

Submission to the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)

Parallel Report for the Baseline Report in Monitoring the United Kingdom

December 2023¹

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¹ All research for this submission was concluded by 1st December 2023.

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Introduction

The Commission welcomes this baseline evaluation of the UK's implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention') by the Group of Experts on Action against Violence against Women and Domestic Violence ('GREVIO'). This report reflects our statutory mandate to promote human rights and, in particular, to encourage best practice in relation to human rights. The Commission must have regard to the human rights of those groups in society whose human rights are not otherwise being sufficiently promoted (s.2, Scottish Commission for Human Rights Act 2006.)¹

The scale of gender-based violence against women and children in Scotland is difficult to determine. There is a broad range of evidence to demonstrating that the issue is endemic, as it is in all parts of the world.² Statistics indicate that in 2019/20 3.7% of women and 2.6% of men in Scotland reported experiences of partner abuse in the preceding 12 months.³ In addition 3.6% of respondents had experienced at least one type of serious sexual assault since the age of 16. Police recorded 64,807 incidents of domestic abuse in 2021-22 and in the same year there were 2,298 rape and attempted rapes reported to the police, but only 152 prosecutions and 78 convictions in a population of 5.45 million.⁴

A survey of 930 people (of which 93.7% were women) was also run as part of the work of the Independent Working Group on Misogyny and Criminal Justice which suggests that 63.5% had experienced harassment in a street and 59.9% had experienced it online. Only 4.6% of respondents reported never having experienced misogynistic behaviours.

It is well understood that women and girls are likely to under-report, and that therefore official data is likely to be a significant under-representation of the true scale of gender-based violence.

The Commission's report takes into consideration the baseline assessment questionnaire issued by GREVIO and the state report by adopting a chapter-based structure. The Commission has drawn on the considerable expertise of front-line experience in undertaking a prioritisation against the full scope of the Convention. The Commission established an Istanbul Reference Group (IRG) to inform and contribute to the analysis the Commission was undertaking and provided feedback on drafts of the submission. Membership of the IRG was drawn from a range of organisations working within all aspects of the gender-based violence sector.

Separately, the Commission commissioned a series of focus groups with survivors to understand their experiences, priorities, and views as part of the preparation of our report. A standalone report covering their experiences has also been published.

The report represents the Commission's own research and analysis. Throughout this report, we refer to input from the IRG, the focus groups and also to other stakeholder evidence.

Further information on the Commission's methodology can be found at [ANNEX A](#).

Summary of Key Findings

Scotland has developed comprehensive and ambitious approach to Violence against Women and Girls, which is drawn from international and regional human rights standards. Equally Safe has been successful in establishing a national approach to gender-based violence against women and girls built on human rights principles and standards.

There is a large gap between policy and practice and women's experiences of accessing support fall far short of expectations set by Equally Safe. In general, progress measurement could be improved

with more specific and measurable actions and reporting could be more transparent across many frameworks.

There is a need to enhance intersectionality, accessibility and cultural sensitivity in both policy and service provision.

Measuring progress is made more challenging due to the partiality of data and evidence around outcomes, especially for further marginalised groups of women. Alignment with international human rights standards could be helpful in driving improvement in data quality and disaggregation.

Victim-survivors want opportunities to participate in policymaking however this is not currently adequately resourced across the public sector, meaning that third sector organisations are under intense pressure and do not feel this is appreciated.

The support service framework in Scotland is complex and inconsistent. While some effort has been demonstrated to improve the funding landscape, the lack of sustainability increases precarity for services and staff and undermines the availability of support for victim-survivors.

Recent and proposed law reforms in the area of violence against women have been innovative and grounded in a gender-sensitive approach. However more time is needed to understand how these are being applied in practice.

Improvement is needed in the provision of information and relationships between police and victims of crimes.

Legal aid is not readily accessible, and survivors have deeply negative experiences and perceptions of criminal cases. Proposals for reform of the criminal justice system reflect the seriousness of this but there is a lack of consensus about the cumulative impact of changes that must still be navigated in the legislative process.

It is not currently possible to say whether sentences as a whole for perpetrators of gender-based violence are proportionate. However, it is clear that the public and importantly victim-survivors do not feel that their experiences are reflected in the sentences currently imposed.

Responses to violence against women perpetrated by children should appropriately reflect the seriousness of violence against women even where an alternative route to justice may be appropriate.

The UK's reservation in respect of Article 59 undermines the safety of migrant women and should be withdrawn.

The Scottish Government should continue to explore how it can ensure the maximum available support available to women with NRPF conditions while working with the UK Government to end its use.

There is a need to further explore how the Scottish Government's proposals to strengthen human rights will prevent and ensure access to justice for victim-survivors of gender-based violence.

Scotland and the Convention

The Istanbul Convention reflects and builds on the European Court of Human Rights (ECtHR) approach to cases involving violence against women. The Human Rights Act 1998 incorporates the European Convention on Human Rights in the UK. The Convention is further embedded through the Scotland Act, which limits the powers of the Scottish Parliament to the scope of Convention rights. The Scotland Act also gives Scottish authorities responsibility to observe and implement other human rights treaties to which the UK is a party.⁵

The Istanbul Convention contains six substantive chapters. GREVIO characterises the articles within these chapters under four themes: integrated policies, prevention, protection and the prosecution, investigation, and sanctions (**the 'four Ps' of the Convention.**) Many elements of law and policy central to the 'four Ps' are within the

legislative competence of the Scottish Parliament (IC Article 5.) This includes health, education, justice including policing, housing, and local government. Further information is available at [ANNEX B](#).

The Istanbul Convention has been demonstrably influential in Scotland's approach to violence against women, in tandem with the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Equally Safe, Scotland's Strategy to End Violence Against Women, explicitly links to a number of international obligations.⁶ In particular, the national strategy includes a commitment to "meeting the benchmark" set by each framework. The strategy and approach predates the UK's ratification of the Convention in July 2022, at which point the UK accepted legal obligations to comply, including Scotland.

Chapter 1 – Purposes, definitions, equality and non-discrimination, general obligation

Scope of Gender-Based Violence Policy

Equally Safe embeds the framing that violence against women is a cause and a consequence of gender inequality into the national approach (Istanbul Convention (IC) Article 1, Article 3(1), 3(2) and 3(3), as well as Article 5). The strategy's conception of violence against women as a violation of the fundamental human rights also includes a focus on gendered approaches.

The strategy refers to a number of international sources of legal obligations to respond to violence against women:

- the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention)
- the Global Platform for Action calling on Governments to take integrated measures to prevent and eliminate violence against women and girls
- the Human Rights Act
- the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW)
- the United Nations Convention on the Rights of the Child (UNCRC)

This list is not exhaustive, but could be further strengthened with explicit the inclusion of:

- The UN Bill of Rights: The International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Convention on the Rights of Persons with Disabilities (UNCRPD)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);

- UN Convention on the Elimination of All Forms of Racial Discrimination (UNCERD);
- Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention); and
- Council of Europe Convention on Action against Trafficking in Human Beings.

Each of these treaties and monitoring mechanisms have generated clear general and specific obligations for Scotland to address violence against women and children. A list of current treaty body recommendations relevant to violence against women is included at [ANNEX C](#).

Gender Equality Measures

Equality and non-discrimination (IC Article 4.1, Article 4.2) are mostly legislated for at UK level through the Equality Act 2010. Scotland has some limited power to go beyond the measures in the Equality Act. The Equality Act is regulated by the Equality and Human Rights Commission.

A number of legislative and policy measures have been adopted to promote gender equality and women's rights in Scotland (IC Article 6, Article 4), for example:

- The National Advisory Council on Women and Girls (now in Phase 2)⁷
- A Gender Equality Index⁸
- A Gender Pay Gap Action Plan⁹
- A Women's Health Plan¹⁰
- Commitment to incorporation of CEDAW and other international human rights standards into domestic law (see page 90)
- A Gender Sensitivity Audit of the Scottish Parliament¹¹

Despite action by the Scottish Government to prioritise gender sensitive policymaking, in general outcomes for women and girls have not yet

demonstrated significant improvement (IC Article 6). The Gender Equality Index² published by the Scottish Government in 2020 scores Scotland 73 out of 100, with a score of 100 indicating full gender equality.¹² The gender pay gap for women in Scotland is 10.9%, rising to 26.3% for part time workers, both increasing slightly from 2021 to 2022 after sustained falls.¹³ Women are under-represented in positions of influence in all sectors.¹⁴

The Scottish Government produces an Equality Outcomes and Mainstreaming Report in compliance with the Public Sector Equality Duty. The 2023 report commits to implementing recommendations from the first phase of the First Minister's National Advisory Council for Women and Girls (NAGWAG.)¹⁵ The NACWAG³ has published three reports,¹⁶ with the majority of its recommendations accepted. A second phase of the NACWAG has been established to scrutinise progress.¹⁷ As of autumn 2023 there has been no report analysing the implementation of measures. Publicly available information suggests some concern that some of the commitments may have been broadened to a generic equality focus in their implementation. There is also concern about limited understanding of intersectionality across government.¹⁸

² The Index is based on that of the European Institute for Gender Equality (EIGE) however the two cannot be compared as they use different indicators. The index has also been criticised for using insufficiently sensitive indicators which give a false impression of equality, for example the health domain (99/100) relies on meeting treatment targets for reproductive healthcare only accessed by women as opposed to health outcomes that would enable comparison with men. See: [Scotland's Gender Equality Index 2020 \(data.gov.scot\)](#)

³ The NAGWAG was established by the then First Minister in 2017 and given a broad mandate to advise the Scottish Government on gender equality matters see: [The NACWG - NACWG \(generationequal.scot\)](#)

Definitions employed in this report

This report uses the terminology of the Convention (IC Article 3) and notes that in general Scotland’s definitions in legislation and policy are broadly consistent. In the Convention, a “**violence against women**” is understood as a violation of human rights and a form of discrimination against women and shall mean “all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (IC Article 3(a)). Equally Safe includes a slightly different list of non-exclusive harms, including commercial sexual exploitation and human trafficking. The two definitions are consistent as both emphasise the gendered nature of violence against women and girls and offer non-exhaustive examples.

Equally Safe’s definition explicitly includes children “of all genders as subject to harm through violence.”¹⁹ **Children’s status** is recognised in the Istanbul Convention, though varies from victims in their own right, relational to their mother and as witnesses (IC Preamble, Article 3(f), Article 13, Article 18, Article 22, Article 23, and Article 31.)⁴

The Convention refers to “**domestic violence**” to mean “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim” (IC Article 3(b)). In Scotland the term “**domestic abuse**” is generally used throughout policy frameworks to

⁴ Members of the IRG were clear that children are victims of gender-based violence with specific needs that are somewhat but not wholly addressed through national gender-based violence approaches.

clarify the inclusion of non-physical forms of harm. Both terms are used throughout this report, however the intended meanings are generally identical.

The Convention defines “**gender**” as the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for women and men (IC Article 3(c)) and “**gender-based violence against women**” as violence that is directed against a woman because she is a woman or that affects women disproportionately (IC Article 3(d)). The Convention also refers to persons who experience gender-based violence and domestic abuse as a “**victim**” / “**victims**” (IC Article 3(e)). In Scotland there is no consensus in policy frameworks or among women and girls who have experienced gender-based violence between the terms “**victim**” or “**survivor**”. Therefore, we refer to “**victim-survivor(s)**” when referring to a person who has experienced gender-based violence and “**victim(s)**” in the context of criminal cases, in line with Equally Safe and associated policies.

The term ‘**complainer**’ is the legal language used in Scottish criminal cases (c.f. ‘**defender**’ as a person accused of a crime.) Focus group members commented on their dissatisfaction with the term and their perception of its implications.²⁰

This report also uses the term “**Women**” to mean “a female of any age” as per the Equality Act 2010, which is therefore consistent with the inclusion of girls under the age of 18 (IC Article 3(f)). References to ‘women’ should be read as inclusive of girls below the age of 18 unless specified otherwise. Finally, the terms “**Sex work / prostitution / women who sell or exchange sex**” are all used, reflecting the diversity of terminology used across Scottish policy frameworks.

Support for marginalised groups

The Convention contains a broad equality and non-discrimination and specific concerns for further marginalised women (IC Article 4.3). The

categories of further marginalisation are non-exhaustive. The Equality Act 2010 establishes nine protected characteristics. Intersectional discrimination is not a specific feature of the Act's operation and s.14 which would establish protection in cases of dual discrimination has not been brought into force.²¹ The current delivery plan for Equally Safe includes a commitment from Public Health Scotland to "consider how the intersections of race, class, disability and gender challenge and contribute to our understanding of violence against women."²²

While all women and children are under-represented in research and data about violence against women, gaps are pronounced for those who are further marginalised. Some particular factors can be seen in research.

A shortage of specialist support for disabled women and girls

Disabled women are more likely to be unemployed, economically inactive and to rely on social security for all or part of their incomes. As a result, withholding of financial or physical support can be even more dangerous.²³ Data suggests that disabled women in the UK are twice as likely to experience domestic abuse and are also twice as likely to suffer assault and rape.²⁴ Scotland-specific research about disabled women and girl's experience of domestic abuse is extremely limited and increasingly outdated. A 2015 Glasgow study found that 73% of participating disabled women had experienced domestic abuse and 43% had been sexually assaulted.²⁵ Attitudinal biases and a lack of physically accessible spaces appear to play a role in under-reporting of physical and sexual violence by disabled women.²⁶

The most recent disability equality strategy, A Fairer Scotland for Disabled People, included no specific action on gender-based violence.²⁷ A progress report highlights action to improve education on sex and healthy relationships, sexual and reproductive health for people

with learning disabilities,²⁸ discussed below. While Equally Safe is highlighted, no further specific actions are identified.

Impacts of Gender Recognition Reform debate on access to services

For the last five years there has been ongoing debate about reforms proposed by the Scottish Government to the statutory Gender Recognition process.⁵ As a result, the environment surrounding the inclusion and exclusion of transgender people – in particular transgender women – from violence against women services has become increasingly fraught, highly politicised, and polarised. There are anecdotal reports that some women are self-excluding from services due to fears that they will face re-traumatisation or encounter men abusing provision for transgender women. Similarly, there are anecdotal reports that trans people are not accessing violence against women services due to concern that they will be ejected or encounter prejudice.

The discourse around the best way to deliver services for people in vulnerable situations has been extremely difficult for service providers, who are required to balance the needs of different populations according to their own operational set ups. The Equality Act 2010 allows for trans

⁵ Women's organisations, LGBTI+ organisations and campaign groups have expressed a range of views on the merits and consequences of proposed reforms. The reforms were passed by the Scottish Parliament in December 2022, however challenged by the UK due to [dispute about competency and possible effects on the Equality Act](#). The final outcome of litigation is currently pending. International Human Rights Experts have considered the proposals and the debate, including the [UN Special Rapporteur on Violence Against Women](#), [The UN Independent Expert of Sexual Orientation and Gender Identity](#) and the [Council of Europe's Human Rights Commissioner](#). In addition, a number of states made recommendations relating to gender identity as part of the [UK's 4th Cycle of Universal Periodic Review](#).

people to be excluded from single sex services where this is a proportionate means of achieving a legitimate aim.

The complexity - and at times misinformation – around how the exceptions are, can and should be applied requires leadership and thoughtful explanation based on the precise nature of the individual operational setting. Services in Scotland have a long history of appropriate risk management and managing the dignity and privacy of all users. The majority of service providers and their umbrella networks have expressed support for reforms and confirmed that they would have no direct bearing on how they manage services.²⁹ Any woman who requires gender-based violence support services must have access to that service without discrimination under the Istanbul Convention (Article 4) and in such a way as to protect their safety (IC Article 18, IC Article 23.)

Young women and girls falling through gaps

Stakeholder engagement highlighted concerns that girls who are at risk of who experience gender-based violence are sometimes falling between frameworks for children and frameworks for women.³⁰ NHS Health Scotland finds that young women are at a high risk of all forms of gender-based violence but “often this can be overlooked or minimised, particularly in their teenage years”.³¹ Scottish Women’s Aid and the Young Women’s Movement undertook research (RISE report) with young victim-survivors of domestic abuse which found that 36% of young women had been in an intimate relationship with someone who was abusive or harmed them physically or emotionally.³²

Some local Women's Aid services have taken forward initiatives to reach young women.⁶ The RISE report found that young women thought it was very important that services understand young women's life experience, including the impact of racism, LGBTQ+ relationships and gender identity. They wanted to know more about the support that would be available to them.³³

Safety is a significant concern for young girls³⁴ and that this is even more acute for young women of colour³⁵ and for young LGBTQ+ women.³⁶ Girls feel increasingly less safe as they get older; 20% of 7 to 10-year-olds, 31% of 11 to 16-year-olds, and 43% of 16 to 21-year-olds report that they sometimes feel unsafe outside.³⁷ One-in-three 13 to 17-year-old girls in the UK have reported some form of sexual violence.³⁸ UK-wide research has also shown extremely high prevalence of online violence towards girls, with 81% of girls and young women aged 11-21 having experienced some form of threatening or upsetting behaviour online.³⁹

There is deeply concerning evidence that gender-based violence against girls in schools is extremely commonplace and that both prevalence and severity are increasing.⁴⁰ A 2017 report from the Children's Parliament suggests that much of the harassment and abuse girls experience is invisible as there is no systematic recording and where a disclosure is made it is often treated as an in-school behaviour management issue.

Nearly 70% of pupils in Scotland have experienced sexual harassment in the past three months. 34% have experienced unwanted sexual touching.⁴¹ It also found that in over 70% of cases, sexual harassment is not reported, even if it is severe and includes unwanted sexual touching. When accounting for gender, there was a broadly even distribution of

⁶ IRG members suggested that there may be an assumption among young women that services are not for them.

reports between boys and girls (52.7% and 48.7%). When asked to identify whether they had carried out any of the listed harms, boys were more than twice as likely to identify themselves as having done so (37.5% and 14.8%.⁴²)

Efforts to prevent exclusion can have a negative consequence where harmful perpetrator behaviours carried out by one pupil towards another can be minimised or dealt with informally. As a result, girls who have experienced violence including serious sexual violence, are required to continue to share space with perpetrators. Stakeholders suggests that there are high numbers of reports of girls self-excluding, moving schools or leaving education to protect their safety and wellbeing, undermining their right to education (UNCRC 28). Forthcoming Scottish Government guidelines may give schools guidance on how to record incidents of gender-based violence, however, were not aware of plans to systemise data collection.

