#)

³ Ministry of Justice (2012) Prisoners' childhood and family backgrounds, London: MoJ

- victims of domestic violence as adults.⁴ Because many women fear disclosing abuse, both figures are likely to be an underestimate.⁵
- (b) Women’s offences are more likely than men’s to be prompted by their relationships with 48% of women, compared to only 22% of men, saying that they had committed offences to support someone else’s drug use.⁶
 - (c) Research by The Disabilities Trust found that of 173 women screened at HMP Drake Hall, 64% reported a history indicative of brain injury and for most this was caused by domestic violence.⁷
 - (d) In research by Muslim Hands with Muslim women in prison, 71% of interview participants reported experience of domestic abuse.⁸
 - (e) Women with learning disabilities are particularly vulnerable to domestic abuse.⁹
 - (f) Women with children can be reluctant to disclose their exposure to domestic violence, but the impact of prosecution and imprisonment may be particularly disruptive and traumatic for both mothers and children.¹⁰

Although the links between victimisation and offending are now better recognised, the experience of abuse and trauma is too often disregarded in decisions by criminal justice agencies.

International human rights bodies

- 3.3 The Committee for the Elimination of Discrimination Against Women has expressed concern about the incarceration of women in the UK and recommended adopting “*alternative...custodial strategies, including community interventions and services*” for women accused of minor offences¹¹. The UN Bangkok Rules mandate the provision of diversionary measures and sentencing alternatives “*taking account of the history of victimisation of many women offenders...*”¹²
- 3.4 The UN Special Rapporteur on Violence Against Women visited the UK in 2014 and raised concerns over the disproportionate number of Black and minority ethnic women in prison, the number of women who have been subjected to violence prior to their imprisonment and the number of young women imprisoned. In her statement she called for recognition of ‘*women’s histories of victimisation when making decisions about incarceration*’.¹³

⁴ Data Extracted from OASYS, In Thinking differently about female offenders. Transforming rehabilitation, Guidance Document. MOJ/NOMS 2014

⁵ Gelsthorpe, L., Sharpe, G., and Roberts, J. (2007) Provision for Women offenders in the community London: Fawcett Society

⁶ Light, M., Grant, E. and Hopkins, K. (2013) Gender differences in substance misuse and mental health amongst prisoners, London: MOJ

⁷ [The Disabilities Trust \(2019\) Making the link: Female offending and brain injury. London: The Disabilities Trust](#)

⁸ Muslim Hands (2018) (In)visibility: Female. Muslim. Imprisoned, London: Muslim Hands

⁹ Prison Reform Trust (2019) Out of the Shadows: Women with learning disabilities in contact with or on the edges of the criminal justice system, London: PRT

¹⁰ Beresford, S. (2018) What About Me? The impact on children when mothers are involved in the criminal justice system, London: PRT

¹¹ CEDAW C/GBR/CO/7: Committee on the Elimination of Discrimination Against Women - Concluding observation on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013

¹² United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders

¹³ Press release, Office of the UN High Commissioner for Human Rights, 15 April 2014, ‘Special Rapporteur on violence against women finalizes country mission to the United Kingdom and Northern Ireland and calls for urgent action to address the accountability deficit and also the adverse impacts of changes in funding and services’, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/displayNews.aspx?NewsId=14514&LangId=E>

How domestic abuse drives offending by victims/survivors

- 3.5 The government's response to the domestic abuse consultation¹⁴ and its Female Offender Strategy¹⁵ recognise that, as highlighted in PRT's 2017 report 'There's a reason we're in trouble'¹⁶, women's offending is often driven by their experience of domestic abuse. Offending can be a 'by-product' of abuse, resulting from the victim's attempts to survive, and the criminal justice process itself can be used against victims as a weapon of abuse.¹⁷ As Women's Aid puts it:¹⁸

Coercive control creates invisible chains and a sense of fear that pervades all elements of a victim's life. It works to limit their human rights by depriving them of their liberty and reducing their ability for action. Experts like Evan Stark liken coercive control to being taken hostage. As he says: "the victim becomes captive in an unreal world created by the abuser, entrapped in a world of confusion, contradiction and fear".

