



Evidence submitted by CIH Scotland 04 December 2020

About CIH

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world including over 2,000 in Scotland.

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CIH contact:

Callum Chomczuk
National Director, CIH Scotland
Callum.Chomczuk@cih.org

1. Do you agree that a senior police officer should be able to impose a short-term Domestic Abuse Protection Notice (DAPN), without first seeking court approval, as proposed in sections 4-7 of the Bill? If so, what advantages would a DAPN have over the existing police and court powers?

Criminal sanctions can and must always be recognised as a primary response from police authorities when dealing with instances of domestic abuse. However, when considering other civil orders that are available such as interdicts then the use of a DAPN and DAPO can have value. For example, securing an interdict can require households to access a solicitor or obtain legal aid and a determination is ultimately made by a Sherriff which can take time to progress the court system as well as being costly for a victim. Finance should not be a consideration when accessing justice. Whereas the proposed DAPN/DAPO is a police led initiative, not requiring an independent solicitor, and has the flexibility for a swift response from the police to address a matter of concern before then being considered by a court no later than the next court day after giving initial notice to leave. This strikes the right balance between responsiveness and appropriate oversight of police actions.

We also note the creation of a DAPN/DAPO creates an important precedent by challenging the conflation of leaving an abuser and leaving the family home.

2. Do you agree that the civil courts should be given powers to make a Domestic Abuse Protection Order (DAPO), as proposed in section 8-16 of the Bill? If so, what advantages would a DAPO have over the existing police and court powers?

As per question 1

3. Section 1 of the Bill requires the two people covered by the DAPN or DAPO to be spouses, civil partners or in an 'intimate personal relationship' with each other. In addition, the suspected perpetrator must be aged 18 or over and the person at risk must be 16 or over. Do you agree with this overall approach or do you wish to suggest any changes? In the Domestic Abuse Bill, that is currently making its way through the UK Parliament, a broader approach is proposed for England and Wales, extending to other family relationships and people sharing a house in other circumstances.

We agree with the definition set out the Bill. Domestic abuse is predominately perpetrated by men on women who are their partner/ ex-partner. Other adult protection legislation already sets out scope for protections for other groups at risk of harm, but we would recommend a review and amendment of this legislation if such shortcomings and concerns are presented to the committee about other groups of individuals at risk.

4. Under section 8 of the Bill only police officers would be able to apply to the court for a DAPO. Do you agree with this approach or do you think the power to apply should be extended to other individuals or organisations? If the latter, who would you wish to include?

For DAPN/ DAPO to be successful it is vital they have the confidence of the court system and credibility with those being asked to leave their family home. We believe senior police officers are the most appropriate lead to communicate to householders that a DAPN has been served and they must temporarily leave their home and authoritatively communicate the process and timeline.

With regards to applying for a DAPO we also consider that police officers are best placed to make such applications, and this would support consistency throughout the process which would improve timeliness in the court decision making process.

However, we also note that landlords in the social sector have longstanding experience in progressing eviction proceedings within the court system and building an appropriate evidence base to meet the satisfaction of Sheriffs. As such, we believe there is merit to extend the scope of application to these organisations.

5. Do you agree with the tests (set out in section 4 and section 8 of the Bill) which must be satisfied for the making of a DAPN and a DAPO respectively?

We believe the tests set out in section 4 and 8 are appropriate but also, as noted above, we believe there is scope for considering the role for other professionals such as senior housing practitioners in bringing forward an application for a DAPO. Landlords in the social sector have longstanding experience in progressing eviction proceedings within the court system and building an appropriate evidence base to meet the satisfaction of Sheriffs and as such, we believe there is merit to extend the scope of application to these organisations.

6. Do you support the definition of ‘abusive behaviour’ (in sections 2 and 3) which is a key component of those tests?

Yes. In 2018 Scotland passed the Domestic Abuse Bill, which expanded the definition of domestic abuse to include coercive control. We are pleased to see that the Domestic Abuse (Protection) Bill reflects the definition as set out in that Bill and would suggest no further amendment is needed.

7. Under the Bill, a DAPN lasts until a DAPO (or interim DAPO) is made. A DAPO can last for a maximum of three months. Do you agree with the proposed maximum periods the DAPN and DAPO can last for?