Lack of accessible support that meets the needs of women with learning disabilities

Women and girls with learning disabilities have specific needs that are not currently addressed across Scotland's implementation of the Convention. There are no official statistics on the number of women with a learning disability who experience any form of gender-based violence. Most research is with small groups, little of which is Scotland-specific. Local authority data on the number of Adult Protection Referrals⁷

⁷ Local authorities have statutory obligations to make inquiries about a person's wellbeing, property or financial affairs if it knows or believes that the person is an adult at risk and that it might need to intervene in order to protect the person's wellbeing, property or financial affairs.

involving a woman with a learning disability who has experienced gender-based violence are extremely limited.⁴³

The Scottish Government's most recent strategy for Learning/Intellectual Disability and Autism: Towards Transformation includes ongoing commitment to the Gender-Based Violence Steering Group, who the strategy says, "will develop an action plan to reduce incidence of violence and empower women with learning/intellectual disabilities and/or autistic women to have safe and loving relationships." The Action Plan has not yet been published.

The Scottish Commission for People With Learning Disabilities (SCLD) and People First (Scotland) – a Disabled People's Organisation (DPO) - received funding from the Delivery Equally Safe fund to run a Gender-Based Violence and Learning Disability' Project. The project was co-developed and conducted with People First (Scotland), a DPO for people with learning disabilities. A report found that women with learning disabilities experienced specific barriers to accessing help following gender-based violence, including being subject to restrictive practices. Women with learning disabilities more frequently require individualised support from social work, appropriate adults, or advocacy services. SCLD found a lack of understanding of learning disability, lack of joint working, inconsistent quality and level of support, poor knowledge about gender-based violence and inaccessible information.⁴⁴

Intersections of racism, sexism, and misogyny

Research with women of colour carried out on behalf of Rape Crisis Scotland shows some concern among participants about whether "generic" or "standard" services would understand their cultural or language needs and concern about whether organisations would have a competent enough understanding of the intersection of sexism and racism. Most participants had not engaged with services but among the small number who had there was they "did not feel that this was a space that would understand them beyond initial contact or signposting."⁴⁵

Women of colour also report low trust in police and there is evidence that Black women's trust in the police is especially low and is falling.⁴⁶ [Women's relationship with police is discussed further at page 55.](#) For Black and minority ethnic women, low trust in police includes a fear or expectation that they will encounter racism and prejudicial attitudes.⁴⁷ Reports from migrants about the racism and prejudice they experience has highlighted the challenges individuals encounter trying to access help due to public impressions that Scotland is 'less racist' or pro-immigration.⁴⁸ [Further discussion of migrant women's legal position is discussed in Chapter VII.](#)

The Race Equality Framework for Scotland 2016 to 2030 says that it will "link closely with several key strategies, legislation" including Equally Safe. No further information on how this will be done or in what areas is given. However, the framework does highlight that racism and sexism may give rise to intersecting or compounding discrimination for women of colour. There are no specific actions in the current delivery plan for Equally Safe to deal with racism or to address the needs of women from Black and Minority Ethnic (BME) communities.

Gypsy / Traveller communities

There is extremely little data available about violence against women in Gypsy / Traveller communities in Scotland and an absence of targeted support services. There is no conclusive evidence to suggest a greater or lesser likelihood violence against women occurs within Gypsy / Traveller communities. However, some limited and dated research available does indicate evidence of a higher prevalence of domestic abuse in some UK Gypsy / Traveller Communities.⁴⁹

Gypsy / Traveller women and girls themselves have been relatively silent in research and this is a gap that needs to be addressed. There is evidence that some of the communities demonstrate higher levels of gendered distribution of income, resources, and caring responsibilities. This is subject to much external commentary and there is evidence of

generational shifts, as with other communities. The 2019 Women and Equalities Committee's inquiry 'Tackling Inequalities faced by Gypsy, Roma and Traveller Communities' also reported that women from these communities are not always able to identify abusive behaviour and that where they do try to seek support, they risk social exclusion within their communities.⁵⁰

There remains significant prejudice in Scotland that characterises Gypsy / Traveller Communities as othered, violent, or untrustworthy. Gypsy / Traveller communities report significant distrust in public authorities. A shortage of culturally appropriate housing is consistently reported, which may add further complexities for women who seek to leave an abusive partner.⁵¹

The exclusion from or lack of capacity of services to support women affected by drug and alcohol issues or mental health issues.

Drug deaths in Scotland are the highest in Europe.⁵² 1,051 people died due to drug misuse in 2022 and while men are twice as likely to die from drug misuse than women, this gap has narrowed in recent years.⁵³ Research has shown that gender-based violence is disproportionately higher among women who use substances.⁵⁴

Our research found few targeted programmes in Scotland to support women who experience gender-based violence.⁸ Examples of targeted outreach from individual services included Women's Aid South Lanarkshire & East Renfrewshire (WASLER)'s Saoirse Service, specifically for women experiencing, or at risk of experiencing domestic

⁸ The IRG expressed strong concerns that women affected by drug and alcohol issues are not receiving adequate general or specialist support when they experience gender-based violence.

abuse and affected by drugs and or alcohol.⁵⁵ The service is delivered in partnership with Liber8 a specialist in drugs and alcohol and receives funding from the Scottish Government through Delivering Equally Safe fund. It was difficult to identify other examples in the research.

Analysis of Multi-Agency Risk Assessment Conference (MARAC) ([see page 52](#)) case data over six months in 2021 showed that of 77 cases discussed in Dundee, 62 had substance misuse as a risk factor.⁵⁶ The Dundee Drugs Commission has called for gender-sensitive approaches to service planning in the city. A Women's Hub has been established, involving Women's Rape and Sexual Abuse Centre in partnership with Dundee Drug and Alcohol Recovery Service, among others.⁵⁷⁹

Perpetrators may also threaten women with disclosure, causing them to fear that they will lose access to their children. Substance misuse may be a survival mechanism, or a nurtured dependency causally related to the violence they have experienced.⁵⁸ Specific programmes designed to support women who use alcohol and drugs do not generally focus on a gendered understanding of violence against women. Dundee's use of the Pause service, which makes the programme's targeted support conditional on taking long-acting contraception has been widely criticised.⁵⁹

Sexual orientation and gender identity

Lesbian, bisexual, and transgender women (LBT+) may have specific experiences of gender-based violence relating to their personal identity. They may encounter negative reactions when trying to access support or avoid seeking support because of their concern that they will encounter prejudice. For LBT+ women who are not "out", the fear of being "outed"

⁹ IRG members also noted that women who use alcohol and drugs are more likely to have very high levels of fear, trauma and distrust when engaging with agencies.

to family members, work colleagues or the local community may be utilised by a perpetrator as part of the abuse and/or prevent them from seeking generalist or specialist support.⁶⁰

As gender-based violence seeks to maintain “attributes that a given society considers appropriate for women and men (IC Article 3(c))”, such violence against women can be seen as a way of controlling or ‘policing’ gender norms and access to power within society.⁶¹ Research suggests that bisexual women are at disproportionately higher risk of domestic abuse, positing that women’s bisexuality is perceived as promiscuous, for men’s sexual benefit and fetishized.⁶²

However, there is limited research into LBT+ women’s experience of accessing protection or of prosecution specific to Scotland, and prevention efforts do not generally consider the intersection of violence against women and homophobia or transphobia. LGBT Youth Scotland has produced research and guidance specifically focused on young people.⁶³ The LGBT Domestic Abuse project works across Scotland to raise awareness of LGBT people's experiences of domestic abuse.⁶⁴ This includes training and collating resources.⁶⁵

Children

The specific needs of children who experience gender-based violence are considered throughout this report, including access to services, court processes and family law. Domestic abuse is the most common concern recorded by social work in child protection case conferences (16%) and in 2021/22, 1,811 children were referred to the Children’s Reporter due to a “close connection with a person who has carried out domestic abuse”⁶⁶ These figures do not include children referred on other grounds who may also have experienced domestic abuse.

Education settings are areas of particular concern. Gender equality and prevention education programmes which target boys are patchy and it

has become more challenging for external expert organisations to deliver schools programmes. [See further discussion at page 41.](#)

Findings

There is a need to enhance intersectionality through greater attention on violence against women girls in strategies including anticipated targeted strategies including the Disability Equality Strategy and the successor to the race equality strategy A Fairer Scotland For All: Race Equality Action Plan. Equally Safe does acknowledge the needs of further marginalised women, but this could go much further and include more specific actions. Funding and resourcing for more specialist services should follow.

Victim-survivors from all groups indicate that they need accessible, culturally sensitive and trauma informed approach to any interaction or support. More should be done to understand what is needed to ensure all victim-survivors feel able to access general or specialist support.

Men and Boys

States are encouraged to apply the Convention to all victims of domestic violence (IC Article 2(2)). In addition, the preamble to the Convention recognition that men may also be victims of domestic violence. The needs of male children are also considered in respect of children's rights under the Convention. [Transgender men and non-binary people may experience similar prejudice to that of LBT+ women discussed at page 24.](#)

A specialist helpline for men who are experiencing or have experienced domestic abuse is operated by Abused Men in Scotland and men can also access support from Victim Support Scotland, Rape Crisis Scotland's Helpline and a National LGBT Domestic Abuse Helpline.⁶⁷ Scotland's Domestic Abuse and Forced Marriage Helpline provides advice is operated by Scottish Women's Aid but provides advice to all victims-survivors.

There is evidence from service providers that male perpetrators can claim that they are victims of domestic abuse and sexual violence as part of their own abusive conduct, whether this be false accusation or not. Cases of 'dual reporting' are not limited to opposite sex relationships.⁶⁸ Such instances require rigorous investigation to identify the primary perpetrator and police and criminal justice officials' sensitivity to gendered dynamics, such as access to resource or even credibility, is an important consideration.

Comprehensive risk management is central to ensure safety of victims from a current or ex-partner or for any other reason (IC Article 18, Article 22 and Article 22.) Guidance is available from Scottish Women's Aid for housing providers which includes risk management,⁶⁹ and women's services have their own protocols for refuge and other service management.

Chapter II - Integrated Policies and Data Collection

National Consolidated Strategy: Equally Safe

As noted above, Scotland has a national strategic approach set out in the Equally Safe Strategy and corresponding Delivery Plans (IC Article 7). Equally Safe is co-owned by Scottish Government and the umbrella body for local government, Convention on Scottish Local Authorities (COSLA).

In general, Equally Safe has been positively received. Engagement with organisations and individual stakeholders for this report demonstrated a good understanding and support for the strategy's gendered approach. There was some reflection that more could be done to improve the intersectionality of the strategy and greater emphasis on children.¹⁰ There is no specific consideration of the needs of learning-disabled women and girls.

A significant amount of public sector policy and practice now draws from Equally Safe. However, the strategy does not include indicators or measurable outcomes that would support a more thorough assessment of its effectiveness. Implementation is monitored by a Joint Strategic Board. However, information on activities of the Board is significantly out of date and it is not clear when it most recently met.⁷⁰

Devolved public policy is developed and implemented with reference to a National Performance Framework loosely based on the UN Sustainable Development Goals. Equally Safe specifies that The

¹⁰ Discussion of the reference group, individual submissions and focus groups. For information on the focus group findings see: The Scottish Human Rights Commission (Forthcoming) "It's Not a Story, It's What Happened" Victim-Survivors of Gender-Based Violence: In Our Words

Scottish Government and COSLA are “developing a performance measurement which will align as far as possible with the existing National Performance Framework.” However, there are notable gaps, in particular the lack of a National Outcome on violence reduction, human rights or on gender equality, each of which would encourage more data gathering.⁷¹ The National Outcome on Communities uses gender-blind data to measure safety.⁷²

The longevity of Equally Safe is perhaps supported by the approach of short-term delivery plans that contain more targeted actions with key actors and timescales identified. The First Delivery Plan ran from 2018 to 2021 and a short life Plan is currently in place for 2022-23.⁷³ The Scottish Government has committed to updating the Delivery Plan and a light touch refresh of the Strategy in early 2024.

Findings

Scotland has developed comprehensive and ambitious approach to Violence against Women and Girls, which is drawn from international and regional human rights standards. Equally Safe has been successful in establishing a national approach to gender-based violence against women and girls built on human rights principles and standards. However, progress measurement could be improved with more specific and measurable actions and reporting could be more transparent.

Local implementation: Violence Against Women Partnerships (VAWPs)

Violence Against Women Partnerships (VAWPs) serve as multi-agency mechanism designed to deliver Equally Safe at a local level (IC Article 7(2)).⁷⁴ VAWPs brings together key public and third sector organisations at the local authority level to deliver local as well as national outcomes. The umbrella body for local government in Scotland, COSLA, has developed a minimum set of standards, which encourage a focus on

prevention and joint working to maximise resource.⁷⁵ A national VAWP Forum is supported by the Improvement Service (the national improvement organisation for Local Government in Scotland), which serves as a coordination and collaboration role and provides a ‘collective voice’⁷⁶ for VAWPs across Scotland.

VAWPs are not statutory bodies and do not receive any direct funding. Members agencies are expected to pool resources in pursuit of a shared strategic plan.⁷⁷ In addition, there is no statutory reporting requirement to assess implementation of local plans and it is difficult to systematically review their suitability. The Improvement Service’s assessment of statistical data from 2021-22⁷⁸ - the most recent period that data is available – suggests that while there are examples of excellent work being undertaken both within and between many local authority areas, not all local authorities are meeting all the prescribed standards.

A lack of status and funding for VAWPs to effectively deliver all their coordination role, was a theme to emerge in the Strategic Review of Funding of Violence Against Women Services published in June 2023.⁷⁹ Not all partnerships have full-time coordination, despite being required to do so. Constraints in inter-agency and multi-agency collaboration and difficulty in overcoming siloed working and funding streams were also noted.⁸⁰ Research and engagement with stakeholders for this report has confirmed a shortage of recent, publicly available information for many VAWPs about their membership and activities.

Findings

Greater transparency and resourcing to support the infrastructure of VAWPs would support monitoring of progress under Equally Safe and the Istanbul Convention. However increased funding for VAWPs should not come at the expense of existing services and national programmes.

Targeted strategies

A key role of Equally Safe is to promote a shared understanding of Violence Against Women and Girls. Several more technical frameworks sit alongside Equally Safe to support implementation for certain communities of geography or interest (IC Article 4, as discussed above) or to address specific types of violence against women. These include:

- National Female Genital Mutilation (FGM) Action Plan
- The National Human Trafficking Strategy⁸¹
- Forced Marriage guidance
- National Guidance for Child Protection (Scottish Gov 2021)
- NHSGGC FGM Care Pathways link
- Human trafficking and exploitation: guidance for health workers
- What health workers need to know about gender-based violence: an overview⁸²

It is evident that Equally Safe has been successful in driving a national definition of an approach to violence against that woman that is reflected in a high proportion of local and targeted policies held by NHS boards,⁸³ local authorities,⁸⁴ Scottish Courts and Tribunals,⁸⁵ police⁸⁶ and education⁸⁷ which is consistent with the aims and principles of the Convention. The separate question of implementation and practice is harder to assess.

Focus group evidence indicates examples of dismissive attitudes or disbelief from agencies that women expect to provide them support and at times, behaviour by state authorities and agents which engages in acts of violence against women (IC Article 5.)⁸⁸ The Commission's work on places of detention in Scotland raises concerns about the treatment and conditions in prisons of women in custody,⁸⁹ many of which have experienced male violence.⁹⁰ Women in places of detention are at a high risk of state perpetrated or enabled gender-based violence.⁹¹ The Scottish Prisons' Service (SPS) has a strategy for women in custody which aims to support "a culture that is sensitive to the gender specific

needs of women”⁹² and has published an updated policy on the housing of transgender prisoners which sets out an individualised approach to risk management.⁹³

Funding

The Scottish Government publishes an Equality and Fairer Scotland Budget Statement alongside the annual budget each year which offers a post-hoc description of spending by equality considerations (IC Article 8). The EFSB for the most recent year (2022-23) did not include any analysis of spending on violence against women.⁹⁴ A range of figures relevant to violence against women are provided across budget documents. Despite Scottish Government’s stated commitments to equality and human rights budgeting, and specifically to gender budgeting, the lack of transparency and breakdown is stark. The lack of information renders it impossible to determine whether Scotland is in compliance with the obligation in Article 8 of the Convention.

Third sector organisations, including frontline services, receive Scottish Government financial support through a Delivering Equally Safe fund worth £38 million between 2021 and 2024, of which £28 million is allocated to frontline services (IC Article 9.)⁹⁵ Of 163 applications, around 90 received funding.⁹⁶ A separate Equality and Human Rights Fund provides grants to organisations and project working on gender equality and women’s rights.

These schemes work on the basis of 3-year funding awards, reflecting historic concerns about short term funding. Many services require to top up their funding via philanthropic grants or project funding. The DES fund has a relatively broad scope, having subsumed, and replaced predecessor schemes that were more targeted and localised. As a result, funding is relatively centralised and competitive.⁹⁷

The Scottish Government also made additional emergency funding available to national and local services over the course of the pandemic.

This funding supported services to redesign their offer to online and socially distanced working methods.⁹⁸ Women who sell sex were identified as a priority group for support. Much of the COVID-19 funding is no longer available and new funding has not been released to fill the gap as services re-adjust to post-pandemic ways of working.

Findings

While the Scottish Government ensures available funding for a wide spectrum of work aligned to Equally Safe, the breadth of projects in scope and competitive nature of funding contributes to a lack of security and sustainability for vital services.

Co-ordinating body

The Home Office has been identified by UK Government as the single body with responsibility for co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by Istanbul (IC Article 10). The Commission can identify no evidence that the Home Office has established ongoing working practices with devolved administrations. It is inconsistent that the Home Office should be responsible for oversight of delivery and monitoring across the UK.

As such a significant proportion of the Convention's subject matter is subject to devolved competence there is value in exploring a dedicated mechanism for the implementation of the Convention. The implementation mechanism should align with the National Strategy and have insight from both national and local actors across the public sector and service delivery. We also note the Scottish Government is considering recommendations from the Independent Strategic Review of Funding in this area.