Failures to take into account the context of domestic abuse in criminal proceedings

- 3.6 The introduction of the offence of controlling or coercive behaviour in Section 76 of the Serious Crime Act 2015 was a progressive move that recognises the consequences of domestic abuse as a pattern of behaviour over time. Crown Prosecution Service (CPS) guidance makes clear that the offence covers a wide range of behaviours, including financial control and social isolation of victims. The government recognises that women's offending is often driven by their experience of this kind of abuse.¹⁹
- 3.7 Anyone who offends and is a victim/survivor of domestic abuse is entitled to have her experience of abuse taken into account at each stage of criminal justice proceedings. Too often this does not happen.²⁰ The fact that the criminal law does not currently provide an effective defence for those who commit offences as a result of abuse no doubt contributes to these failures.²¹
- 3.8 Criminal justice agencies told us that in many cases women may plead guilty upon charge by the police, not realising that their experience of domestic abuse could be a reason for them not to be prosecuted, under the 'public interest test'. Evidence suggests that the police and the CPS often do not apply this test properly even if the abuse is known about. This is recognised in government guidance for the police

¹⁴ HM Government (2019) Transforming the response to domestic abuse: Consultation response and draft Bill, London: OGL

¹⁵ Ministry of Justice (2018) Female Offender Strategy, London: Ministry of Justice

¹⁶ [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending, London: PRT](#)

¹⁷ Roberts, J. (2015) 'It was do or die' – How a woman's experience of domestic abuse can influence her involvement in crime: A qualitative investigation of the experiences of community-based female offenders, Unpublished doctoral research findings summary report, University of Leicester

¹⁸ Women's Aid website, viewed 03/04/19: <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/coercive-control/>

¹⁹ HM Government (2019) Transforming the response to domestic abuse: Consultation response and draft Bill, London: OGL

²⁰ [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending, London: PRT](#)

²¹ [Criminal Bar Association of England and Wales \(2017\) Defences available for women defendants who are victims/survivors of domestic abuse, London: CBA](#)

on working with vulnerable women and for local agencies on developing a whole system approach to women in contact with the criminal justice system.²²

- 3.9 There is also a systematic failure to take the woman's experience of abuse into account in relation to both conviction and sentencing, particularly in light of the move away from providing a thorough pre-sentence report (PSR) in favour of swift justice. One woman imprisoned three times without a PSR commented:

I lost hope in the system. If that can happen to me, my story isn't that important.

Sally Challen case

- 3.10 The Court of Appeal's recent decision in the case of Sally Challen shows how a lack of understanding of coercive control can lead to injustice. Ms Challen killed her husband after years of being controlled and humiliated by him. At the time of her conviction, 'coercive control' was not a crime in England and Wales. Her defence of diminished responsibility failed and she was sentenced to life imprisonment for murder. Justice for Women submitted a fresh appeal in 2017, highlighting new psychiatric evidence and an expert report showing how coercive control provides a better framework for understanding Ms Challen's actions. The Court of Appeal overturned her conviction and ordered a retrial.²³
- 3.11 The statutory partial defence of 'loss of control' in murder and attempted murder cases came into force in October 2010, after Ms Challen's offence took place, and may be better suited than the defence of 'provocation' (which it replaced) for use in murder and attempted murder cases involving coercive control.²⁴

No effective defence for those whose offending is driven by domestic abuse

- 3.12 Those charged with offences other than murder or attempted murder face deficiencies in the current law. The common law defence of duress can be applied (except to murder and attempted murder) where the defendant was acting under threat of imminent death or serious injury and where there would have been no alternative course of action for a reasonable person with relevant characteristics, as set out in the case of *R v Bowen* (the 'Bowen test')²⁵. As the CBA's analysis makes clear, the legal test for the defence of duress is ill suited for cases where a defendant is experiencing domestic abuse.²⁶ Earlier research concluded that '[n]on-culpable abused women can therefore be left defenceless. The result is that too many coerced women are in prison when they ought not to be'.²⁷
- 3.13 The deficiencies of the duress defence are explained in the CBA's 2017 briefing²⁸ and Janet Loveless' research²⁹ and summarised below:

²² Ministry of Justice (2018) *Managing vulnerability: Women – Fact Pack*, London: MoJ; Ministry of Justice (2018) *A Whole System Approach for Female Offenders: Emerging evidence*, London: MoJ. Both available at: <https://www.gov.uk/government/publications/female-offender-strategy>

²³ Justice for Women website, viewed 4 April 2019: <https://www.justiceforwomen.org.uk/sally-challen-appeal>

²⁴ Section 54, Coroners and Justice Act 2009

²⁵ *R v Bowen* 1996 2 Cr App R 157

²⁶ [Criminal Bar Association of England and Wales \(2017\) Defences available for women defendants who are victims/survivors of domestic abuse, London: CBA](#)

²⁷ Loveless, J. (2010) 'Domestic Violence, Coercion and Duress', *Criminal Law Review*, pages 93-108

²⁸ [Criminal Bar Association of England and Wales \(2017\) Defences available for women defendants who are victims/survivors of domestic abuse, London: CBA](#)

²⁹ Loveless, J. (2010) 'Domestic Violence, Coercion and Duress', *Criminal Law Review*, pages 93-108

- (a) The complexities of domestic abuse are ignored, because the emphasis of the definition of duress is on threat of death or serious injury. The defence does not recognise psychological, sexual or financial abuse - which are included in the offence of coercive or controlling behaviour and the proposed statutory definition of domestic abuse.
- (b) For the defence of duress to succeed, the threat of physical harm must be imminent. This fails to recognise the nature of domestic abuse, including coercive control, as *'typically entrenched, unpredictable and random...to a woman whose self esteem has been demolished by past violence, the fear of violence may be ever present and overpowering'*. (Loveless 2010)
- (c) For those experiencing abuse to succeed with this defence, 'relevant characteristics' must be established including 'battered woman syndrome' and 'learned helplessness'. These are outdated concepts which pathologise women rather than offering an effective defence suitable for the actual circumstances. They require the production of medical evidence which is not practicable in many cases involving low level offending tried in the magistrates' courts.

3.14 These deficiencies are illustrated in the examples given in the CBA's briefing including the case of YS, summarised below:

R v YS [2017] EWHC 2839

YS was charged with driving whilst disqualified, driving with excess alcohol, driving without insurance and dangerous driving. An officer noticed a vehicle with its brake lights permanently illuminated and swerving from side to side. He activated the siren, indicating for the vehicle to stop. The vehicle did not stop, and a chase continued for five minutes. In the driving seat was a woman, YS.

YS explained she had been dragged from her home partially dressed by her partner, forced to drive, and that he threatened to kill her if she did not drive on. The partner was screaming at her throughout, punching her in the ribs and trying to grab the steering wheel.

The following findings of fact were made by the Magistrates' Court:

*'There is no doubt that [YS] has been involved in an abusive relationship with R who has a history of violent offences in the domestic setting. We believe that [YS] drove dangerously to escape the Police at the behest of R, although, as the driver of the car, she could have halted the vehicle. **We are prepared to believe that the reason she drove at speed was because [YS] believed if she did not R might kill or seriously injure her.'***

Despite these findings, the Magistrates' Court concluded that the defence of duress failed on the following grounds:

'We do not find that a reasonable person with the defendant's beliefs, history of domestic violence, and of her age, in her situation, would have done what she did.'

'She admits to having consumed alcohol before driving.'

YS' conviction was upheld on appeal to the High Court, with Mrs Justice McGowan ruling that the Magistrates' Court had in fact used an overly favourable application of the Bowen test. In her judgment she set out that:

'A strict application of the principles in R v Bowen would have meant that they only considered the Appellant's age and sex. In fact, they adopted a test more favourable to the Appellant and also considered her personal history of domestic abuse. Even taking that background into account they found that a reasonable person having experienced violence and threats which, on occasion, had not always been carried out would not have acted as the Appellant did. A modified form of the test was applied adding a subjective element to the objective test...