We believe there is scope to extend the Order beyond the proposed three months set out in the Bill in limited circumstances such as when it is combined with the powers to end a joint social tenancy in part 2 of the legislation, to offer more considered and effective protection for victims of domestic abuse.

CIH Scotland is concerned that a three-month limitation on a protective order would not give enough time for the court system to fully consider and conclude on the evidence of ending a joint tenancy. Feedback from our members is that similar eviction cases can take much longer to progress through the courts. Where a DAPO has been applied for a maximum length of time and where a social landlord has initiated proceeding to end a joint tenancy and transfer the home to the victim-survivor, we would suggest flexibility in prescribing a maximum time limit with regards to the DAPO - subject to renewal and oversight from the court.

Such a flexibility could allow social landlords and police to swiftly remove an abuser and in turn keep them out of the victim’s home until the tenancy has been transferred/ended. Otherwise there is a possibility of a DAPO expiring and a perpetrator returning to a social tenancy while the landlord is seeking to transfer the tenancy to the victim-survivor.

8. Do you agree that breach of a DAPN and breach of a DAPO should be a criminal offence, as proposed in sections 7 and 12 of the Bill? Do you support the penalties proposed for breach of a DAPN and breach of a DAPO?

No comment

9. Sections 5 and 9 of the Bill says which obligations a DAPN and a DAPO can include. As well as obligations relating to the person at risk's home and contact with the person at risk, both a DAPN and a DAPO can impose obligations relating to a child usually living with a person at risk. Do you agree with the approach of the Bill under sections 5 and 9 or do you wish to suggest any changes?

No comment

10. Do you think the Bill is clear about what should happen when the terms of a notice or order conflicts with an order relating to children imposed under family law?

No comment

11. Do you agree with the approach in section 18 of the Bill, introducing an additional ground to end a social housing tenant's interest in a tenancy? If so, what benefits does this power have over and above existing statutory powers?

Yes. The most recent statistics from the Scottish Government show that the most common reason for women making a homeless application in 2019/20 remains domestic abuse.

'A dispute within the household violent or abusive' was the reason given by 4,832 people when making a homeless application in 2019/20, with women making 3,783 (78 percent) of applications in this category and almost half of these applications including children.¹ Although significant, this statistic likely underestimates the scale of domestic abuse and links to homelessness. Women may not disclose domestic abuse when making a homeless application or may not present at all.

A Scottish Government review of domestic abuse, housing and homelessness policy and research published in 2010 concluded: 'The prevention or cessation of domestic abuse in a family context will almost always require the woman to leave that home'.²

Research by Scottish Women's Aid in 2015³ found that women often have no choice but to leave the family home because their ex-partner refuses to do so. Some women thought that their ex-partner's sense of entitlement to the family home was a legal entitlement because the house was in their ex-partner's name or because it was a joint tenancy, and because his claim was not challenged by the landlord.

We also note that in June 2018 the Homelessness and Rough Sleeping Action Group HARSAG called for *"All social landlords to have clear policies on domestic abuse, and ensuring that experience of abuse or violence does not lead to someone losing their tenancy – for example, arrangements should be put in place so that tenancies can transfer seamlessly to the person who has experienced abuse, and*

¹ Scottish Government Homelessness Statistics disaggregated by gender accessed from Scottish Government 14 September 2020.

² Scottish Government. (2010). Domestic abuse, housing and homelessness in Scotland: an evidence review. Scottish Government Communities Analytical Services: Scotland. Available at: <http://www.gov.scot/Resource/Doc/328505/0106198.pdf>

³ Scottish Women's Aid. (2015). Change, Justice, Fairness: why should we have to move everywhere and everything because of him? Available at: <https://womensaid.scot/wp-content/uploads/2017/07/Change-Justice-Fairness.pdf>

*reciprocal arrangements should be put in place to ensure people who experience domestic abuse can move to a safer place and have continuity of tenancy.*⁴

The introduction of this additional ground to remove a social tenant's interest in a tenancy addresses the recommendation set out by HARSAG.