Findings

The roles of implementation and accountability should be separated, and a body or bodies appointed to undertake monitoring and evaluation of implementation efforts. The Scottish Government should consider establishing its own oversight mechanism to report on and evaluate compliance with and implementation of the Convention and which is separate to its own role in coordination and implementation.

Data collection

The Commission has serious ongoing concerns about the level of data and evidence gathered and published on a range of human rights issues that makes it difficult to monitor and evaluate progress towards realisation and to determine potential violations, especially for further marginalised and at-risk groups (IC Article 11).

The Scottish Government has made a number of commitments to improve the consistency and availability of data. Additionally, they have commissioned and published several research reports in support of Equally Safe.¹¹ An Equality Evidence Strategy 2023-2025 provides the Scottish Government approach to improving the availability of

¹¹ This includes:

- [Preventing violence against women and girls - what works: effective investments summary](#)
- [Preventing violence against women and girls - what works: evidence summary](#)
- [Domestic abuse court experiences - perspectives of victims and witnesses: research findings](#)
- [Domestic Abuse \(Scotland\) Act 2018 - male victims' experiences of the criminal justice system: emerging findings](#)
- [Scottish Social Attitudes Survey 2019: attitudes to violence against women and Young People in Scotland Survey 2021: attitudes to violence against women and girls.](#)

disaggregated data by characteristics for existing data sets.⁹⁹ However there is no specific action to expand collection of data in respect of gender-based violence.

There were 30,139 charges reported to Crown Office and Procurator Fiscal Service (COPFS) with a domestic abuse identifier over 2022-23. This is a decrease of 8% compared to the 2021-22 total of 32,776.¹⁰⁰ More than 80% involved a female victim and a male perpetrator. Homicide statistics for Scotland show that half of female victims were killed by a partner or ex-partner.¹⁰¹ [Official statistics have shown an increase in crimes recorded under the Domestic Abuse \(Scotland\) Act 2018 since it entered into force in 2019 \(see page 55\)](#). It is impossible to determine whether this represents increased incidents or increased recourse to the new legislation. The Scottish Government has delayed the 2022-23 edition of the *Domestic abuse recorded by the police in Scotland* statistics from November 2023 to March 2024 while statisticians and police Scotland review the methodology.¹⁰²

Reports to the police of rape and serious sexual assault have also increased; 2,529 rape or attempted rape crimes were recorded between in 2022/23, compared with 2,498 rape crimes in the previous reporting year.¹⁰³ Sexual crimes have been on a long-term upward trend since 1974, with some fluctuations.¹⁰⁴ Just over a fifth (21%) of Sexual crimes in 2022-23 were recorded at least one year after they occurred.¹⁰⁵ As a result, the trends must be interpreted carefully.

However, research consistently shows that violence against women is under-reported.¹⁰⁶ Data from 2019-20 showed only 22% of rape victims and 12% of women who were victims of other sexual offences reported it to the police.¹⁰⁷

While some data is disaggregated by sex – although this is not universal – it is much more difficult to understand the characteristics of women affected by gender-based violence. Children are routinely excluded from data collection processes¹⁰⁸ and there are significant gaps for women of

colour, LBT+ women and disabled women, including women with learning disabilities.¹⁰⁹ A significant gap in evidence and data concerns older women, with much of the limited research available significantly outdated.¹¹⁰

Alignment in Equally Safe with international standards, for example the UNCRPD Article 31, could help to drive an improvement in data collection, disaggregation, and publication. More specific understanding of rural women and pregnant women's experiences and needs is already required under CEDAW (Article 14 and Articles 11 and 12, with broader disaggregation outlined in General Recommendation 35).¹¹¹

Participation and representation of lived experience in policymaking

Engagement demonstrated a clear sense that women's voices were missing from policy and prevention frameworks surrounding violence against women. Participants in focus groups felt that women were not sufficiently represented in decisions about their lives and that victim-survivor voices were not adequately reflected in policies.¹¹² Stakeholders highlighted gaps for women with learning disabilities and women of colour. While the Scottish Government regularly emphasises its support for participatory work, they and other policymakers do not often carry out their own. Targeted engagement and participation work is routinely outsourced to the third sector, who reflected to us that there was not always an appreciation of the pressures of delivering this.

Focus group members clearly demonstrated a desire to be listened to and have agency throughout all aspects of the response to gender-based violence, including co-design of policies and programmes. Working with established groups based on trust and trauma-informed practices is one route, but all agencies should consider how to improve meaningful engagement.

Findings

Data about the scale of violence against women suggests increases, however it is not possible to know to what extent this is driven by culture changes around reporting or an increase in male violence. Under-reporting, especially for some communities, remains a key concern.

While Equally Safe has driven a culture change across the public sector measuring progress is challenging due to the partiality of data and evidence around outcomes, especially for further marginalised groups of women. Alignment with international human rights standards could be helpful in driving improvement in data quality, something the Scottish Government has pre-emptively accepted is required. Efforts to improve access to data and evidence are underway however more is needed to address the absence focus on further marginalised groups of women and children.

There is a strong desire among many victim-survivors for more opportunities to participate in policymaking however this is not currently adequately resourced across the public sector, meaning that third sector organisation are under intense pressure and do not feel this is appreciated.

Chapter III – Prevention

Equally Safe claims to “prioritises primary prevention” however no clear definition is included.¹¹³ A range of activities are prioritised by Priority 1: “Scottish society embraces equality and mutual respect and rejects all forms of violence against women and girls” and Priority 2: “Women and girls thrive as equal citizens – socially, culturally, economically and politically.” The approach outlined by the Improvement Service articulates the link between gender inequality and primary prevention as:

“Primary prevention... is a long-term strategy to prevent violence from ever happening by challenging the attitudes, values and structures that sustain inequality and violence.”¹¹⁴

Approaches have generally focused on attitudinal change and women’s access to power and resources (IC Article 12). A review of the predecessor DES fund however noted that there remains widespread confusion about what is meant by ‘prevention’ in relation to VAWG and “whether we really mean ‘early intervention.’”¹¹⁵ In funding reports, local services share that they recognise the value of want to do prevention work but lack the resources to do it, leading to a disconnect between national and local capacity and focus.

Primary prevention in policy

In line with the obligations in the Convention to promote changes in the social and cultural patterns of behaviour of women and men (Article 12), there is widespread activity on women’s social, economic, and cultural rights that draws attention to the causal link between inequality and violence across the Scottish policy landscape. For example, in its Primary Prevention Guidance, the Improvement Service notes that “At a community planning level, stakeholders working within roles and organisations aiming to reduce poverty can play a key role in tackling gender inequality”.¹¹⁶ This is further reflected in the Scottish Government’s Violence Prevention Framework.¹¹⁷

The UK's welfare system has been widely criticised for its explicit focus on family units over individual need and elements and the way that this can limit access to and the sufficiency of income.¹¹⁸ The UK's main out of work and low-income support combines individual entitlements for adults and children into one household award. This approach can limit women's access to independent incomes, strengthen traditional gender norms around household income and facilitate economic abuse.¹¹⁹ The ongoing 'cost of living crisis' is placing women under increased financial pressure. The impact of worsening household debt may be used to perpetrate abuse.¹²⁰

The Social Security (Scotland) Act 2018 included a commitment to introducing single awards using devolved flexibilities. This has yet to be implemented. Eligibility for new benefits delivered by Scotland's new social security agency have typically replicated the focus on household income as a marker for entitlement. The 2018 Ending Homelessness Together High-Level Action Plan also did not include a gendered analysis of housing and homelessness, even though domestic abuse is the most common reason given by women for a homeless application. Planning laws do not require physical safety concerns such as lighting or public transport access to be assessed from a gendered perspective. These examples support the view that primary prevention is still not fully operationalised consistently in Scottish policymaking.

There have been some welcome interventions to ensure that the connection between economic and social inequality and gender-based violence is addressed. The Scottish Government has recently announced a pilot programme to create a domestic abuse leaving fund worth £500,000 across seven local authorities.¹²¹ This builds on a commitment from the Scottish Government's "Improving housing outcomes for women and children experiencing domestic abuse" report of the working group on domestic abuse and housing outcomes.¹²²

Outcomes for women and their children suggest that a more structural response is still necessary. Poverty in Scotland is measured at

household level.¹²³ However data confirms that single parent households are significantly more likely to experience poverty and that over 90% of single parent households are headed by women, suggesting that leaving an abusive partner has significant financial implications. This is further supported by case studies shared by frontline organisations. Disabled women and migrant women who may be even more financially dependent on their partner due to legal, social, and practical barriers to the labour market are at even greater risk.

Many women who sell sex report experiences of serious financial hardship and destitution which has frequently played a role in their decision to commence or return to sex work / prostitution. The UK Work and Pensions Committee heard evidence that the design of the UK welfare system increased precarity for many women who sell sex and directly influenced them to do so (so-called “survival sex”).¹²⁴ This was also reported by the UN Special Rapporteur on Extreme Poverty.¹²⁵ There is evidence that COVID-19 has exacerbated the financial precarity of women who sell sex and required them to undertake higher risk activities that make them vulnerable to violence and or criminalisation.

Findings

The Scottish Government should take action to improve policy coherence around gender equality and primary prevention in its policymaking in line with existing commitments to address women’s social, economic, and cultural positioning which makes them more likely to experience or more vulnerable to gender-based violence.

Awareness raising and information campaigns

Attitudinal change is a key aspiration of Equally Safe (IC Article 13). The Scottish Government provides funding to third sector organisations such as Zero Tolerance and Engender to promote primary prevention approaches with policymakers.¹²⁶ Scottish Government and state / public body campaigns to promote awareness and information include:

- Police Scotland’s ‘That Guy’ (2021), which builds on previous #GetConsent campaigns, targeting men aged 18 – 35 years who are most likely to commit sexual offences¹²⁷ and ‘Is That Me?’ (2022) Police Scotland domestic abuse campaign targeted towards young men, aged 18 – 25 years.¹²⁸
- The Scottish Government campaign to promote access to help and support during COVID-19 restrictions.¹²⁹
- The Scottish Government’s Safer Scotland campaign to promote the national helpline.¹³⁰
- A Scottish Government and NHS campaign to promote a new legal right to self-refer for a forensic health examination at Sexual Assault Response Coordination Service (SARCS).¹³¹

Scottish Government has also funded information campaigns by service provider organisations, including £30,000 in 2017 for a Rape Crisis Scotland Campaign to challenge public perceptions of victim-survivor responses to rape and sexual violence¹³² and an information campaign developed by Scottish Women’s Aid in 2019 to promote the new Domestic Abuse (Scotland) Act and inform the public about coercive control behaviours and offences.¹³³

A number of organisations receive central government funding to run training programmes related to violence against women and intersectional gender equality. This includes focus on challenging stereotypes and attitudinal change.¹² Assessing the reach and impact of these interventions is difficult. The Scottish Social Attitudes Survey (2019) indicates that although a majority consider domestic abuse and sexual violence to be “seriously wrong” the type of abuse, the gender of

¹² Including Equate Scotland, Shakti Women’s Aid, Amina Muslim Women’s Resource Centre, and Scottish Women’s Aid.

the victim and the context within which abuse takes place makes a difference to public attitudes.¹³⁴ ¹³

Education and schools

The national curriculum in Scotland is composed of few mandatory elements and has a focus on interdisciplinary learning.¹³⁵ The Scottish Government must issue statutory guidance for schools on the teaching of relationship, sexual health and parenthood (RSHP) education and draft revised statutory teaching guidance¹⁴ has recently been consulted upon.¹³⁶ A national resource, including materials and lesson plans, is available for all parents and teachers and includes information on bodily autonomy, consent and gender equality from pre-school levels to senior phase (IC Article 14).¹³⁷

Mandatory components for teachers and for pupils do not exist and it is possible for parents to withdraw their children from RHSP lessons. This means that there is a wide variation in the teaching provided across Scotland and information received by pupils. While the draft statutory guidance emphasises the importance of consent and healthy relationship teaching, and gender inclusive education focused on challenging stereotypes there is no way to determine how many pupils are receiving this.

¹³ For example, less than half of people thought the examples of sexual harassment explored were 'very seriously wrong'. Number who considered examples of coercive control to be 'very seriously wrong' were consistently less than those who considered physical or sexual abuse to be 'very seriously wrong' and over a quarter of people agreed that 'rape results from men being unable to control their need for sex'. The survey also shows that where respondents expressed stereotypical views on gender roles, they were shown to be less likely to view abusive behaviour as wrong and harmful.

¹⁴ The updated guidance reflects the obligations and guiding principles of the UNCRC and recommendations from an LGBTI Inclusive Education Working Group.

A 2018 thematic inspection found that consent was taught appropriately in most early learning and childcare settings, but age-appropriate learning on sexual consent was lacking in primary schools and the early stages of secondary schools.¹³⁸ Research has shown access to appropriate, informative RSHP education in additional support needs schools is significantly less than in mainstream schools.¹³⁹

The Scottish Government has established several working groups to consider how best to prevent and respond to harmful behaviour and gender-based violence in schools¹⁴⁰ and to promote gender equality in learning.¹⁴¹ Neither has yet reported.

Additional resources and sexual violence prevention work in schools have been provided by NGOs. These included Equally Safe at School, a whole school approach to preventing gender-based violence in schools.¹⁴² Rape Crisis Scotland runs the programme with an online portal for self-assessment and training.¹⁴³ The Scottish Government committed to funding through the current Equally Safe Delivery Plan.¹⁴⁴ Rape Crisis Scotland and Scottish Women's Aid have also worked with Young Scot to develop a "That's Not OK" resource for young people to help identify the signs of abusive relationships.¹⁴⁵ An Equally Safe in Higher Education toolkit is also available through the University of Strathclyde, providing free resources for further and higher education staff.¹⁴⁶

Focus groups were strongly supportive of education as a key element of cultural and individual change. Many expressed that this needed to start early and focus on healthy relationships and gender equality. Support for educational intervention has also been seen in previous research, for example Scottish Women's Convention (SWC).¹⁴⁷ However stakeholders also shared concerns that it was becoming more difficult to deliver work with children and young people.

Findings

There is a lack of consistency in the delivery of RSHPE in both mainstream and additional support for learning education environments. While good tools exist, it is difficult to determine how frequently they are utilised.

Early intervention and perpetrator programmes

The Caledonian Programme is the main programme in Scotland (IC Article 16) being delivered to address domestic abuse perpetrated by men towards women. The Programme adopts an integrated ‘Whole Family’ approach¹⁴⁸ which combines a court-ordered programme for men aimed at changing their behaviour, with parallel support services for women and children. Referrals to the men’s programme are made following a conviction of domestic abuse.¹⁵

An independent evaluation of Caledonian found that programme was largely being delivered in line with its core principles, however some variations were noted across different local authority areas. However, the evaluation also noted that limitations in the monitoring data made it difficult to quantify the exact uptake, as well as completion and attrition rates. There does not appear to be any further evaluations of the programme’s effectiveness since 2016.

The key programme offered in Scotland for perpetrators of sexual violence is ‘Moving Forward: Making Changes’ (MF:MC). An evaluation in 2018¹⁴⁹ found that it was difficult to quantify the impact of MF: MC. It was assessed as being delivered mostly in line with intentions, with some positive changes indicated among the participants, including a

¹⁵ Members of the the IRG suggested that victim-survivors have been deemed ‘uncooperative’ for choosing not to participate.

reduction in risk scores.¹⁵⁰ However, there were several limitations and areas identified for service improvements. Due to issues around staffing and resourcing, many community teams were unable to deliver the programme at recommended frequency. The evaluation team also received feedback that the programme manual was vague in parts; an issue which had also been identified in a previous evaluation.¹⁵¹

There are other programmes run in different local authority areas, an Internet Offender Groupwork Programme¹⁵² and programmes run in some prisons.¹⁵³ The absence of a structured programme for people under the age of 18 who commit sexual offences has been noted,¹⁵⁴ although there has been work undertaken to develop specific programmes for young people,¹⁵⁵ such as the UP2U programme in North Lanarkshire.¹⁵⁶ As with other programmes, there has been insufficient data to provide effective analysis of impact and outcomes.¹⁵⁷

Zero Tolerance has received funding from the Scottish Government to develop a framework for what an organisation to change public attitudes in Scotland to girls and women's equality and rights will look like.¹⁵⁸ The report found that work with young people and education was limited in Scotland compared to other countries. The report also found that most interventions focused on the experiences of white, able bodied and middle-class women and there was a lack of data about the attitudes or impact of programmes for minority communities or rural communities. While story telling was shown to be impactful, it comes with risks of further violence for women who do so.¹⁵⁹

Findings

Delivery of perpetrator behaviour programmes is inconsistent across Scotland and there is little to no evaluation of the success in the medium to long term. There is a need to improve research and evaluation to determine the success of intervention programmes with perpetrators and men and boys at risk.

Training of professionals

The state report demonstrates the lack of available data on training programmes for professionals (IC Article 15) and we welcome the Scottish Government commitment to undergo a review of their data processes. Their response identifies two programmes - Equally Safe in Practice and NHS Education - each of which offers a framework for training rather than a comprehensive, mandatory programme.

Equally Safe in Practice was evaluated following a pilot with seven local authorities in 2021.¹⁶⁰ More than 1140 people across the seven areas participated and feedback was largely positive, with many indicating that “they could see clear ways they will use the learning in their practice.” As of 2023, the training programme has not been formally expanded although all modules remain available.

While many third sector organisations receive funding to deliver training as part of Scottish Government grants, there is no single record of how many and which professionals receive this training. Under the Delivering Equally Safe Fund, 7,360 people from the statutory and private sectors attended education and awareness raising sessions delivered by funded third sector organisations between April and September 2022.¹⁶¹ More than 30% of the organisations however reported that training sessions to council staff and in education settings had become more challenging to run and the engagement from some council and schools had reduced as other pressures were prioritised. to set up and run.¹⁶² Focus group discussions indicated that participants had little confidence that training was effective.¹⁶³

Some Violence Against Women Partnerships (VAWPs) offer comprehensive training as part of local delivery plans, for example The Highland Violence Against Women Partnership offers a variety of gender-based violence focussed training which is available to all NHS staff in the Highlands and Islands.¹⁶⁴

Training for healthcare professionals¹⁶⁵ is accessed online¹⁶⁶ however there appears to be no publicly available data on participation nor evaluation. [See page 55 for training for police Scotland officers](#). Training for social workers also came through as a key area of concern in work undertaken by the Scottish Women’s Convention¹⁶⁷ an agency that was routinely raised in our focus group engagement.