'A proper application of the test in Bowen should have caused the Justices to ask themselves the following questions, 1. Did the Appellant behave in the way she did on the night because she believed her partner would seriously assault or kill her because he had behaved in that way in the past? 2. Would a reasonable woman of her age have responded to those threats in that way?

'Accordingly, in so far as the Justices misdirected themselves it was in the Appellant's favour.'

3.15 The PRT and CBA reports include women's accounts of offences committed as a direct result of domestic abuse, such as:³⁰

- Handling stolen goods under threat of violence by a partner
- Taking the blame for possession of a controlled substance belonging to an abusive partner
- Taking the blame for carrying a knife on behalf of an abusive partner
- Theft offences to pay for drugs and alcohol used by themselves and their abusive partner
- Assault against an abusive partner or ex-partner
- Failure to attend school for fear of abusive ex-partner
- Bringing drugs into prison for an abusive partner

These offences all led to criminal convictions, with some women serving prison sentences while others undertook community orders.

3.16 In conclusion, although there has been progress in recognising the nature of coercive control, current legal defences fall short of protecting domestic abuse victims/survivors from prosecution or conviction, leading to injustice. To remedy this, a new statutory defence is needed.

New statutory defence for those whose offending is driven by domestic abuse

3.17 Section 45 of the Modern Slavery Act 2015 introduced a statutory defence for those who commit an offence as a consequence of having been a victim of human trafficking or modern slavery. This requires proactive, early case management and

³⁰ See: [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending](#), London: PRT and [Criminal Bar Association of England and Wales \(2017\) Defences available for women defendants who are victims/survivors of domestic abuse](#), London: CBA

allows all agencies, including the courts, to become more adept at recognising and responding to circumstances which should indicate there is no public interest in prosecuting a case, or where the statutory defence should apply.

- 3.18 An equivalent statutory defence should be added to the draft Bill for those whose offending is driven by domestic abuse. This would be available to both men and women. It will need to be supported by an appropriate CPS policy and judicial directions (to be included in the Crown Court compendium about the treatment of defendants affected by domestic abuse).
- 3.19 Our proposed new clause is annexed to this briefing and is supported by the CBA.

4. Title and scope of the draft Bill

- 4.1 Restricting the Bill's title and scope to domestic abuse is inconsistent with the UK government's strategy³¹ and international human rights law³² and risks jeopardising efforts to ensure that all forms of violence against women and girls are given the same priority. Adopting a more comprehensive approach would echo the government's own recognition that women and girls form the majority of victims of these crimes while making clear that where men and boys are victims they are equally entitled to protection and support. The Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (the 'Wales Act') provides an alternative model.
- 4.2 The Bill should be expanded to create a statutory framework for a comprehensive, public sector response to violence against women and girls, underpinned by a national training framework and modelled on the Welsh approach. This should include a requirement on criminal justice agencies to make routine enquiry of women who present as suspects or defendants as to whether they are experiencing domestic abuse, as recommended in PRT's report 'There's a reason we're in trouble'.³³
- 4.3 All criminal justice agencies should be enabled to recognise the signs of domestic abuse and identify where this may be an underlying factor in women's offending. The role of NHS liaison and diversion services is especially important in ensuring that women suspects and defendants are asked in a sensitive manner about any prior experience of violence and abuse, informing criminal justice decision making, and making referral into support services. It is encouraging that these services have a specific women's lead.
- 4.4 The Wales Act is underpinned by a National Training Framework on Violence against Women, Domestic Abuse and Sexual Violence for key public specialist service providers. This includes 'Ask and Act', a principles-based approach to targeted enquiry, the aim of which is to increase identification and support for those who experience violence against women. This is a possible model for the approach in England. PRT's 2016 briefing 'Leading change – the role of local authorities in supporting women with multiple needs' also suggests practical ways in which local authorities in England can prioritise and address the needs of vulnerable women.³⁴

³¹ [HM Government \(2016\) Strategy to end violence against women and girls, London: Home Office](#)

