

Cabinet Secretary for Justice and Home Affairs submission of 19 September 2023

PE1887/M: Create an Unborn Victims of Violence Act

I wanted to provide the committee with an update on the Scottish Government's considerations of PE1887 as promised in my predecessor's letter earlier this year.

Let me begin by saying that I fully recognise the tragic circumstances outlined by the Petitioner which no woman should ever have to endure.

I have to balance that position with the very real challenges that are always presented when looking at proposals on new pieces of legislation and law; and to consider if there are other avenues to explore to achieve the same end.

While I recognise the Committee's support for the Petition, I have noted that you are also aware of the clear and evident difficulties in creating any new offence in this area, particularly but not exclusively in terms of how it could be proven. It is likely to prove difficult, both medically and causally, to demonstrate for example, that psychological or another form of abuse led to a woman's miscarriage. Committee members and those invited to provide evidence outlined some of those challenges and made clear how the law currently reflects these circumstances through judicial process and how that might be strengthened.

As part of the Committee's considerations you will already be aware that Section 2 of the Domestic Abuse (Scotland) Act 2018 Act in particular provides a non-exhaustive definition of what is considered "abusive behaviour" for the operation of the domestic abuse offence, and this includes behaviour that is violent, threatening or intimidating or that has as its purpose or relevant effect the frightening, humiliating, degrading or punishing of a partner or ex-partner. The Act therefore recognises the multi-faceted nature of domestic abuse, which is much more than physical abuse. The maximum penalty for an offence under section 1 of the Act is imprisonment for a term of up to 14 years.

It is for Police Scotland and the COPFS to investigate and prosecute cases under the domestic abuse offence, including decisions about what

conduct may be included in a course of conduct, and it is understood that common law and other statutory offences may be used depending on the individual facts and circumstances of each case.

For example, the common law offence of assault may also apply in those instances the Petitioner describes, where the violent actions of a perpetrator cause the victim to miscarry, or a perpetrator forces a woman to terminate her pregnancy against her will. The maximum penalty for the common law offence of assault ranges up to life imprisonment and is limited only by the sentencing powers of the court in which the case is heard.

Were the Scottish Parliament to consider any change to the law in this area there would need to be considerable thought given to the possibility of unintended consequences.

With those considerations, I am not persuaded at this time that we should introduce a new offence, but I do note the ongoing considerations of the Sentencing Council and the fact that are currently considering their approach to sentencing guidelines.

Please keep me advised of the committee's considerations.

Yours sincerely

Angela Constance MSP