Private Actors and Media

The Scottish Government funds third sector organisation Close the Gap to run the “Equally Safe at Work” project¹⁶⁸ which works with employers to improve their employment practice through advancing gender equality at work and supporting victim-survivors of violence against women on the understanding that trauma resulting from gender-based violence undermines women’s participation in the labour market (IC Article 17). The project offers an accreditation programme. An initial pilot found that at its end, managers were confident or very confident about recognising the signs of sexual harassment (68%). Around half were confident or very confident about recognising the signs of domestic abuse (53%) and stalking (49%). Confidence levels were lower for rape and sexual assault (43%) and lowest for ‘honour-based’ violence (31%).¹⁶⁹

Following recommendations from the NACWAG,¹⁷⁰ the Scottish Government has also funded the establishment of an Equal Media and Culture Centre for Scotland to research harmful stereotypes of women and lack of gender balance, which shape public attitudes and behaviours, including men’s violence (IC Article 17).¹⁷¹ Zero Tolerance also receives funding to work with media¹⁷² and has developed guidelines for print and broadcast media’s reporting of violence against women.¹⁷³

Media in Scotland is disproportionately male, particularly at editor level. In 2020, a Women in Journalism Scotland (WIJS) survey found a significant proportion of women in journalism had lost work and/or seen their workload expand without additional compensation during the

pandemic. Approximately 36 per cent of women journalists responding to the WIJS survey said that they had received abuse of some kind this year whilst doing their job, either on social media, on the phone – and for nine women even in person.¹⁷⁴ Many respondents expressed that abuse was something they considered a normal part of the job.¹⁷⁵

Chapter IV – Protection

Impact of COVID-19

COVID-19 related restrictions had a significant effect on the way that services operate in Scotland (IC Article 18.). Periods of social distancing meant that typical routes to support such as healthcare setting or schools were inaccessible for long periods between 2020 and 2022. Evidence suggests that the prevalence of all types of violence against women rose.¹⁷⁶ Services reported that the demand for support fluctuated massively, with initial drop offs in people seeking support followed by rises.¹⁷⁷

Some women found the move to online services opened up more support options, especially women in rural locations, women in employment and mothers.¹⁷⁸ However many others experienced digital exclusion, intensified abuse and safety concerns and other women found perpetrators were able to utilise restrictions to perpetuate abuse such as through online platforms, or via manipulation of child contact arrangements ([see page 85](#)). Negative impacts were also seen for children,¹⁷⁹ who had fewer positive social interactions and less access to safe spaces.¹⁸⁰

The Scottish Government emphasised that core child protection services must be provided throughout, with clarity that a child must be seen, directly, in person if there were a concern that the child is at risk of harm or abuse. However, a small number of children with a child protection plan were not seen physically in the first weeks of the pandemic (6%) and noted an increase in calls to children's helplines.¹⁸¹

Providers reported that the loss of statutory services and support had increased pressure on the third sector.¹⁸² Data reported by service providers suggests that these changes continue to have an impact on how they deliver services, for example less community engagement, challenges with partnership working and access and data collection.¹⁸³

National women's organisations have expressed concerns about the sustainability of services in view of the end of emergency funding intended to help them manage long waiting lists.¹⁸⁴

Availability of support services

Equally Safe envisioned that every victim and survivor of VAWG should have access to relevant, effective, and integrated support services where they are needed (IC Article 18, Article 20 and Article 22). Services should provide support to victim-survivors in line with Equally Safe, including a gendered understanding of violence against women and avoiding secondary victimisation (IC Article 18(3)).

There is currently no dedicated legal right to access services to support victim-survivors of violence against women, although there are some standalone legal rights to access some avenues of support, for example:

- The ability to self-refer to SARCS for a forensic medical examination following rape or sexual assault without first reporting to the police¹⁸⁵
- The right to access physical and mental health medical care through the National Health Service, including for asylum seekers or refugees. Migrants must pay an NHS Surcharge.
- A right to access emergency accommodation if required to leave home because of domestic abuse.¹⁸⁶
- A statutory right to access services under the Human Trafficking and Exploitation (Scotland) Act 2015.

The Independent Strategic Review made a number of recommendations that the Scottish Government is currently considering. However Rape Crisis Scotland have indicated that there may be unintended consequences for charitable income that need to be considered or mitigated against with considerable funding increases.¹⁸⁷ It is also worth reflecting that a statutory right is not itself necessary to achieve this aim, and while it may improve access to justice where minimum services are

not provided in accordance with the right, there are a number of other barriers to justice in Scotland that may impede the exercise of such a right.¹⁸⁸

The UK's state report indicates some areas of concern to us with regards to the mapping of available support as defined by Article 20.¹⁶ This was reflected in the Independent Strategic Review of Funding and Commission of Violence Against Women and Girls Services. Support is rarely co-located, and access is mediated through the availability of information (IC Article 19). It is not always provided in accessible formats and requires victim-survivors to navigate multiple agencies.

Focus group members, especially women with learning disabilities, described the role of social work in mediating access to support, whether general or specialist. For those with a positive relationship with their social worker, this was generally not a problem, however others described challenging, sometime gatekeeping behaviours that undermined their trust. Research by the Scottish Commission for People with Learning Disabilities (SCLD) has further demonstrated the critical role of social care, whether as the initial recipient of a disclosure or through ongoing support.¹⁸⁹ Too often however, women with learning disabilities report negative experiences of being poorly supported, undermined, dismissed, or even lied to by support agencies.

Specialist Support

Specialist support including Women's Aid and Rape Crisis Centres can support survivors through the complex support landscape (Article 22). However, research suggests that most victim-survivors do not access

¹⁶ Including legal and psychological counselling, financial assistance, housing, education, training, and assistance in finding employment, and access to healthcare and social services.

specialist violence against women services, with the most common barriers including not knowing the service exists, stigma-related concerns or not wanting to access support at the time.¹⁹⁰

Specialist service provision has been historically piecemeal and complicated. Funding limitations have meant that some services have had to close their waiting lists for support to new referrals. Refuge support is provided almost exclusively by the third sector on the basis of commissioning. Local authority funding for service provision was historically greater and has reduced as local authority funding in general has become more precarious. In addition, specialist women's services have found it more difficult to access local funding as local authorities try to make funding go further by awarding contracts to more generalist services.¹⁹¹ A range of other grant-making and philanthropic bodies also fund services. This complex and often unstable funding environment is often accompanied by competitive tendering processes and short term (1-3 year) awards.¹⁹² Staffing is a significant concern for services and many report having to readvertise posts on multiple occasions.¹⁹³

Increased demand for support in the wake of the COVID-19 pandemic and the impact of unsustainable funding landscapes means that some services are operating long waiting lists or in some cases having to triage referrals, offering a set form of initial support and then a wait for more suitable support options. Increasing the waiting times to access support can have devastating impacts on victim-survivors and increase the complexity of meeting their needs when they are seen.

In total there were 13,660 adult referrals into Scottish Women's Aid services¹⁹⁴ and 8,198 people supported by Rape Crisis Scotland 2021-2022.¹⁹⁵ Identifying how many refuge spaces exist in Scotland is extremely difficult. The Scottish Government notes that Scottish Women's Aid services provide 387 bed spaces across Scotland,¹⁹⁶ however not all providers are members of the umbrella organisation. The number of refuge spaces may also fluctuate based on housing needs of women, for example the need to be housed with children.

Despite Equally Safe's inclusion of Commercial Sexual Exploitation (CSE), direct work with those affected by CSE activity is currently only funded in 4 Local Authority areas.¹⁹⁷ A CLiCK service is also operated by SACRO to support women who sell or exchange sex online throughout Scotland.¹⁹⁸

Service pressures are especially acute for targeted support agencies working with further marginalised groups of women. Minoritised survivors experience abuse for longer lengths of time and identified different and additional barriers to service access.¹⁹⁹ These more targeted support agencies tend to be smaller and have more limited avenues for funding, while reporting equally high or higher demands for their service.²⁰⁰

Findings

Service provision in Scotland is complex and inconsistent. While some effort has been demonstrated to improve the funding landscape, the lack of sustainability increases precarity for services and staff and undermines the availability of support for victim-survivors. The Scottish Government should improve data around the availability of refuge accommodation similar to comparable statistics for England and Wales produced by the Office for National Statistics.

Support for Children

Children may be both witnesses of domestic abuse and victims in their own standing (IC preamble, Article 26, and UNCRC Articles 6, 19 and 34.) There are a number of specialist programmes to support children who live in a household where there is domestic abuse. The CEDAR (Children Experiencing Domestic Abuse Recovery) recovery programme was operated by Scottish Women's Aid but now sits with the Improvement Service. It includes group support activities for children who have experienced domestic abuse and their mothers.²⁰¹ Despite inclusion in Equally Safe and positive feedback from providers, it has been difficult for service providers to access funding for CEDAR. There

is no longer a national coordinator and so coordination, training and support has fallen to those who deliver CEDAR services. Children, young people and their parents or carers report that there are insufficient services focused on children's recovery. They also share a desire for services, including criminal justice bodies, to work more directly with children.²⁰²

Local Authorities have increasingly adopted Safe and Together models; As of September 2022, just under 90% of local authority areas in Scotland had invested in some level of Safe & Together training for their staff.²⁰³ Safe and Together models - like CEDAR - prioritise support to ensure that services work to keep child safe and together with the non-offending parent; partner with the non-offending parent as the default position; and intervene with the perpetrator to reduce risk and harm to the child.²⁰⁴ Reviews of Safe and Together models have suggested that when implemented properly it results in better assessment, better partnerships, and better case plans, although evaluations are limited.²⁰⁵

The Scottish Government has established a pilot 'Bairns' Hoose' programme based on the Barnahus model which would bring together child protection, justice, and health support and services to child victims and witnesses of abuse and harm.²⁰⁶ The overarching vision of the Bairns Hoose is that: "All children in Scotland who have been victims or witnesses to abuse or violence... will have access to trauma-informed recovery, support and justice."²⁰⁷ The pilot has not yet been rolled out fully.¹⁷

Specialist violence against women services must also ensure that children's needs are met appropriately and in line with evolving capacities (see Article 19 UNCRC). For example, under-16-year-olds

¹⁷ IRG members suggested the approach had limited traction on the ground

cannot currently self-refer to SARC, and instead must report to police first.

Service Cooperation

A Multi-Agency Risk Assessment Conference (MARAC) is a mechanism to bring together statutory and non-statutory agencies to share information and inform a coordinated action plan to increase the safety of the victim and their children (Article 18).²⁰⁸ Frontline services such as refuge providers are involved and often make the referral but police, healthcare professionals, social work and the local authority will also participate.

There is however currently no Scottish Government funding or statutory basis for MARACs and no single standards. The Scottish Government consulted on 'Improving Multi-Agency Risk Assessment and Interventions for Victims of Domestic Abuse: A Scottish Government Consultation' in 2019,²⁰⁹ however work on implementing the findings was paused in 2020 due to COVID-19.²¹⁰ As part of its commitments in the short life delivery plan for Equally Safe 2022-23, the Scottish Government published a 'Deep Dive-Learning Report' with stakeholders involved in MARACs across Scotland. Participants in MARACs said there to be a need for more discussion about adequate resourcing, clear roles and responsibilities, national guidance and quality standards and a statutory footing for MARACs.²¹¹

While MARAC is primarily concerned with a safety plan for adults, children should be part of the wider agenda and input sought from agencies with responsibility for child safeguarding. Limited funding has meant that Children and Young People's Independent Domestic Abuse Advocacy (IDDA) workers are increasingly difficult to support.

Similar to MARAC, Multi Agency Public Protection Arrangements (MAPPA) brings together the Police, Scottish Prison Service, Health Boards, and the Local Authorities, in partnership as the Responsible

Authorities, to assess and manage the risk posed for certain categories of offender to manage protection upon release from prison. This includes sex offenders who are subject to notification requirements under the Sexual Offences Act 2003 and other individuals assessed as posing a risk of serious harm to the public.

Availability of helplines

Scotland has a number of tailored helplines that are available to survivors free of charge operated by service providers (Article 24). The range of helplines available has allowed for a number of targeted options to offer bespoke support relevant to victim-survivor experience and / or identity. However, the diversity of options means that most helplines do not operate 24/7 (Article 24). A 24/7 National Domestic Abuse and Forced Marriage helpline is run by Scottish Women's Aid. The Strategic Review of Funding and Commissioning made recommendations to the Scottish Government to review the national and to consider a single provision. Rape Crisis Scotland has expressed significant concern about the impact a single combined helpline would have for survivors.

Reporting

Focus group participants expressed deeply negative experiences of reporting, involving both a lack of information or support to make a report and dismissive or even hostile treatment by first responders. For some women in our discussions, their fears were heightened due to concern a report would negatively impact their children and their parenting rights, especially for women with a learning disability. Previous research with victim-survivors adds further evidence of “racist, sexist, ableist and prejudicial attitudes” among police.²¹²

Research over many years posits a range of reasons for not reporting to police, including fear of reprisals, a view that gender-based violence is inherently a private matter, stigma, a pre-existing and ongoing relationship with the perpetrator, concerns about being blamed or

concern that the victim-survivor will not be taken seriously by police and criminal justice agencies.²¹³ Structural and societal reasons for not reporting sexual assault include the impact of ‘rape myths’ or a sense that there is an experience of ‘real rape’ that may differ from the victim-survivor’s.²¹⁴

For victim-survivors who do tell others, including professionals (IC Article 25), this does not always lead to referrals to general or specialist support. In one survey, half of survivors who accessed specialist services had self-referred, despite disclosing to an average of three people or agencies.²¹⁵

Findings

Despite many positives, there is a large gap between policy and practice and women’s experiences of accessing support fall far short of expectations set by Equally Safe.

Chapter V – Substantive Law

Domestic abuse

The predominant legislative framework for domestic abuse cases is the Domestic Abuse (Scotland) Act 2018 (IC Article 33 and 35). When it was passed the Act was lauded as the ‘gold standard’ framework by researchers and practitioners in the field. The Act established a new offence of engaging in an abusive course of conduct against a current partner or an ex-partner. The Act also made non-physical forms of abuse criminal for the first time. In addition to new offences, the Act also changed aspects of the management of domestic abuse cases.

Academic research has questioned whether the position of children who observe or are involved in domestic abuse is properly addressed in the act.²¹⁶ Children are not recognised as a victim of an offence of domestic abuse but may be the recipient of behaviour defined as abusive.²¹⁷ Section 5 of the Act establishes an ‘aggravation in relation to a child’, which may be recorded upon conviction and taken into account during sentencing (IC Article 46). While a small-scale study from 2014-15 shows that 63.7% of adults who reported partner abuse while children were living in the home said that the child was present during the most recent incident, there does not appear to be any publicly available data on the use of the aggravator.

The Domestic Abuse (Scotland) Act has recently been reviewed as part of post-legislative scrutiny and statutory monitoring requirements.²¹⁸ The Scottish Government interim reporting requirement report was published in January 2023 and found that there was a lack of awareness and understanding of the Act.²¹⁹ Although the law better reflected how adults experience domestic abuse, its impact has been limited by poor understanding of what constitutes criminal behaviour amongst the public (including victims/witnesses) and professionals.

There were 1,781 crimes recorded under the Domestic Abuse (Scotland) Act 2018 in 2022-23, the fourth year this legislation has been in place. This was a 1% increase compared to 2021-22 (from 1,760 to 1,781). 95% of victims were recorded as female.²²⁰

Not all instances of domestic abuse may involve a charge under the Domestic Abuse (Scotland) Act. A separate statistical publication Domestic abuse recorded by the police in Scotland, 2021-22 (the most recent available) shows that police recorded 64,807 incidents of domestic abuse in 2021-22.²²¹ The type of crime or offence that was most frequently recorded as part of a domestic abuse incident in 2021-22 was common assault, accounting for 32% of all crimes and offences recorded. This was followed by threatening and abusive behaviour accounting for 21%. Crimes recorded under the Domestic Abuse (Scotland) Act 2018 accounted for 4%. These statistics contraindicate evidence which suggests that psychological abuse is more commonly experienced than physical abuse.²²² The range of other relevant legal frameworks that domestic abuse may engage is broad and may also involve charges of sexual crimes or honour-based crimes discussed below.

While the new law better reflects women's experience, there is a risk that this is undermined by limited awareness among the public and professionals of what criminal behaviour looks like. Participants in one study reported that responses to their reports focused on single or severe instances of physical violence and that the justice system struggled with the prosecution of psychological abuse, particularly regarding verbal, telephone, and online abusive behaviour.²²³ The working definition of domestic abuse used by Police Scotland and the

COPFS¹⁸ does not include an emphasis on the role of gender nor inclusion of children.

Police Scotland operates a Disclosure Scheme for Domestic Abuse Scotland (DSDAS)²²⁴ which gives individuals a right to access background information about another individual. The Disclosure scheme applies to people enquiring about their own partner, somebody else's partner, or an employee. Upon receipt of a request Police Scotland will engage with the requester and partner agencies and ultimately must decide whether disclosing information is 'lawful and necessary'. Since the scheme was launched in 2015, Police Scotland has received more than 20,005 requests, 58% of which resulted in a police disclosure (11,559).²²⁵ Figures obtained by media also indicated that applications increased during the COVID-19 pandemic.²²⁶ Third sector organisations have called for a review to assess the effectiveness of the scheme.