³² [The Council of Europe Convention on preventing and combating violence against women and domestic violence \(the Istanbul Convention\)](#)

³³ [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending, London: PRT](#)

³⁴ [Prison Reform Trust \(2016\) Leading change: the role of local authorities in supporting women with multiple needs, London: PRT](#)

- 4.5 Specific attention should be given to ensuring that the Bill and associated guidance provide equal protection for victims/survivors in minority groups, including BAME women, foreign national women, women of minority faiths, LGBT women and disabled women.
- 4.6 The Bill should include specific protections for migrant women. We support the submissions made to this committee by Liberty, namely:
- (a) All victims/survivors should be able to report abuse safely, including foreign national women, without fear of immigration enforcement.
 - (b) All migrant victims/survivors should be made eligible to apply for indefinite leave to remain under the Domestic Violence Rule.
 - (c) The Bill should extend the Destitute Domestic Violence Concession so that all migrant victims/survivors can apply for temporary support, regardless of their immigration status. This support should be extended to at least six months.
 - (d) The No Recourse to Public Funds rule should be abolished for victims/survivors.
 - (e) The government should end indefinite immigration detention and improve the Adults at Risk policy to ensure vulnerable people, including migrant victims/survivors, are not detained.
- 4.7 Foreign national women offenders who are victims/survivors of domestic abuse are particularly vulnerable due to potentially insecure immigration status, limited support networks and communication barriers. Limited access to legal aid is problematic for foreign national women offenders who may be simultaneously engaged in criminal justice proceedings, immigration proceedings and family proceedings relating to children. Language and cultural barriers and the increased likelihood of being a victim of trafficking or modern slavery also make this a particularly vulnerable group.³⁵
- 4.8 Support from specialist women’s services such as Hibiscus Initiatives, who have many years of experience in working with foreign national women in the criminal justice system, can be a lifeline as highlighted in PRT’s 2018 report ‘Still No Way Out’.³⁶ The case of Justina is illustrative. Her offending resulted directly from domestic abuse; she served a prison sentence for assaulting her abusive partner. Dedicated specialist support from Hibiscus enabled her to gain refuge accommodation after her release from prison, *pro bono* legal representation to challenge her detention post-sentence and deportation proceedings, and help with family proceedings. As a result Justina was reunited with her child, found work and is now living freely and without fear in the UK.
- 4.9 Specialist services like Hibiscus should be made more widely available both in prison and in the community to ensure access to justice for the most vulnerable groups. Criminal justice agencies need to work in close partnership with those services both in developing a strategic approach to their treatment of foreign national women and in their day to day work. At present, services like these are scarce and struggle to sustain themselves on a patchwork of relatively short-term funding streams.
- 4.10 The Bill must be accompanied by a sustainable, long term funding plan for specialist services aimed at meeting all victims’/survivors’ needs if it is to realise its stated objectives. Investment in a network of specialist women’s community services

³⁵ [Prison Reform Trust \(2018\) Still No Way Out: Foreign national women and trafficked women in the criminal justice system, London: PRT](#)

³⁶ [Prison Reform Trust \(2018\) Still No Way Out: Foreign national women and trafficked women in the criminal justice system, London: PRT](#)

throughout the country would enable many more women like Justina to achieve positive outcomes for themselves and their children, as well as ensuring women are diverted away from the criminal justice system and from custody where appropriate, through the effective use of community disposals. As the justice select committee has recently commented:³⁷

...the existing funding is unlikely to have sufficient impact. The Government should be more bold in investing in community alternatives for women cross-departmentally, not only via the justice system... That the issue of mainstream cross-Government funding for women's centres remains unresolved by consecutive Governments over the last 10 years is a grossly wasted opportunity to reduce the costly intergenerational impact of crime...