We recognise that Section 13 Matrimonial Homes (Family Protection) (Scotland) Act 1981 gives a non-entitled spouse the power to apply to the sheriff court for the transfer of the tenancy to their name in certain circumstances. However, we consider this to be insufficient as the court action must be raised by the victim-survivor, with all the attendant difficulties of having the affected individual lead on eviction proceedings. Indeed, Scottish Women's Aid research⁵ on the use of the Matrimonial Homes Act sets out the difficulties and limitations of these orders in enabling a woman to remain safely in her home. These include:

- Women's ineligibility – dependent on marital status or civil partnership.
- Ability to access legal advice and finding solicitors prepared to do this work.
- Eligibility for legal aid.
- Women have to take and pay for legal action – not the landlord.
- Breaches, where abusers return to the home, are often unenforced.
- At the point of crisis, accessing homelessness services is likely to be more straight forward and quicker than approaching a court.

We also recognise that a social landlord can apply to the court for an order to transfer the tenancy under Paragraph 15 of schedule 2 of the 2001 Act. The sheriff would then decide whether it is reasonable to make an order allowing the tenancy to be transferred. The sheriff would also have to be satisfied that other suitable accommodation was available for the other party when the order took effect.

However, in reality there are risks in this process for individual women, as they have to make a request to the landlord for the tenancy to be transferred and may be required to provide evidence in court, which means this process is not commonly used. In addition, unless discretion is used there can be a lengthy process between the application being raised and a determination being made.

We would also note the feedback from social landlords such as the City of Edinburgh Council which in approving a new domestic abuse housing policy identified as a key issue the lack of a legislative route to enable them to take action against perpetrators.

As such, we welcome the provision of the Domestic Abuse (Protection) (Scotland) Bill that will create a new means for social landlords to actively support women to remain in their home and allow them to act against perpetrators.

In addition, an important aspect of the protective notice/orders under the Domestic Abuse (Protection) (Scotland) Bill is that they incur no financial cost to victim-survivors. As a recognised limitation of utilising the Matrimonial Homes Act legislation, women face significant difficulties in accessing legal protection and leaving an abusive partner. This often leaves women in financial hardship, which adds further disadvantage and barriers to justice. A dearth of local solicitors

⁴ HARSAG. (2018). Ending homelessness. The report on the final recommendations of the Homelessness and Rough Sleeping Action Group. Recommendation 23. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2018/06/homelessness-and-rough-sleeping-action-group-final-report/documents/hrsag-final-report-june-2018-pdf/hrsag-final-report-june-2018-pdf/govscot%3Adocument/HRSAG%2BFinal%2BReport%2BJune%2B2018.pdf>

⁵ <http://womensaid.scot/wp-content/uploads/2017/07/ExclusionOrderReport.pdf>

competent in understanding domestic abuse and who also provide advice and assistance and civil legal aid also impedes access to justice.⁶

12. Additional issues not covered by the above

CIH Scotland wants to stress the importance of providing new accommodation for those perpetrators that have lost their social tenancy. While we welcome social landlords having the power to remove a domestic abuser from a tenancy, it is important that where possible the said abuser is provided with another tenancy elsewhere and that they are not forced into homelessness. While it may be undesirable for a landlord to be seen as rewarding perpetrators of domestic abuse, providing alternative accommodation will provide security for the victim and lessen the likelihood of any attempted redress from evicted party.

We recognise the statutory responsibility that local authorities have to prevent and address homelessness which includes rehousing and the Bill as drafted only requires RSLs to provide advice and assistance to those that have lost their tenancy, rather than rehouse. As such we believe there is case for improved protocols between RSLs and councils to address rehousing issues in the accompanying guidance. Indeed, we would welcome assurances from the Scottish Government that following the passing of the legislation it will work with the housing and equalities sector to provide guidance for social landlords for implementing the Domestic Abuse (Protection) (Scotland) Act.

In addition to consideration of RSLs and local authority rehousing protocols, we believe this guidance should include revisions to the Model Scottish Secure Tenancy Agreement to reflect the provisions in the Bill for social landlords to raise proceedings in court to end the tenancy rights of someone who has abused their partner or ex-partner. Guidance should specify what constitutes full consideration of domestic abuse and the actions required by a social landlord to investigate, and to respond to and support victim-survivors of domestic abuse.

⁶ SWA. (2017). Independent strategic review of legal aid call for evidence. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2017/06/responses-call-evidence-relation-independent-strategic-review-legal-aid-2017/documents/00521014-pdf/00521014-pdf/govscot%3Adocument/00521014>