Sexual Crimes

Sexual crimes (IC Article 36) are contained both within the common law and within several legislative frameworks, in particular:

- The Sexual Offences (Scotland) Act 2009
- The Abusive Behaviour and Sexual Harm (Scotland) Act 2016
- The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

¹⁸ Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS) have a shared definition of domestic abuse available on the Police Scotland website. See: [What is domestic abuse? - Police Scotland](#)

Official statistics show that sexual crimes¹⁹ account for 5% of all crimes recorded in Scotland in 2022-23. The number of sexual crimes recorded by the police in Scotland decreased by 3% from 15,049 in 2021-22 to 14,602 in 2022-23 (the most recent year available).²²⁷ Rape & attempted rape accounted for 17% of sexual crimes and sexual assault accounted for 36%. A total of 2,529 rape or attempted rape crimes were recorded between in 2022/23, compared with 2,498 rape crimes in the previous reporting year.²²⁸ While reported crime is generally falling, sexual crimes continue to increase.²²⁹ A significant minority of sexual offences are reported at least one year after they occurred (21%).²³⁰

While increased reporting could be interpreted as a greater disclosure, it is concerning that rape has the lowest conviction rate of any crime in Scotland – around 51% of rape cases that reach trial result in a prosecution compared to 91% for all other crimes.²³¹ Rape Crisis highlights that “in 2020-21 there were 2,176 rapes and attempted rapes reported to the police, but only 152 prosecutions and just 78 convictions.” Figures released by the Scottish Government in May 2021 revealed that almost a quarter of trials for rape or attempted rape result in a Not Proven verdict ([see page 73](#)). [Proposals for reform in this area are discussed at pages 74-75.](#)

¹⁹ Defined for the purposes of statistical analysis as:

- Rape & attempted rape
- Sexual assault
- Causing to view sexual activity or images
- Communicating indecently
- Threatening to or disclosing intimate images
- Indecent photos of children
- Crimes associated with prostitution
- Other sexual crimes, a wide range of offences including voyeurism, incest, and Possession of extreme pornography.

See: [User Guide to Recorded Crime: 2022-23 \(www.gov.scot\)](#)

In 2021, the Lord Advocate ordered a review of how prosecutors deal with reports of sexual offences, reporting that sexual offences now account for 70% of the casework of Scotland's High Court prosecutors.²³² The review will examine whether the way in which sexual offences are dealt with by COPFS protects the rights, and meets the needs and interests, of victims while protecting the rights of accused persons in criminal proceedings, and is due to report in Autumn 2023.²³³

Commercial sexual exploitation and human trafficking

While commercial sexual exploitation and human trafficking are not issues within the explicit scope of the Istanbul Convention's substantive articles, both are issues of violence against women as defined by the Scottish Government. The Convention's content applies to all forms of violence against women (Article 2). The Illegal Migration Act is likely to cause a deterioration in protection and support for survivors when it comes into effect ([see page 62](#)).

Commercial sexual exploitation is subject to a complex legal framework. The exchanging of sex for money is legal however activities such as publicly soliciting or loitering for the purposes of selling sex and "brothel keeping" are all criminal offences. A Police Scotland Working Group was established in 2019 to discuss the approach to policing under the current legal framework, which has supported an update to Standard Operating Procedure and Toolkit for front line officers who encounter those involved in prostitution.²³⁴ There is ongoing debate about legal reforms,²³⁵ including adopting the "Nordic model" of regulation which criminalises the purchase of sex but decriminalises the sale of sex.²³⁶

Sexual Entertainment Venues are legal but require to be licenced following the Air Weapons and Licensing (Scotland) Act 2015.²³⁷ Local Authorities determine if they wish to provide licences and set a number of licences that will be issued, including a nil option.²³⁸ In 2023, Edinburgh City Council's nil cap was successfully challenged in court on process grounds.²³⁹ The court did however confirm that it was not

unlawful to have had regard to Equally Safe. The nil cap theoretically remains an available option available, however human rights arguments raised in the case did not form part of the decision.²⁴⁰

The Encompass Network of seven specialist CSE organisations²⁰ produce an annual snapshot report which reveals that over the course of one week in October 2022, the organisations supported 101 women who had been involved in selling or exchanging sex or images. Of the 101 women, 92 had disclosed a mental health issue and 61 of the women supported disclosed they had an addiction issue. Four of the women supported had disclosed they were being assessed for a learning disability.²⁴¹ In addition, 27 women disclosed experiences of childhood sexual abuse and 59 women disclosed experiences of domestic abuse.

There are links between poverty and the sale and exchange of sex and who noted risks of the current cost of living crisis. The Encompass snapshot further demonstrates a wide array of further support needs, including immigration advice, interpretation, mental health support, finance and debt and criminal justice issues, among others.²⁴²

The Human Trafficking and Exploitation (Scotland) Act 2015 created an offence of Human Trafficking in Scots law and established a statutory aggravator where the trafficking involves a child.²⁴³ The Lord Advocate is also required to publish instructions about the prosecution of a person who is, or appears to be, the victim of an offence.²⁴⁴ These provide that there is unlikely to be public interest in prosecuting victims of human trafficking accused of criminal activity carried out as a consequence of trafficking or exploitation.²⁴⁵ However between 2016 and 2020, 155 potential trafficking survivors faced criminal charges, 21 of whom were

²⁰ Another Way (Edinburgh), Routes Out (Glasgow), Vice Versa (Dundee), Rape and Sexual Abuse Centre (Perth & Kinross), Aberdeen Cyrenians, Alcohol & Drug Action Aberdeen and TARA.

children.²⁴⁶ Risks of sexual exploitation have been noted for women with learning disabilities although this is not recorded in the NRM statistics.²⁴⁷

The majority of people trafficked into Scotland are women.²⁴⁸ In 2022 there were 621 (405 adult) referrals to the UK National Referral Mechanism made in Scotland, 108 of which were for sexual purposes (where a purpose was recorded) and of these 78 were women²¹ and girls, and 30 were men and boys.²² Despite the statistics and the obligations under the present Convention and the Convention on Action against Trafficking in Human Beings,²⁴⁹ Scotland's current human trafficking frameworks are largely ungendered. The Scottish Government's Trafficking and Exploitation Strategy – required under the 2015 Act - does refer to Equally Safe.²³ It also commits to “Appropriate specialist support available for all victims that is sensitive to age, gender and culture.”²⁵⁰ However further information on *how* the Scottish Government will meet the needs of women and girls is not provided within the strategy.

‘Honour based’ crimes

There is no single legal definition of so-called ‘honour based’ violence in Scotland (IC Article 42), however Equally Safe's definition includes dowry related violence, female genital mutilation, forced and child

²¹ These figures include 16 girls aged 17 or under, 54 women over the age of 18 and 8 where the age was not known, reported in Scotland and where the reason for exploitation included sexual purposes.

²² These figures include 13 boys aged 17 or under and 16 males over the age of 18, and 1 referral where age was not known, reported in Scotland and where the reason for exploitation included sexual purposes.

²³ As well as the Sustainable Development Goals Goal 5, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, particularly women and children (Palermo Protocol); the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the UN Convention on the Rights of the Child (UNCRC)

marriages, and ‘honour’ crimes. Abuse perpetrated by non-partner family members is not covered by the Domestic Abuse (Scotland) Act 2018, instead a number of general and specific criminal law provisions may be applied:

- Prohibition of Female Genital Mutilation (Scotland) Act 2005
- Female Genital Mutilation (Protection and Guidance) Act
- Forced Marriage (Protection and Jurisdiction) Scotland Act 2011
- Forced Marriage Protection Orders (FMPOs). The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011
- Domestic abuse and sexual violence provisions previously discussed.

Because of the array of legislation that may apply, determining the scale of ‘honour-based’ abuse in Scotland is difficult. A freedom of information request to Police Scotland showed that between 2015 and 2021 there were 955 incidents recorded by the police where an honour-based violence marker was logged in the interim Vulnerable Persons Database.²⁵¹

Research is currently being carried out with grassroots women’s aid organisations in Scotland²⁴ to map protection provided to victims of gender-based abuse through the law and policing and to expand information for those working with survivors and with public policy.²⁵² A summary report argues that abus behaviour in the name of family is incorporated at strategic rather than legislative level in Scotland’s approach to violence against women, and as a result women experiencing honour-based abuse are excluded from “equal access to and redress from Scots law”.²⁵³ This has a disproportionate impact for women from minority ethnic backgrounds. The researchers argue that

²⁴ Hemat Gryffe Women’s Aid and Shakti Women’s Aid.

there is a need to consider a separate honour-based abuse strategy, including consideration of legislation.

There is a dearth of research exploring BME women's experiences of gender-based violence in Scotland. However, while 'honour-based' abuse has traditionally had a perceived association with racial and cultural minorities in Scotland there is no evidence that violence against women, children, and young people is higher in minority ethnic communities. Research and advocacy organisations are increasingly highlighting that socio-cultural practices such as forced marriage and honour-based violence derive from patriarchal patterns equally prevalent in white, traditional Scottish cultural backgrounds.²⁵⁴ For example, peer research carried out by LGBT+ young people demonstrates the ways in which coercion, shame and physical violence can be wielded by multiple perpetrators to enforce rigid gender norms and preserve community standing.²⁵⁵ These patterns intersect with cultural factors in a multitude of ways across different communities.²⁵⁶

Stalking and Harassment

States are required to ensure that there are criminal or other sanctions in place to respond to "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person" (IC Article 40).

Sexual harassment is not a distinct crime in Scotland. Behaviours exhibited as part of sexual harassment may be criminal offences of themselves including assault, sexual assault or stalking. Sexual harassment is a form of sex discrimination under s.26 of the Equality Act. Employers are liable for harassment committed by workers in the course of their employment unless they take 'reasonable steps' to prevent it. The recently passed Worker Protection (Amendment of the Equality Act 2010) Act reinstates employer liability for harassment of employees by third parties.

It is unclear how many women have experienced sexual harassment in the workplace as not all women report, and workplaces are not required to publish any data on reported incidents. The number of sexual harassment claims at employment tribunal is also not available. In 2016, the Trade Unions Congress reported that “more than half of women consulted had experienced sexual harassment at work.”²⁵⁷ Further TUC research with 1,100 disabled women in the UK found that almost 70% had been sexually harassed at work.²⁵⁸

In 2021 the Scottish Government convened an independent Working Group on Criminal Justice and Misogyny to establish whether there were gaps in the law as it applies to hate crime and violence against women. The Working Group report noted that “[t]oo often, conduct in the workplace which is essentially criminal... are considered the domain of employment law.”²⁵⁹ The Group proposed new legislation to create new offences, including an offence of misogynistic harassment and behaviour, a statutory misogyny aggravator, an offence of stirring up misogyny and an offence of sending threatening or abusive communications invoking rape, sexual assault or disfigurement to a woman or girl.

The Scottish Government consulted on draft legislation in 2023 and the current legislative programme includes commitment to introduce a Bill. The Commission submitted views to the consultation, advising that in our assessment, the proposed Bill is in general consistent with human rights standards and may advance respect for human rights in the Scottish justice system; however, clarification and further development is required in some areas.

A single incidence of behaviour that causes cause a victim to suffer fear or alarm could currently be prosecuted under a breach of the peace or a ‘s.38 offence’ under the Criminal Justice and Licensing Act. The victim is required to suffer actual fear or alarm as a result of the accused’s conduct. Courts dealing with such behaviours have demonstrated a lack of gender-sensitivity in interpreting ‘fear and alarm,’ for example in

Ahmed v HMA, where the court stated that “[i]t does not seem to us that a polite conversational request or compliment can be construed as threatening merely because it is uninvited or unwelcome.”²⁶⁰

Stalking is a ‘course of conduct’ offence, requiring two or more incidents that would reasonably place another person in a state of fear or alarm.²⁶¹ The Scottish Women’s Rights Centre warns that stalking is “an underreported and often poorly understood crime.”²⁶² The Scottish Crime and Justice Survey found that 11.6% of adults reported experiencing at least one type of stalking and harassment.²⁶³ The most common type of stalking and harassment reported was being sent unwanted messages by text, email, messenger, or posts on social media sites.²⁵

A concerning increase in online harassment has been reported during and post-COVID-19 pandemic.²⁶⁴ For young people, spending more time online for schooling and socialisation has increased incidences of online harassment, bullying and sexual abuse.²⁶⁵ Between 2015 and 2021, referrals to Police Scotland relating to offences targeting children online increased by 511%.²⁶⁶

Researchers at the Open Union found that one in six women (17%) have experienced online violence and over a third of women (35%) have witnessed online violence. One in nine (11%) of women who experienced online violence say this progressed to offline violence. Even higher rates of victimisation are reported by young women aged 16-24 (27%) and LGB+ women (45%). Women and girls in Scotland were the most likely to have witnessed online violence (35%).²⁶⁷ The data showed that women and girls were unlikely to seek support from the police (4%).

²⁵ The IRG noted that stalking behaviours are often downplayed by the police, who have a poor understanding of escalation and highlighted that stalking is also a common feature of domestic abuse.

Regulation of online harassment is complicated by the devolution settlement. Scotland can legislate to introduce criminal offences that may be capable of being carried out online, such as the communication of threats. However, regulation of the internet is reserved to Westminster. The UK Parliament recently passed the Online Safety Act 2023, which establishes a number of obligations on providers.²⁶⁸ It also creates new criminal offences, including an offence of encouraging or assisting serious self-harm²⁶⁹ which extends to Scotland following the consent of the Scottish Parliament.²⁷⁰ Scotland already has parallel offences to those in the new Act around the sharing of images.²⁷¹ Convictions for causing to view sexual activity or images rose 38% between 2020-21 (158) and 2021-22 (218) and convictions for threatening to or disclosing intimate images rose by 50%, from 46 in 2020-21 to 69 in 2021-22.²⁷²

Forced abortion or sterilisation

There is no specific offence of forced or coerced abortion or sterilisation (IC Article 39) however the common law of assault would be applicable in almost all cases. Coerced abortion or sterilisation in the context of an intimate relationship would also be a crime under section 1 of the Domestic Abuse Scotland Act. Survey data from 2014 suggests that 11% of women accessing a UK abortion clinic had experienced physical abuse during the last year, and 4% had experienced sexual abuse during the last year.²⁷³

There is no evidence available to determine to what extent forced or coerced abortion or sterilisation is occurring in Scotland. A 2017 report from feminist organisation Engender found evidence of coerced sterilisation among disabled women, especially for women with learning disabilities.²⁷⁴

Findings

Recent and proposed law reforms in the area of violence against women have been innovative and grounded in a gender-sensitive approach. However more time is needed to understand how these are being applied in practice.

There is an urgent need for the Scottish Government to support greater awareness-raising for victims and survivors of domestic abuse, to encourage reporting and ensure that the broader scope of the protections provided by the Act are understood (e.g., economic abuse).

Chapter VI – Investigation, prosecution, procedural law, and protective measures

Policing and investigation

In 2022 the outgoing Chief Constable publicly acknowledged that “institutional racism, sexism, misogyny and discrimination exist” within the national police force (IC Article 5). UK data confirms that women’s trust in the police has fallen dramatically following the high-profile incidents of serious violence and misogyny perpetrated by serving officers.²⁷⁵ While not be limited to Police Scotland, senior officers on the force have consistently acknowledged the challenges in building public trust.²⁷⁶ Police Scotland’s own engagement suggests that 57% of respondents chose not to report violence to the police for reasons including a lack of trust.²⁷⁷ His Majesty’s Inspectorate of Constabulary in Scotland has also warned that not all Police Scotland officers have up-to-date vetting records.²⁷⁸

Police Scotland launched a new Violence Against Women and Girls Strategy in 2023²⁷⁹ which links to Equally Safe and which foregrounds building trust and confidence with women and girls. The strategy also refers to the Istanbul Convention. Police Scotland commits to a person-centred approach when working with women who have experienced GBV, greater partnership working and developing a greater focus on intersectionality across the force. While the strategy is extremely welcome, specific and measurable actions are outlined in a separate implementation plan which is not easily available. Progress is being monitored through existing Police governance arrangements.²⁸⁰ Further transparency may improve confidence further.

The Strategy includes a commitment that all frontline officers and staff will undertake specialist training to recognise gender based violence in all its forms (IC Article 50 and Article 54.)²⁸¹ There is currently a mandatory Equality, Diversity and Inclusion e-learning module for all officers and staff which provides an introduction to gender and other

forms of bias.²⁸² More specialist training is also available on forms of violence against women.²⁸³ Only officers with specific training may interview suspected victims of rape or sexual crime (Sexual Offence Liaison Officers.)²⁸⁴ This officer should also be responsible for providing updates on the investigation. There is not yet evidence to determine how training impacts on behaviour. There is also no available information on the percentage of officers who have undertaken specific violence against women training.

To support the implementation of the Domestic Abuse (Scotland) Act 2018, the Scottish Government provided funding for the training of 14,000 police officers and staff, and the appointment of 700 domestic abuse champions. Scottish Parliament's Criminal Justice Committee has warned that training for officers was delayed and was not sufficiently detailed or ongoing to effectively support officers to identify domestic abuse, especially non-physical abuse.²⁸⁵ Police Scotland reported to the Committee that as of March 2023, 18,496 officers and staff had completed e-learning modules which provide baseline understanding of the legislation and 13,510 officers and staff had attended one-day core training.²⁸⁶ According to quarterly statistics for March 2023, Police Scotland employs 16,614.7 FTE officers and 5881.2 FTE staff.²⁸⁷

Findings

Recent media coverage has exacerbated longstanding issues with trust in the police among women, which is likely to be particularly acute for women of colour, LBT women and other groups who have experienced poor treatment. Police Scotland has acknowledged the significant risk that these experiences pose to its relationships with women and girls and its ability to operate effectively. The organisation's Violence Against Women strategy is a welcome development however more public-facing information on its implementation may support the acknowledged need to increase confidence.

Improvement is needed in the provision of information between police and victims of crimes. It is unclear how many officers are undertaking targeted training to support implementation of new law or gender-sensitivity.

Access to Justice - Legal Aid

Concerns about the design of the legal aid system and women's access to justice in cases of gender-based violence have been noted by many including the CEDAW Committee.²⁸⁸ Legal Aid is provided through the Scottish Legal Aid Board (SLAB) (IC Article 57).

Civil legal aid is means-tested and recipients with disposable income of over £293 per month are required to contribute to costs. The SLAB must agree that it is reasonable to go to court to pursue or to defend the case. Individual solicitors have the right to choose which cases they wish to represent. For victim-survivors who face language barriers understanding how to make a claim can be even more difficult and dissuade them from applying.

Identifying solicitors who will accept legal aid cases has become increasingly difficult. The 139 most deprived communities in Scotland, equivalent to around 100,000 people, share just 29 civil legal aid firms between them. There are no civil legal aid firms at all in 122 of the 139 areas.²⁸⁹ Geographical inequalities in legal aid access are acute for specialist support; there is now no domestic abuse civil legal aid provider in the Highlands.²⁹⁰ Many solicitors are refusing to take on protective order cases on a legal aid basis due to the legal aid payment structure. Stakeholders who shared evidence including examples of women having to represent themselves in civil cases or not proceeding, putting their safety at risk.