5. Proposed criminalisation of breach of Domestic Abuse Protection Orders

- 5.1 The existing Domestic Violence Protection Order (DAPO) may be used where there is insufficient evidence to convict, to allow the alleged victim/survivor breathing space. The proposal for breaches of the new Domestic Abuse Protection Order to be treated as a criminal offence is problematic and may contravene the right to a fair trial under Article 6 of the European Convention on Human Rights.
- 5.2 While we appreciate the challenges in obtaining convictions in domestic abuse cases, criminalising breach of DAPOs is not the right solution. We oppose in principle a policy under which civil orders imposed on a balance of probabilities can, if breached, result in a criminal conviction and even imprisonment without a criminal process in relation to the original, alleged offending behaviour. Further, as the government's consultation document itself acknowledged: "*There is ... a risk that criminalising breach could deter people from applying for the proposed order, or ... reporting a breach.*"
- 5.3 The proposal to criminalise breach in relation to positive conditions of an order, for instance a failure to attend a particular programme, is particularly problematic. There may be legitimate reasons for such a breach, for instance illness or child care responsibilities or unavailability of suitably adapted programmes for people with learning disabilities or mental health needs. In these circumstances, prosecution for breach would be disproportionate and could have negative consequences for both victim/survivor and perpetrator.
- 5.4 Making provision for certain breaches to be dealt with as a contempt of court is not a sufficient safeguard, as this is still a serious offence punishable by up to two years in prison or an unlimited fine. In conclusion we believe the provision allowing for criminalisation of breach of DAPOs should be removed from this Bill.

Prison Reform Trust, April 2019

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³⁷ House of Commons Justice Select Committee (2019) Prison population 2022: planning for the future Sixteenth Report of Session 2017–19, London: TSO

ANNEX – Defence for victims of domestic abuse who commit an offence

New clause

The following new clause is proposed:

“Defence for victims of domestic abuse who commit an offence

- (1) A person is not guilty of an offence if—
 - (a) the person is aged 18 or over when the person does the act which constitutes the offence,
 - (b) the person does that act because the person is compelled to do it, and
 - (c) the compulsion is attributable to their being a victim of domestic abuse.
- (2) A person may be compelled to do something by another person or by the person’s circumstances.
- (3) Compulsion is attributable to domestic abuse only if—
 - (a) it is, or is part of, conduct which constitutes domestic abuse as defined in section 1 of this Act, or
 - (b) it is a direct consequence of a person being, or having been, a victim of domestic abuse.
- (4) A person is not guilty of an offence if—
 - (a) the person is aged 16 or 17 when the person does the act which constitutes the offence, and
 - (b) the person does that act as a direct consequence of the person being, or having been, a victim of domestic abuse.
- (5) In this section references to an act include an omission.
- (6) Subsections [\(1\)](#) and [\(4\)](#) do not apply to the offence of murder or attempted murder.

Explanatory notes

1. The draft clause is not gender specific and would offer protection to men as well as women, although in practice women are most often likely to benefit due to the much greater likelihood of their being victims of domestic abuse.
2. The draft clause is closely modelled on [Section 45, Modern Slavery Act 2015](#), with the following differences:
 - a) References to ‘victims of trafficking/slavery/relevant exploitation’ have been replaced with ‘victims of domestic abuse’ as defined [in clause 1 of the draft Bill](#). CPS legal guidance on the application of section 76 of the Serious Crime Act 2015 (the offence of controlling or coercive behaviour, which forms part of domestic abuse as defined in clause 1 of the draft Bill) states that relevant behaviour to indicate ‘controlling or coercive behaviour’ includes acts such as controlling finances and social isolation.³⁸

³⁸ [CPS \(2017\) Controlling or Coercive Behaviour in an Intimate or Family Relationship: Legal Guidance – Domestic Abuse, London: CPS](#)

- b) References to 'a reasonable person' with 'relevant characteristics' having 'no realistic alternative' (sub-sections 45(1)(d) and 45(4)(c) of the Modern Slavery Act 2015) have been removed in order to avoid the same pitfalls that currently exist in the defence of duress.
- 3. It is proposed that the defence should not be available for the offence of murder or attempted murder.
- 4. The draft Bill defines domestic abuse in clause 1 as applying to those aged 16 and over. The requirement to establish compulsion is omitted in the draft statutory defence where the defendant is aged 16 or 17 years.