Legal aid is available for people who are charged with criminal offences to cover the cost of representation at court by solicitors or advocates, and for bail applications. In 2022, defence lawyers undertook a boycott

of cases under the Domestic Abuse Act 2018, arguing that fees were insufficient to cover the complexity of cases.²⁹¹ The Glasgow Bar Association said the domestic abuse cases are “far too complex and lengthy to undertake for a fixed fee” that was set in 1999.²⁹² Complainers are not a party to the case and victims of an offence are considered witnesses. Complainers may require legal aid in some specific circumstances. Following *WF v Scottish Ministers*, complainers must have access to legal aid on a non-means-tested basis to challenge attempts to access their private medical records as evidence in accordance with privacy rights under Article 8 ECHR.²⁹³

The Scottish Budget identifies the legal aid budget for 2023-24 as £156.1 million plus £3 million to strengthen access to justice for deprived communities and vulnerable groups.²⁹⁴ In January 2023, the Scottish Government announced £11 million package to increase fees for legal aid lawyers.²⁹⁵ The Law Society and Scottish Solicitors Bar Association welcomed the agreement as a “step forward” but called for a long-term solution to underfunding and establishment of a sustainable fee review mechanism.²⁹⁶ No proposals have yet been brought forward. The Legal Aid (Scotland) Act 1986 is widely considered to be outdated and an independent review commissioned by the Scottish Government found wide-ranging issues with the current system.²⁹⁷

The Scottish Women’s Rights Centre (SWRC)²⁶ receives funding through SLAB to provide legal advice in cases of gender-based violence. SWRC reported an increased demand for services over 2022, with many service users reporting struggles to access legal aid, in some cases having unsuccessfully contacted between 30-100 solicitors. This has resulted in an increased in urgent inquiries from women who are self-

²⁶ SWRC is a collaboration between Rape Crisis Scotland, JustRight Scotland and the University of Strathclyde Law Clinic.

representing. While the service has attempted to meet the need by providing more in-depth advice, this has had a knock-on impact on the capacity to take on individual representation.²⁷

Findings

An acknowledged crisis exists across legal aid in Scotland, which is undermining women's rights to access justice and potentially their safety. A full review is needed to ensure the legal aid system; however, an interim increase may be necessary to encourage solicitors to take on legal aid cases before the full review can be completed. More support for specialist is needed, including in law centres.

Protection and barring orders

Scotland has a number of protective orders that courts may utilise to protect victims of gender-based violence.²⁸ This landscape is complex for individuals to understand and navigate. While police or the court may request a criminal non-harassment order if they do not or the order is insufficient, women must apply to civil courts to seek a protective order. A protective order does not require a conviction or charge. However, many women in need of a protective order cannot raise a court action if they do not qualify for legal aid or are unable to pay contributions to costs.²⁹ There are often delays in accessing court that render the

²⁷ As at November 2023, the SWRC is unable to take on new cases. See: [Legal representation - Take on process | Scottish Women's Rights Centre \(scottishwomensrightscentre.org.uk\)](https://www.scottishwomensrightscentre.org.uk/legal-representation-take-on-process)

²⁸ Including Bail conditions; Criminal non-harassment order; Interdict and interim interdict; Attached power of arrest to an interdict; Civil non-harassment orders; Exclusion orders; Forced marriage protection orders and Female genital mutilation protection orders.

landscape of protective orders unsuitable for situations of “immediate danger” (Article 52).

The Domestic Abuse (Protection) (Scotland) Act 2021 attempts to improve the situation for victim-survivors of domestic abuse by introducing new powers for senior police officers to impose a Domestic Abuse Protection Notice (DAPN) on a suspected perpetrator of abuse, without resort to the courts and gives the civil court, on application by the police, power to grant a Domestic Abuse Protection Order (DAPO) in relation to a perpetrator of abuse. However, two years on from Parliament passing the legislation, the provisions have not yet been implemented, with the Scottish Government indicating implementation for other parts of the Act that focus on tenancy rights was expected in early 2024. No timescale for the rest of the legislation has been given.²⁹⁹

Findings

The protection order landscape is complicated and expensive, and legal aid is not readily accessible. New purpose-built protection orders have not yet been implemented and Scottish Government has not provided a timescale.

Criminal Proceedings

Scotland has a broadly adversarial justice system with unique elements that reflect its history as a mixed legal system, including the use of three verdicts (guilty, not guilty, and not proven) and a 15-member simple majority jury. In 2022, the Scottish Government published a vision for Justice in Scotland that proposes reforms to make the system more trauma-informed and notes that the nature of the criminal justice system has at times not served women and children.³⁰⁰

Victim-survivors consistently report that their experience of court processes is “extremely distressing and retraumatising” (IC Article 55).³⁰¹ The Scottish Parliament’s Criminal Justice Committee heard experiences of poor practice, lack of communication, limited

explanations and a lack of empathy shown by criminal and civil justice agents.³⁰² Examples include statements being taken by sole male officers, lack of protection for victims and witnesses attending court, no challenge to unacceptable behaviour and language by legal representatives within courts and a lack of follow up and aftercare. Focus group members also had almost universally distressing experiences.³⁰³ They described being treated as evidence rather than human beings, having their experiences segmented or dismissed by both defence and prosecution lawyers and not being provided with information that would help them to understand the process or outcomes. At times the failure to keep them informed had caused them to fear for their physical safety.

A 2022 study of 22 victims and witnesses who had gone through a domestic abuse case in Scottish Courts found that women continued to find the policing and justice processes following a report disempowering. While there were some positive experiences surrounding additional supports such as special measures, interdicts, and harassment orders these appeared to be both the exception and short lived. Women expressed “feeling a lack of control throughout” the reporting, investigation, and justice process.³⁰⁴ The study concludes that “Far from being at the centre of the justice process, [the women] felt on the periphery and marginalised by it.” Aspects highlighted that contributed to these feelings included feeling uninformed, giving evidence in an adversarial process, court adjournments and delays significantly impacted on their mental health.³⁰⁵

An independent review of the management of sexual offences cases made a number of recommendations to improve the process of conducting sexual offences cases in Scottish Courts for the victim, including improving the trauma-awareness throughout the system.³⁰⁶ This also included a new special offences court, presumed use of pre-recorded evidence; measures to improve the current experience of complainers with a particular focus on improved communication; steps to enhance jury involvement; and improvements to aspects of the Children’s Hearings System.

Reflecting the findings from the review, a Victims, Witnesses and Justice Reform (Scotland) Bill is currently being considered by the Scottish Parliament. The Bill's stated intention is to improve justice responses, particularly in sexual offence cases. If passed, it would make statutory the right of complainers to independent, state funded representation where sexual history evidence is being led. The proposals would give ministers an obligation to establish the pilot specialist Sexual Offences Court. The Court would hear all solemn level sexual offence cases. Cases in the sexual offences court may be heard by a single judge sitting without a jury.

Some members of the legal profession have raised concerns that some of the proposals for reform, or their cumulative impact, affect the balancing of rights between the victim and accused (complainer and defender) too far in favour of the complainer and put at risk the rights of the accused.³⁰⁷

Findings

Scottish Government has determined that significant reforms are needed to ensure the broader justice system is more gender-sensitive and trauma informed. Proposals for reform of the criminal justice system reflect the seriousness of survivors' negative experiences and perceptions of criminal cases. However, there is a lack of consensus about the cumulative impact of changes that must still be navigated in the legislative process.

Domestic Abuse Courts

A specialist domestic abuse court was piloted in 2004 at Glasgow Sheriff Court and subsequently rolled out in Edinburgh and Livingston.³⁰⁸

Domestic Abuse Cluster Courts are also now in place in Ayr, Dunfermline, Falkirk, and the Scottish Borders. The specialist courts are intended to improve and increase the speed of court processes.³⁰⁹ The specialist courts ensure that a single judge works with a case throughout

the process while the cluster courts primarily ensure consistent scheduling of domestic abuse trials. Support agencies have been critical of the definition of Domestic Abuse Courts and raised concerns that cluster courts do not offer meaningful improvement for victims and witnesses.³¹⁰

A 2007 evaluation of the Glasgow Pilot found evidence of increased effectiveness of the response to domestic abuse.³¹¹ However data beyond this evaluation is extremely sparse and there is “virtually no evidence in the public domain” about the specialist courts subsequently established.³¹² The Scottish Courts and Tribunal Service has confirmed that each Sheriffdom has applied its own unique response to case management.³¹³

Criminal Court Backlog

Due to the impact of the COVID-19 pandemic, all jury trials were paused from 17 March 2020 and almost all summary criminal trials were adjourned and moved into ten ‘hub’ sheriff courts from the 25 March 2020. The Scottish Parliament agreed temporary legislative powers in The Coronavirus (Scotland) Act 2020 which allowed the Scottish Courts and Tribunals system to increase the use of digital working.²⁹ Various restrictions remained in place until April 2022, which directly impacted the operating capacity of courts. At its peak in January 2022, a 43,606 backlog of scheduled trials had built up.³¹⁴

While the COVID-19-related court backlog has “significantly reduced”³¹⁵ the time between pleading and trial for solemn cases – including serious assault, murder, and rape trials – has on average doubled since 2020 (IC Article 55). 70 per cent of cases indicted and awaiting trial relate to

²⁹ [The Coronavirus \(Scotland\) \(No2\) Act 2020](#) also introduced some further measures

serious sexual offences.³¹⁶ Cases of serious sexual violence make up 80 to 85 per cent of cases that proceed to trial in the high court.³¹⁷ Delays are having a significant impact on the mental health of victims and witnesses,³¹⁸ with the Scottish Government acknowledging the risk that victims and witnesses may withdraw from the case.³¹⁹ However, Rape Crisis Scotland has noted that COVID-19 has exacerbated a pre-existing situation,³²⁰ with victim-survivors supported by the organisation having to wait two or more years for cases to come to court even prior to restrictions.³²¹

A pilot programme has been established for virtual summary criminal trials to be conducted in Aberdeen and Inverness Sheriff Courts for domestic abuse cases. A report of the Oversight Board for virtual trials was broadly positive about their usage and recommended that “there would be no reason in principle not to allow suitable trials in other areas of business to use the virtual trial resource if capacity is available and the parties wish it.”³²²

Findings

Criminal justice and civil justice are struggling to cope, with real daily impacts and human rights risks for victim-survivors as justice is delayed or denied. A reform agenda is a necessary attempt to respond to historic and recent issues, but a lack of consensus here threatens opportunity to improve things for women and children.

Court support and advocacy

There is a shortage of court support and advocacy services for women and girls and for children who are navigating the criminal justice system in some parts of Scotland (IC Article 56).³²³ Glasgow City Council provides the ASSIST service that also supports people of all genders who experience domestic abuse in surrounding local authority areas, as well as men in Edinburgh.³²⁴ Women in Edinburgh can access a support

worker through the local women's aid service. Some other local authorities directly provide access to a dedicated support service.³²⁵

In other areas of Scotland, Independent Domestic Abuse Advocates (IDAAs) may be able to support victim-survivors at a medium to high risk of harm. IDAAs do not have to be formally employed or working within a criminal justice agency. The Scottish Women's Rights Centre also operates an advocacy service for women who experience gender-based violence, however as of November 2023, the service was temporarily unable to take on more cases for advocacy representation.³²⁶

The Scottish Government provides funding through Rape Crisis Scotland for a National Advocacy Project (NAP). NAP is a network of specialist Rape Crisis Advocacy Workers across Scotland who can provide victim-survivors of rape and serious sexual crime with individualised support and information through all stages of the criminal justice system.³²⁷ An evaluation of the project was carried out in 2018 and found that victims-survivors were overwhelmingly positive about the advocacy support that they had received. However, there were different understandings of what advocacy meant between Advocacy Workers, RCC Managers, COPFS, the police and other stakeholders.³²⁸ While flexibility and consistency can be provided by having a trusted advocate, the review also noted that the service was "filling a gap" in the justice system." Capacity was already an issue two years into the service and likely to become more stretched.³²⁹

ASSIST, Scottish Women's Aid and SafeLives deliver a professional development award (PDA) in domestic abuse.³³⁰ The number of accredited advocacy workers in Scotland is unclear. A 2017 Scottish Government commissioned scoping exercise on advocacy services which estimated that there were 299.24 FTE advocacy staff among surveyed advocacy services.³³¹ These figures are likely to be out of date and demonstrate that different services had different definition of advocacy. 55% of advocacy services surveyed stated that at least one member of staff holds a specialist qualification in domestic abuse

advocacy. During the pandemic, there were also reports that advocacy workers were unable to attend court with complainers and workers were less able to access information about processes.³³²

A protocol between COPFS, Police Scotland and Victim Support Scotland exists to establish joint working, including referring vulnerable witnesses to VSS for support.³³³ We heard from some stakeholders that this may not be consistently happening in practice. Police Scotland also have an obligation to provide victims of crime with appropriate access to support, either through a referral to victim support services or ensuring that they have sufficient information to self-refer.³³⁴ There is an automatic referral protocol in place between Police Scotland and Rape Crisis Scotland, which includes an optional feedback process for victim-survivors to share their experiences of reporting (IC Article 27).

Under the Vulnerable Witnesses (Scotland) Act 2004, special measures can be utilised where there is a significant risk that the quality of the evidence to be given by a person will be diminished by reason of fear or distress in connection with giving evidence in the proceedings.³³⁵ Victims in cases of domestic abuse, sexual crime, stalking, and human trafficking are automatically considered vulnerable witnesses under Victims and Witnesses (Scotland) Act 2014.³³⁶

Vulnerable witnesses automatically have access to standard special measures upon request, including the presence of a supporter when they give evidence, the use of screens and the use of remote weblink evidence. Non-standard special measures may be requested, including evidence in chief in the form of a recorded prior statement and evidence taken by a commissioner.³⁰ All child witnesses are deemed vulnerable

³⁰ This is now a standard special measure for a child under the age of 18 in all High Court cases.

witnesses under the Criminal Procedure (Scotland) Act 1995. The Children (Scotland) Act 2020 enhances the special measures available to children in some cases including matters such as parental responsibilities and rights and child contact and residence.

Findings

Advocacy generally involves dedicated and individualised support through the court processes, usually via a dedicated support worker. This support can be resource intensive, long-lasting, and unpredictable.

Sentencing, legal remedy and compensation

Sentencing decisions reflect a wide range of factors³³⁷ but the court should seek to ensure that the sentence to be imposed is fair and proportionate (IC Article 45).³³⁸ The primary factor that the court should have regard to is the seriousness of the offence. The Sentencing Council for England and Wales has definitive guidelines that position domestic abuse offences as being more serious than comparable non-domestic abuse offences,³³⁹ however there are currently no equivalent guidelines in Scotland.³⁴⁰ The Scottish Sentencing Council is currently developing guidelines for rape, sexual assault, domestic abuse, and indecent images of children.³⁴¹

In 2021-22, a custodial sentence was imposed on 98% of rape and attempted rape. Rape and attempted rape attracted the second longest average custodial sentence of all crime types at an average of 2,572 days (seven years and two weeks), an increase of 137 days from 2021-22. However sexual assault is significantly less likely to result in a custodial sentence (around 45% of proven charges) and fewer than 20% of charges under the Domestic Abuse Scotland Act received a custodial sentence.³⁴² In 2021-22 the crime and offence types where community sentences were most commonly given were:

- Domestic Abuse (Scotland) Act 2018 - 423 people or 61% of convictions.
- Causing to view sexual activity or images – 138 people or 63% of convictions.
- Communicating indecently – 100 people or 74% of convictions.
- Threatening to or disclosing intimate images – 44 people or 64% of convictions.
- Indecent photos of children – 217 people or 74% of convictions.

Similarly, those convicted of an offence which contains a domestic abuse aggravation most commonly receive a community sentence. Community disposals can include behaviour change requirements that are intended to both punish and rehabilitation, but evidence on the long-term impacts of existing programmes is difficult to identify ([See page 42.](#))

Assessing the proportionality of the sentencing trends (IC Article 45) is difficult given the wide range of behaviours that might be prosecuted under many of these offences. Research from the Scottish Sentencing Council found that members of the public and victims of sexual offences thought sentencing of sexual offences in Scotland was generally too lenient.³⁴³ Survivors felt that more consideration is given to the offender in sentencing than the victim.

Similar research on domestic abuse similarly found that a gap between the abuse experienced by the complainer and what is evidenced before the court can lead to a perception by complainers that sentences are not commensurate with their lived experience. Victims also felt that they lacked agency and that there was a need for procedural justice through timely, consistent, and relevant information.³⁴⁴ Women who participated in the Domestic Abuse Court Experiences research did not feel that they were adequately informed throughout the process and were often unclear on what sentences had been imposed, what offences these related to, and the rationale for sentences. There was a clear sense that

offences did not reflect the sustained nature or severity of abuse they had experienced nor the impact it had on their lives.³⁴⁵

Members from our focus group shared views that aligned with this existing research. Several expressed strong dissatisfaction with sentencing, including sentencing policies for people under the age of 25. There was a consistent sense that convictions were challenging to secure and that even where they had been secured, many of the victim-survivors did not feel they were proportionate to the harm nor that they would ensure their safety.

The Scottish Sentencing Council is responsible for developing sentencing guidelines. The current guidelines in respect of young people under 25 require that when “sentencing a young person, particular regard should be had to: the maturity of the young person; and rehabilitation.” However, the guidelines also provide that “sentence imposed must be fair and proportionate.”³⁴⁶ In recent months high profile stories about unusually low levels of sanctions have been reported.³⁴⁷ There is no requirement that courts impose substantially lower or non-custodial sentences on perpetrators under the age of 25 of violence against women and girls, although a custodial sentence “should be shorter.” The Sentencing Council has agreed to review the guidance.³⁴⁸

In line with the Victims Code,³⁴⁹ where an offender has been sentenced to 18 months or more in prison, a victim may register with the Victim Notification Scheme.³⁵⁰ Registered individuals have a right to be told when the prisoner is considered for parole, and to make written representations (comments) about their release to the Parole Board for Scotland. An independent review has recommended extending this to all children in line with an evolving capacities approach reflecting the UNCRC.³⁵¹ A lack of trauma informed process was also highlighted. Users of the scheme who were victims of sexual assault reported that it was “highly upsetting to know the offender would be able to see what they had written about the impact on them; they felt this gave more control to the offender.”

Victim-survivors of crimes of violence, sexual abuse or physical abuse can apply to the Criminal Injuries Compensation Authority for compensation where they have been physically or mentally injured as a result of the crime. If the victim-survivor was an adult (aged 18 and over) at the time, the claim must be made within 2 years of the incident (unless in exceptional circumstances). The two-year rule does not apply where the victim-survivor was below the age of 18. All crimes must be reported to the police before a compensation claim will be considered. Where the penalty imposed is a fine, a victim surcharge may be imposed under the Victims and Witnesses (Scotland) Act 2014.

Findings

It is not currently possible to say whether sentences as a whole for perpetrators of gender-based violence are proportionate. However, it is clear that the public and importantly victim-survivors do not feel that their experiences are reflected in the sentences currently imposed. Improvement to the information and explanation provided to victim-survivors would greatly help them to feel heard within the justice process.

The long-term impact of gender-based violence for victim-survivors should be properly reflected in all sentencing guidelines currently in development at the Scottish Sentencing Council.

Minor perpetrators and children in conflict with the law

The age of criminal responsibility in Scotland is currently 12.³⁵² The UN Committee on the Rights of the Child has called for the age of criminal responsibility to be raised to 14.³⁵³ Children under the age of 16 who are accused of a criminal offence are generally referred to a Children's Hearing Panel. The Children (Care and Justice) (Scotland) Bill will, if passed, extend referrals to 16- and 17-year-olds for both behaviour and welfare grounds. The systems aim to ensure a child-welfare approach to justice for children and young people.³⁵⁴

Serious cases where the child is over the age of 12 can be prosecuted in courts at the direction of the Lord Advocate (IC Article 45).³⁵⁵ COPFS is responsible for setting prosecuting guidance. The current protocol for joint reporting requires that people over the age of 15 are generally dealt with in the criminal justice system in cases of serious sexual offences. The Children, Care and Justice Bill proposes reforms to the prosecution and sentencing of children in conflict with the law in order to ensure that their treatments is consistent with the UNCRC.³⁵⁶ Currently secure care is the primary form of deprivation of liberty for children, whether for their own or others safety. However, as the Children and Young People's Commissioner Scotland highlights, a small number of children continue to be imprisoned, not all for serious or violent crimes³⁵⁷.

Despite recognising the need to ensure that all children's human rights are respected, some women's sector organisation have expressed concerns that some aspects of the Bill do not sufficiently consider women and girls who have been the victim of an offence committed by a child. In many instances, the victim is likely to be of a similar age.³⁵⁸ Rape Crisis Scotland reports that some "Survivors of sexual violence where the perpetrator is dealt with in the Children's Hearing System report very particular difficulties with this, these are inherently traumatising" when they are called as a witness.³⁵⁹ This highlights a widely recognised need to improve the availability and consistency of support to victims of all ages.

There are concerns that the Bill's approach to balancing privacy rights and information sharing does not adequately address the rights of victims to information. Some campaigners highlight that information is essential to ensure their safety and that they understand decision. Further consideration is needed to ensure an approach that ensures compatibility with the EHRC, UNCRC and the Council of Europe Guidelines on Child Friendly Justice position that information that could reveal or indirectly enable the disclosure of a child's identity should generally not be disclosed.³⁶⁰ The Children and Young People's Commissioner has argued that such information should only be

disclosed where it is necessary and proportionate, for example to facilitate safety planning.³⁶¹

Findings

Responses to violence against women perpetrated by children should appropriately reflect the seriousness of violence against women even where an alternative route to justice may be appropriate.

The Scottish Government and justice agencies should ensure that approaches to child-friendly justice and to tackling violence against women and girls are not in conflict. They should provide adequate support both to children in conflict with the law and to child victims.

Clear expectations and support should be made available to the victims of crimes, and where information cannot be given, reasons for decisions should be clearly explained and safety a priority consideration.

Civil Proceedings

Delays to civil proceedings as a result of the COVID-19 pandemic have had a negative impact on women and children's access to justice and delays or disruptions to child contact arrangements can put individuals at risk (IC Article 29).³⁶² Stakeholders also shared that family court procedures are highly traumatising for the women that they work with and are an area of deep dissatisfaction to a lack of understanding and support.

Mediation and Dispute Resolution

Mediation in instances of separation is not compulsory in Scotland (IC Article 48). A Sheriff (Scottish lower court judge) can refer parties to mediation once proceedings have commenced in court. However, there are currently no legal sanctions applied to parties who refuse to attend mediation sessions directed by the court. Sections 23 and 24 of the Children (Scotland) Act 2020, oblige the Scottish Government to explore 'alternative dispute resolution', including providing 'funding for alternative dispute resolution' and establishing a 'pilot scheme for mandatory alternative dispute resolution meetings'. Such a pilot would permit a court to only make an order under relating to parental rights and responsibilities³⁶³ if parties have attended a mandatory alternative dispute resolution meeting where alternatives to court are explained to all parties. This would be subject to the 'best interest of the child' requirement in the UNCRC Act if passed.

While clearly open to increasing the role of mediation in Scottish civil justice, the Scottish Government has expressed scepticism about whether mediation should be used in cases involving domestic abuse, sexual violence or gender based violence.³⁶⁴ Scottish Women's Aid have consistently warned that mediation is inappropriate in cases of domestic abuse, including cases of coercive control that the victim may not identify themselves as abusive.³⁶⁵ Any increased role for mediation must consider the power imbalances between parties and the risk of abuse by perpetrators.

Child Contact

Awareness of the abuse by perpetrators of the child contact system (IC Article 31) is increasing across public policy. Scottish Government Child Protection Guidance highlights an area of critical concern is that in domestic abuse situations, child contact with the perpetrator can provide a channel for continuing and even increasing domestic abuse against the victim/survivor and children.³⁶⁶ The Children (Scotland) Act 2020

places a duty on courts to consider the risks that delays in civil proceedings may have for children and encourages the court to hear the views of younger children. Courts must also investigate the reasons for a parent failing to follow a court order. Child welfare reporters and child contact centres will also come under statutory regulation, although this has not yet been implemented.

The Act also establishes increased and more formalised processes for the inspection of child contact centres. Standards have not yet been developed. The Scottish Women's Rights Centre have highlighted the need for staff at contact centres to have required training to recognise the impact of domestic abuse and the child protection concerns that can flow from domestic abuse.

While the measures in the 2020 Act improve the current framework and should be implemented as quickly as possible, it should also be noted that The Children (Scotland) Act 1995 already requires courts to have particular regard to the need to protect children from domestic abuse before making any contact order. There is evidence however that judges are not currently sensitive to the risks involved or understand the ongoing impacts of domestic abuse for children and their mothers.³⁶⁷ A 2023 report commissioned by Scottish Government from researchers at the Universities of Napier and Glasgow found that domestic abuse allegations and convictions of parents who have perpetrated abuse are not being adequately captured by Scottish civil courts during child contact hearings.³⁶⁸

Chapter VII – Migration and Asylum

Residency protection for migrant women

The UK has submitted reservations to the Convention in respect of Article 59.³¹ This precludes GREVIO from considering the granting of leave to remain and other visa conditions in respect of migrant women who experience gender-based violence. The UK Government has previously said its position on Article 59 is under review “pending the results and evaluation of the support for migrant victims scheme.” No further update has been provided. The House of Lords International Agreements Committee has also recommended that the ratification be lifted.³⁶⁹

The Scottish Government made its opposition to the reservation known; however, ratification of international agreements and immigration are wholly reserved to the UK.³⁷⁰ This includes asylum claims (IC Article 60) and non-refoulement (IC Article 61). The Commission has previously expressed concerns about further changes to UK immigration law in the Illegal Migration Act.³⁷¹ The Act establishes that any asylum application made by someone who arrives irregularly at the UK is permanently inadmissible.³⁷² The Nationality and Borders Act also introduced ‘differentiated status’ for refugees, however the classification system is currently paused.³⁷³

³¹ Article 59 requires state parties to “take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship.”

Victim-survivors may be eligible to apply for indefinite leave to remain if their relationship breaks down due to domestic abuse.³⁷⁴ If the applicant has no means of supporting themselves, a 'Destitution Domestic Violence Concession' can be granted to provide access to public funds while the decision on leave to remain is pending. However, the application processes are extremely complex,³⁷⁵ which may leave women vulnerable to errors or being unable to challenge decisions. Support agencies described instances where women had remained with or returned to a dangerous situation at home because the process was too difficult.

No Recourse to Public Funds (NRPF)

The treatment of migrant women was frequently raised in stakeholder engagement for this report. Many strongly expressed that the Scottish Government should use all levers that are available with it to better support migrant women residing in Scotland.

NRPF is a condition that may be applied to an individual's leave to enter or remain in the UK. Migrants with NRPF conditions cannot access services provided and/or funded by the government listed in the Immigration and Asylum Act 1999 and the Immigration Rules.³⁷⁶ Funds not listed may be accessed, for example Scottish Legal Aid Board-funded legal aid, free school lunches, early learning childcare support, or access to some NHS services. However, given the vast number of prohibited funds and perceived complexity many eligible applicants may be dissuaded or require significant support to apply.

Many women with an NRPF condition are unable to undertake paid work, either because their visa condition does not grant right to work or because of caring responsibilities. The risk of destitution for this group is especially high. Migrant women are in a considerably worse position than non-migrants (IC Article 4), including at greater risk of exploitation and homelessness. Victim-survivors who are reliant on a perpetrator for their legal status or living are in an impossible position. Further essential

costs of accessing support such as internet access, transport or internet access place support even further out of reach.

The Scottish Government and Local Authorities (COSLA) have developed an “Ending Destitution Together Strategy” to provide some support for people in Scotland with NRPF conditions.³⁷⁷ The strategy draws from human rights standards and principles but has a limited focus on gender. It has been welcomed for providing a lifeline to prevent homelessness for women and their children. However, implementation is not consistent due to lack of knowledge, particularly among frontline staff, of the strategy, of migrants’ rights and statutory duties to protect vulnerable adults and children.³⁷⁸ Women with NRPF can be referred to MARAC, which can be used as evidence in an application for Indefinite Leave to Remain.

A number of vital third sector organisations provide advice and support to women who are subject to NRPF³², in addition to local women’s aid centres. However, in 2017 Scottish Women’s Aid reported that some Women’s Aid groups had been informed by their local authority that as a condition of their funding they cannot accommodate women with NRPF or provide them with any support unless they are able to demonstrate this has not been provided using public funds.³⁷⁹

Findings

The UK’s reservation in respect of Article 59 undermines the safety of migrant women and should be withdrawn. The NRPF condition places migrant women and their children who experience gender-based violence in positions of considerable risk. The Scottish Government should continue to explore how it can ensure the maximum available

³² E.g., JustRight Scotland, Amina Muslim Women Resource Centre.

support available while working with the UK Government to end the use of the condition.

Legal Framework

Incorporation of human rights standards

The Scottish Government is currently exploring incorporation of international human rights treaties within the limits of the devolution settlement (IC Article 4). This would see new legislation to create a Scottish Human Rights Bill which reflects ICESCR, CERD, CEDAW and CRPD as well as environmental rights. Rights protected by European Conventions including Istanbul are not currently part of the discussion.

The Scottish Government recently consulted on its proposed model.³⁸⁰ This model of incorporation would create a duty to comply with ICESCR provisions in devolved areas and a duty to consider how rights in the other treaties could be advanced. This differentiated approach requires further explanation, and the Commission has noted that other models are possible.

If pursued, the Scottish Government's model could enhance public body awareness of recourse to CEDAW provisions. While CEDAW does not include a standalone provision on gender-based violence, the treaty has been interpreted as covering violence against women, particularly under Article 2 (non-discrimination.) Further analysis of the Convention's application to violence against women has been set out by the CEDAW Committee in General Recommendations 19 and 35.³⁸¹ General Comments and General Recommendations may form part of the Scottish Government's proposed interpretative clause³⁸² This would strengthen the recourse to these frameworks, among others, in public body decisions and relevant court decisions. However, the absence of a duty to comply with CEDAW raises questions about how justice could be accessed in cases of violations.³⁸³

In respect of children's rights, the Scottish Parliament is currently considering amendments to a Bill to incorporate the UNCRC.³⁸⁴

Findings

There is a need to further explore how the Scottish Government's proposals to strengthen human rights will prevent and ensure access to justice for victim-survivors of gender-based violence.

ANNEX A.: Methodology

Reference Group Members

The Commission established a reference group to support to provide feedback on the research and analysis it undertook in preparation for this submission. Interested groups were invited to indicate their interest on the basis that they fulfilled one of two criteria:

- Individuals and organisations currently or recently working on at least aspect of the Convention, summarised by GREVIO – the expert monitoring body - as “the 4 Ps” – Prevention, Protection, Prosecution, Integrated Policies.
- And / or, individuals and organisations with demonstrable experience in human rights reporting, especially women’s rights experience.

Organisations to include a short description of how they met these criteria. Invitations to note interest were sent out via:

- Stakeholders who attended co-hosted with Scottish Women’s Aid in June about the Convention;
- Members of the Scottish Parliament CPG on Men’s Violence Against Women and Girls after the SHRC was invited to present on the Convention and reporting process.

All organisations and individuals who expressed an interest were ultimately invited to participate.

Member were not compensated for their participation in the Reference Group. Terms of reference were agreed, which confirmed:

“The output of the process will be the preparation of the Commission’s shadow report, authored by the Commission’s staff on behalf of Commission members.

“The Reference Group’s primary purpose is to ensure breadth and accuracy in the Commission’s reporting and views or opinions shared by Reference Group members are not privileged in status as compared to other stakeholders nor do they restrict the Commission’s engagement with any other organisation’s views and opinions.

As a National Human Rights Institution, the Commission will at all times prioritise its compliance with the Paris Principles and demonstrate independence, pluralism, and expert opinion on all aspects of its work, including the preparation of international reports. The Commission is not bound by the views of Reference Group members. Where there is good reason to depart from reference group advice or consensus, the Commission will endeavour to explain - in good faith - why it has done so.

Reference Group members are likewise not bound by the Commission’s report findings, recommendations or other positions and maintain their full freedom to express their own organisational or individual positions, including where the Commission has departed from their advice, subject to the below agreement on transparency and confidentiality.”

An open questionnaire was published on the Commission’s website however this did not attract a significant number of additional views. Organisations who submitted views through this questionnaire or via an alternative means are listed below. Input was received from two individuals anonymously.

Members of the Reference Group

- Children and Young People’s Commissioner for Scotland
- Dr Claire Houghton, Edinburgh University
- Engender: Delivering Equally Safe Joint Project
- Just Right Scotland
- Scottish Commission on People with Learning Disabilities
- Scottish Women’s Aid

- Scottish Women's Convention
- South Lanarkshire and East Renfrewshire Women's Aid
- Zero Tolerance

Additional input was received from:

- Amina, Muslim Women's Resource Centre
- CEMVO Scottish Minority Ethnic
- Just Right Scotland
- LGBT Youth Scotland
- Rape Crisis Scotland
- Scottish Women's Convention

ANNEX B.: Devolution Settlement

General overview

The UK's unwritten constitution leaves some matters open to political, legal, and academic debate. In simple terms, the UK Parliament maintains legislative sovereignty, and in principle retains the power to legislate on any matter of its choosing. However, the status of the Scottish Parliament is recognised as constitutionally significant. The Parliament was created by the Scotland Act 1998, which was amended in 2016 to provide a clause recognising the permanence of the institution.³³

The Scottish Parliament has power to create primary legislation in the form of Acts of the Scottish Parliament. The scope of the Scottish Parliament's legal powers – known as devolved powers or competence – is provided on a general basis³⁴ subject to three main limits:³⁵

- Legislation must not be incompatible with the European Convention on Human Rights;
- The Scottish Parliament cannot modify “protected statutes”; and
- Legislation that “relates to” matters reserved to the UK Parliament is incompetent, and therefore “not law”.

Reserved matters are listed in schedule 5 of the Scotland Act 1998.

³³ [Scotland Act 2016 \(legislation.gov.uk\)](https://legislation.gov.uk)

³⁴ Scotland Act 1998 s.28(1)

³⁵ Scotland Act 1998 s.29A

Identifying the limits of devolved competence is not always simple.³⁶ While the whole policy area is reserved, many areas are subject to exceptions and sometimes the phrasing of such exceptions is subject to interpretation. Schedule 4 lists “protected statutes” that cannot be modified by Scottish law – whether expressly or in substance – even if the Scottish Parliament has power to legislate in that area. The Human Rights Act 1998 is a protected statute.

“Observing and implementing international obligations,” is an exception to the general reservation of international relations.³⁷ Scotland may choose how to implement and protect international human rights obligations to which the UK is a party but cannot accept formal legal obligations as a separate party (The Scottish Government has made several voluntary commitments with international and regional bodies). The Scottish Parliament has elected to legislate for domestic incorporation of the UN Convention on the Rights of the Child, and while the legislation was successfully challenged for relating to reserved matters, the majority of the provisions of the Bill were found to be in the scope of devolved competence.³⁸

The Scottish Parliament has established the Scottish Human Rights Commission as a National Human Rights Institution with power to promote and protect human rights in devolved areas of law and policy. The Equality and Human Rights Commission is established by the UK Parliament and has a mandate to regulate equality law in England,

³⁶ “Relates to” requires more than a merely loose, incidental or consequential connection with a reserved matter (*Martin v Most* [2010] UKSC 10; *Imperial Tobacco v Lord Advocate* [2012] UKSC 61)

³⁷ Sch.5, Pt1, para 7(2)(a)

³⁸ See [REFERENCE by the Attorney General and the Advocate General for Scotland - United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill - The Supreme Court](#)

Wales and Scotland and operate as NHRI in respect of reserved areas in Scotland.

Scotland has a number of standalone state institutions, many of which pre-date the establishment of the Parliament in 1998. These include a separate legal system and judiciary, education system, health service and property and land registration system.

Summary of reserved and devolved areas

Devolved area	Reserved area
agriculture, forestry, and fisheries	benefits (some aspects)
benefits (some aspects)	betting and gambling
consumer advocacy and advice	broadcasting
economic development	constitution (some aspects)
education and training	consumer protection policy
elections to the Scottish Parliament and local government	currency
energy (some aspects)	data protection
environment	defence and national security
equality legislation (some aspects)	equality legislation (most aspects)
fire services	energy (most aspects)
freedom of information	elections to the UK Parliament
health and social services	employment law and industrial relations
housing	financial services
justice and policing	foreign affairs

local government	immigration, asylum, and visas
planning	nationality and citizenship
sport and the arts	postal services
taxation (some aspects)	taxation (some aspects)
tourism	telecommunications
transport (some aspects)	trade and industry
	transport (some aspects)

ANNEX C.: Treaty Body Recommendations Relevant to Violence Against Women

This is a summary of key recent recommendations from UN treaty bodies of key relevance to violence against women and girls.

United Nations Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 2015 CCPR/C/GBR/CO/7

“The State party should strengthen measures aimed at preventing and combating violence against women, including domestic violence and sexual abuse, by, inter-alia

...

(b) Encouraging the reporting of domestic violence cases, inter alia by informing women of their rights and the existing legal avenues through which they can receive protection;

(c) Ensuring that all domestic violence cases, in all United Kingdom territories and dependencies, are thoroughly investigated, that perpetrators are prosecuted and, if they are convicted, are punished with appropriate sanctions;

(d) Ensuring that victims have access to effective remedies and means of protection, including strong police protection, adequate emergency shelter, rehabilitative services, legal assistance, and other support services.”

United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, 2016 E/C.12/GBR/CO/6

“The Committee requests the State party to include in its next periodic report information on the impact of the implementation of the national strategy on gender-based violence, particularly with regard to violence against women and girls with disabilities.”

**United Nations Committee on the Rights of the Child,
Concluding observations on the combined sixth and
seventh periodic reports of the United Kingdom of Great
Britain and Northern Ireland, 2023 CRC/C/GBR/CO/6-7**

“The Committee urges the State party:

(a) To ensure that child protection systems take a child rights-based approach to preventing and addressing cases of abuse and neglect, including psychological violence, that social services and other mechanisms for identifying and supporting children at risk of violence and child victims of violence are adequately resourced and that child victims are fully recognized as victims and have access to community-based trauma care and child-sensitive support services;

...

(c) To promptly and effectively investigate and intervene in all cases of violence against children, including domestic violence and the sexual exploitation and abuse of children in and outside the home, in the digital environment, in religious and educational institutions and in alternative care settings, and ensure expert support to child victims and that perpetrators are brought to justice;

(d) To strengthen measures aimed at tackling violence against children, including by implementing the recommendations of the Independent Inquiry into Child Sexual Abuse in England and Wales, the Gillen Review in Northern Ireland, the Scottish Child Abuse Inquiry and other relevant inquiries and investigations conducted by independent bodies;

(e) To develop measures aimed at preventing violence against children in alternative care, children with disabilities, asylum-seeking, refugee and migrant children and children belonging to minority groups;

(f) To ensure that all children who are victims or witnesses of violence have

prompt access to child-sensitive, multisectoral and comprehensive interventions,

services and support, including forensic interviews and psychological therapy, with the aim of preventing the secondary victimization of those children, and allocate sufficient resources for the implementation and expansion of the barnahus and similar models, such as The Lighthouse in London;

(g) To ensure a child rights and trauma care-based approach in the provision of support services for victims, including the Bairns' Hoose standards in Scotland, and that such services and support are also available for and address the specific needs of all victims of violence;

(h) To ensure that all child victims of violence, including sexual abuse, are

allowed, as child witnesses, to provide video-recorded evidence for testimony and cross-examination during the pretrial stage in judicial procedures as a default process, under sections 21 and 28 of the Youth Justice and Criminal Evidence Act 1999, and that they have access to appropriate therapy without delay;

(i) To strengthen efforts to train professionals working with and for children, including social workers, law enforcement authorities and the judiciary, to identify and effectively respond to cases of violence, including sexual exploitation;

...

(k) To ensure the systematic collection and analysis of data on child protection issues and violence against children to inform the implementation of national strategies on violence and child sexual abuse, including by: (i) creating a national database for missing children;

ii) collecting data on cases that have been reported, investigated and prosecuted; and

(iii) ensuring that 16- and 17-year-old persons are considered as children in the disaggregation of data on sexual exploitation and abuse.”

“Recalling joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices and its previous recommendations, the Committee recommends that the State party:

(a) Develop national strategies aimed at eliminating and preventing harmful practices affecting children, including child marriage, female genital mutilation and violence committed in the name of so-called “honour”, and ensure that they include effective measures for raising public awareness, training relevant professional groups, identifying victims and addressing data gaps and low rates of reporting and prosecution;

“...Integrate comprehensive, age-appropriate and evidence-based education on sexual and reproductive health into mandatory school curricula at all levels of education and into teacher training and ensure that it includes education on sexual diversity, sexual and reproductive health rights, responsible sexual behaviour and violence prevention, without the possibility for faith-based schools or parents to opt out of such education;”

**United Nations Committee on the Elimination of
Discrimination Against Women, Concluding observations
on the eighth periodic report of the United Kingdom of
Great Britain and Northern Ireland, 2019
CEDAW/C/GBR/CO/8**

“Systematically collect and publish data, disaggregated by sex, gender, ethnicity, disability and age, throughout the whole of its territory to inform policymaking and assess the impact of measures taken.”

With reference to its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and recalling its previous recommendation to the State party, the Committee recommends that the State party:

- (a) Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence;
- (b) Adopt legislative and comprehensive policy measures to protect women from all forms of gender-based violence throughout the State party’s jurisdiction, including Northern Ireland;
- (c) Ensure that asylum-seeking and migrant women and women with insecure immigration status are able to seek effective protection and support services without fear of having their immigration status reported to authorities;
- (d) Ensure that its laws and policies effectively protect women with disabilities from all forms of gender-based violence, in particular violence perpetrated by their caregivers;
- (e) Ensure that the policy of commissioning services does not undermine the provision of specialized services for women who are victims of gender-based violence.”

“The Committee recommends that the State party ensure the full implementation of its legislation on female genital mutilation and take further measures to effectively prosecute perpetrators of this offence. It also recommends that the State party step up its efforts to raise awareness that female genital mutilation is a form of child abuse and gender-based violence against women and girls.

(a) Ensure that the definition of trafficking in persons in its national legislation is in line with the internationally agreed definition set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

(b) Adopt a comprehensive national strategy to combat trafficking in women and girls, as previously recommended;

(c) Continue to improve the national referral mechanism, including by implementing the reform package announced in October 2017, to ensure that victims of trafficking are properly identified and adequately protected and supported.”

“The Committee recommends that the State party:

(a) Take effective measures to ensure that women in vulnerable situations have effective access to employment opportunities, housing, and social security so that they do not need to resort to prostitution or “sex for rent”;

(b) Take effective measures to reduce demand for commercial sex, including by carrying out educational and awareness-raising measures targeted at men and boys and focused on combating all notions of the subordination and objectification of women;

(c) Revise legislation to decriminalize prostitution and clear the criminal records of women who have been convicted for offences related to prostitution to enable them to seek alternative forms of employment;

(d) Ensure the availability of specialist services that are adequately funded, inclusive and accessible to assist women and girls in exiting prostitution;

(e) Create educational and employment opportunities for women who wish to exit prostitution;

(f) Undertake research into the prevalence and nature of prostitution in Northern Ireland and Scotland, in addition to the research that is currently under way in England and Wales, to identify the necessary changes to be made to legislation and policy;

(g) Revise its legislation to shift the burden of proof from the prosecution to the purchaser of sexual services for cases involving minors, as previously recommended (CEDAW/C/GBR/CO/7, para. 41).”

“(c) Take measures to introduce into school curricula mandatory, age-appropriate education on sexual and reproductive rights, including issues such as gender relations and responsible sexual behaviour, throughout the State party;

(d) Encourage employers to publish a narrative with their gender pay gap data, with a view to better understanding the reasons behind the gender pay gap, and to take appropriate remedial measures;

(e) Introduce a mandatory duty on employers to take reasonable steps to protect women from sexual harassment in the workplace;”

United Nations Committee on the Rights of Persons With Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, 2017 CRPD/C/GBR/CO/1

“The Committee recommends that the State party, in close consultation with organizations of women and girls with disabilities, mainstream the rights of women and girls with disabilities into disability and gender

equality policies. It also recommends that the State party, in line with the Committee's general comment No. 3 (2016) on women and girls with disabilities and targets 5.1, 5.2 and 5.5 of the Sustainable Development Goals, adopt inclusive and targeted measures, including the collection of disaggregated data, to prevent multiple and intersectional discrimination against women and girls with disabilities, particularly those with intellectual and/or psychosocial disabilities, in education, employment, health and access to justice and in terms of poverty and violence."

"Establish measures to ensure equal access to justice and to safeguard persons with disabilities, particularly women, children, intersex persons and elderly persons with disabilities from abuse, ill-treatment, sexual violence and exploitation;"

ANNEX D.: Update – January 2024.

Since the report was submitted in December 2023, the following developments of note have occurred which refer to materials referenced.

Equally Safe Refresh

On 7th December 2023, the Scottish Government and COSLA published a refresh of the National Strategy for Violence Against Women, Equally Safe.³⁹

The Refresh is the first full update to the national strategy since 2016. The Vision and Aims of the Strategy remain unchanged. Evidence and analysis used in the narrative of the report has been updated. A streamlined definition of violence against women is now provided:

“The phrase violence against women and girls is used to describe violent and abusive behaviour directed at women and girls because they are women and girls. It is behaviour which is carried out predominantly by men. It is an abuse of power and stems from systemic, deep-rooted women’s inequality. VAWG limits women’s and girls’ freedom and potential and is a fundamental violation of human rights.”

The refresh adds further detail and analysis on intersectional approaches. For example, the omission of women with learning disabilities has been addressed in the narrative.

The Scottish Government intends to publish An Equally Safe Delivery Plan in 2024 to provide practical delivery information.

³⁹ [Equally Safe 2023 - preventing and eradicating violence against women and girls: strategy - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/equally-safe-2023-2026/pages/strategy-2023-2026.aspx)

Gender Recognition Reform (Scotland) Bill

In our report, we noted that the outcome of litigation concerning the Scottish Parliament's passing of a Gender Recognition Reform Bill was pending. On 8th December 2023, the Outer House of the Court of Session ruled that the UK Government had not acted unlawfully in preventing the Bill from receiving Royal Assent (thereby becoming law) under section 35 of the Scotland Act.

The Scottish Government has subsequently confirmed they do not intend to appeal the decision. Therefore, the process for granting a gender recognition certificate in Scotland remains unchanged from the Gender Recognition Act 2004.

End Notes

- ¹ [Scottish Commission for Human Rights Act 2006 section 2.](#)
- ² [World Health Organisation \(WHO\) \(2021\) Devastatingly pervasive: 1 in 3 women globally experience violence.](#)
- ³ [Scottish Government. Scottish Crime and Justice Survey \(2020/21\).](#)
- ⁴ [Scottish Government. Domestic abuse: statistics recorded by the police in Scotland - 2021/22.](#)
- ⁵ [The Scotland Act 1998 Sch.5.](#)
- ⁶ See: Scottish Government (2018) [Equally Safe strategy - Violence against women and girls \(VAWG\) - gov.scot \(www.gov.scot\)](#)
- ⁷ See: [Homepage - NACWG \(generationequal.scot\)](#)
- ⁸ See: Scottish Government, [Scotland's Gender Equality Index 2020 \(data.gov.scot\)](#)
- ⁹ See: Scottish Government, [A fairer Scotland for women: gender pay gap action plan - gov.scot \(www.gov.scot\)](#)
- ¹⁰ See: Scottish Government, [Women's health plan - gov.scot \(www.gov.scot\)](#)
- ¹¹ See: Scottish Parliament, [A Parliament for All](#)
- ¹² See: [Scotland's Gender Equality Index 2020 \(data.gov.scot\)](#)
- ¹³ See: Scottish Government, [Gender Pay Gap Statistics](#)
- ¹⁴ See: Engender, [Sex and Power \(engender.org.uk\)](#)

¹⁵ See: Scottish Government, [Equality Outcomes Mainstreaming Report](#)

¹⁶ See: NACWAG [Our Recommendations - NACWG \(generationequal.scot\)](#)

¹⁷ See: NACWAG [Advisory Council Meetings - NACWG \(generationequal.scot\)](#)

¹⁸ See: NACWAG [NACWG-Accountability-Event-Meeting-Note-11-Jan-2023.pdf \(generationequal.scot\)](#)

¹⁹ See: Scottish Government and COSLA: [Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls \(www.gov.scot\)](#)

²⁰ See: The Scottish Human Rights Commission (Forthcoming) "It's Not a Story, It's What Happened" Victim-Survivors of Gender-Based Violence: In Our Words

²¹ See: Scottish Government, [Equality Act 2010 \(legislation.gov.uk\)](#)

²² See: Scottish Government, [Equally Safe Short Life Delivery Plan SUMMER 2022 - AUTUMN 2023 \(www.gov.scot\)](#)

²³ SafeLives (2017) [Disabled survivors too: Disabled people and domestic abuse.](#)

²⁴ SafeLives (2017) [Disabled survivors too: Disabled people and domestic abuse.](#)

²⁵ Wise Women (2015) [Daisie project: violence against disabled women survey.](#)

²⁶ Engender (2018) Our Bodies Our Rights. See: [DAWR \(engender.org.uk\)](#); Impact Funding Partners (2020) Guest Blog: GDA –

Disabled Women & Domestic Violence. See: [Guest Blog: GDA - Disabled Women & Domestic Violence - Impact Funding Partners](#)

²⁷ See: [A Fairer Scotland For Disabled People - Our Delivery Plan to 2021 for the United Nations Convention on the Rights of Persons with Disabilities \(www.gov.scot\)](#)

²⁸ See: [Progress Report: A Fairer Scotland for Disabled People \(www.gov.scot\)](#)

²⁹ Scottish Parliament [Equalities, Human Rights and Civil Justice Committee \(2022\) Official Report](#) - Tuesday 31 May 2022.

³⁰ Nevens, K., and Hutchison, E., 2024. 'Falling between the cracks: girls' rights are human rights,' Zero Tolerance. (Forthcoming)

³¹ [NHS Health Scotland \(2018\) What health workers need to know about gender-based violence: an overview](#)

³² Scottish Women's Aid and the Young Women's Movement (2022), [The Rise Report](#)

³³ Scottish Women's Aid and the Young Women's Movement (2022), [The Rise Report](#)

³⁴ [Girlguiding Scotland \(2020\) Girls In Scotland 2020](#)

³⁵ See: [Zero Tolerance \(2023\) Reform of the Criminal Law to Address Misogyny Briefing](#)

³⁶ [LGBT Youth Scotland \(2020\) LGBT Young Women & Girls in Scotland 2020 Consultation - Briefing](#)

³⁷ [Girlguiding Scotland \(2020\) Girls In Scotland 2020](#)

³⁸ [NSPCC \(2009\) Partner exploitation and violence in teenage intimate relationships](#)

³⁹ [Girlguiding UK \(2021\) Girls' Attitudes Survey](#)

⁴⁰ See: [Equally Safe at School: the evidence on gender-based violence and young people](#)

⁴¹ See: [Sexual harassment in secondary school: Prevalence and ambiguities. A mixed methods study in Scottish schools | PLOS ONE](#)

⁴² See: [Sexual harassment in secondary school: Prevalence and ambiguities. A mixed methods study in Scottish schools | PLOS ONE](#)

⁴³ See: SCLD, [Unheard Unequal Unjust But Not Hidden Anymore: Women with Learning Disabilities' Experiences of Gender-Based Violence in Scotland](#)

⁴⁴ See: SCLD, [Unheard Unequal Unjust But Not Hidden Anymore: Women with Learning Disabilities' Experiences of Gender-Based Violence in Scotland](#)

⁴⁵ See: Rape Crisis Scotland, [Delivering sexual violence support services that work for survivors of colour](#)

⁴⁶ See: [Met chief: Black women's trust in policing has worsened in last year | The Independent](#)

⁴⁷ See: Rape Crisis Scotland, [SRG-Police-Responses-in-Scotland-Report---RGB-spreads.pdf \(rapecrisisscotland.org.uk\)](#)

⁴⁸ See: [Scotland and Immigration: Moving beyond political narratives of openness \(eurac.edu\)](#)

⁴⁹ See: First Light | Domestic abuse and sexual violence support | Gypsies and Travellers; South East Wales Women's Aid Consortium (2010), Domestic Abuse & Equality: Gypsy & Traveller Women; The Guardian | On the road to change: dealing with domestic violence in Gypsy and Traveller groups, all as cited in [LIME \(limeculture.co.uk\)](http://limeculture.co.uk)

⁵⁰ See: [Tackling inequalities faced by the Gypsy, Roma and Traveller communities \(parliament.uk\)](http://parliament.uk)

⁵¹ See: Scottish Government, [3. Background - Gypsy/Travellers - accommodation needs: evidence review - gov.scot \(www.gov.scot\)](http://www.gov.scot)

⁵² See: [EMCDDA home page | www.emcdda.europa.eu](http://www.emcdda.europa.eu); [Scotland drugs deaths remain highest in Europe despite slight fall in latest figures | Euronews](http://euronews.com)

⁵³ See: [Drug-related Deaths in Scotland in 2022 | National Records of Scotland \(nrscotland.gov.uk\)](http://nrscotland.gov.uk)

⁵⁴ [E. Moir \(2022\) Hidden GBV: Women and substance use](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC6888888/)

⁵⁵ See: [Saoirse - Liber8](http://www.liber8.com)

⁵⁶ See: [Hidden GBV: Women and substance use - PMC \(nih.gov\)](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC6888888/)

⁵⁷ See: [WRASAC Dundee & Angus | Womens Hub](http://www.womenshub.org)

⁵⁸ See: [Women and drugs: health and social responses | www.emcdda.europa.eu](http://www.emcdda.europa.eu)

⁵⁹ See: [Concerns raised again about Dundee project's conditional support to women – SDF – Scottish Drugs Forum](http://www.scottishdrugsforum.com)

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- ⁶⁰ See: [Information for LGBTQ+ survivors | Scottish Women's Rights Centre \(scottishwomensrightscentre.org.uk\)](https://scottishwomensrightscentre.org.uk)
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