

Prevention of Domestic Abuse (Scotland) Bill

Policy Memorandum

Introduction

1. As required under Rule 9.3.3A of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Prevention of Domestic Abuse (Scotland) Bill introduced in the Scottish Parliament on 7 May 2025.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 67–EN);
 - a Financial Memorandum (SP Bill 67–FM);
 - a Delegated Powers Memorandum (SP Bill 67–DPM);
 - statements on legislative competence by the Presiding Officer and the Member in Charge of the Bill (SP Bill 67–LC).
3. This Policy Memorandum has been prepared by the Non-Government Bills Unit on behalf of Pam Gosal MSP (“the Member”) to set out the Member's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Policy objectives of the Bill

4. In 2023-2024, there were almost 64,000 domestic abuse incidents in Scotland, an increase of 3% compared to the previous year (almost 62,000 in 2022-23).¹ In 2023-24 more than four out of five (83%) victims of domestic abuse were female and 81% of incidents involved a female victim and a male suspected perpetrator. More than half of these incidents in 2023-2024 (just over 32,000) were committed by people who already had a history of domestic abuse.
5. The Member believes action is essential to reverse the trend of rising numbers of instances of domestic abuse that cause long-term harm to victims, their families, and

¹ Scottish Government. (2024, November 19). Domestic abuse: statistics recorded by the Police in Scotland – 2023-24. Retrieved from: <https://www.gov.scot/publications/domestic-abuse-statistics-recorded-police-scotland-2023-24/documents/>.

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wider communities. Many incidents of domestic abuse will go unreported. Domestic abusers will in many cases go on to reoffend; in a report relating to England and Wales, four in five perpetrators of domestic abuse homicide were known to police before homicide, three in five of them for domestic abuse.² The Member believes this demonstrates the need for multi-agency management of domestic abuse offenders.

6. The Covid-19 pandemic had a significant impact on the levels of domestic abuse as highlighted in two reports published by the Scottish Government. The first report³ stated that, following an initial drop in domestic abuse referrals in the initial period of lockdown, referrals began to increase as lockdown progressed. The report also found that lockdown created specific challenges for Black, Asian, and Minority Ethnic (BAME) women and stated that these were related to 'legal applications and appeals, and separation from abusive partners.'⁴ The second report⁵ highlighted that reportedly 10 % of domestic abuse organisations found that lockdown had led to an increase in the number of referrals for minority groups, including BAME people and disabled people.

7. The Prevention of Domestic Abuse (Scotland) Bill ("the Bill") aims to reduce the incidences of domestic abuse (including reducing levels of re-offending), through a series of measures including preventative measures, rehabilitation measures, increasing data to inform work to reduce domestic abuse, and long-term monitoring of those convicted of domestic abuse offences. In summary the Bill covers:

- The introduction of notification requirements for domestic abuse offenders, similar to those for sex offenders, to ensure they can be effectively monitored and subject to monitoring and management through the existing multi-agency public protection arrangements (MAPPAs) under the Management of Offenders etc. (Scotland) Act 2005⁶ (Part 1 of the Bill);
- An increased focus at a number of stages of the criminal justice system on rehabilitation measures for domestic abuse offenders (Part 2 of the Bill). This covers:

² Domestic Homicide Project. (2024, March). Domestic Homicides and Suspected Victim Suicides 2022-2023 Report. Retrieved from: <https://www.vkpp.org.uk/vkpp-work/domestic-homicide-project/>.

³ Scottish Government. (2020, June 19). Coronavirus (COVID-19): domestic abuse and other forms of violence against women and girls - 30/3/20-22/05/20. Retrieved from: <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2020/09/coronavirus-covid-19-domestic-abuse-forms-violence-against-women-girls-during-phases-1-2-3-scotlands-route-map-22-11-august-2020/documents/coronavirus-covid-19-domestic-abuse-forms-violence-against-women-girls-during-phases-1-2-3-scotlands-route-map-22-11-august-2020/coronavirus-covid-19-domestic-abuse-forms-violence-against-women-girls-during-phases-1-2-3-scotlands-route-map-22-11-august-2020/govscot%3Adocument/coronavirus-covid-19-domestic-abuse-forms-violence-against-women-girls-during-phases-1-2-3-scotlands-route-map-22-11-august-2020.pdf>.

⁴ Ibid., p. 8.

⁵ Scottish Government. (2020, September 18). Coronavirus (COVID-19): domestic abuse and other forms of violence against women and girls during Phases 1, 2 and 3 of Scotland's route map (22 May to 11 August 2020). Retrieved from: <https://www.gov.scot/publications/coronavirus-covid-19-domestic-abuse-forms-violence-against-women-girls-during-phases-1-2-3-scotlands-route-map-22-11-august-2020/documents/>.

⁶ Management of Offenders (Scotland) Act 2005. Retrieved from: <https://www.legislation.gov.uk/asp/2005/14/contents>.

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- prior to sentencing: the court to obtain a report from the local authority setting out an assessment of the suitability of the offender for participation in appropriate rehabilitation services;
- while in custody: throughcare support to include an assessment of the suitability of the offender for participation in appropriate rehabilitation services; and
- prior to release: the Parole Board to obtain a report from the local authority setting out an assessment of the suitability of the prisoner for participation in appropriate rehabilitation services;
- The introduction of collection of data on the victims of domestic abuse by Police Scotland, the Crown Office and Procurator Fiscal Service and charities and the production and publication of an annual report to the Scottish Parliament by Scottish Ministers to enable scrutiny of the data collected (Part 3 of the Bill); and
- The establishment of duties on Scottish Ministers and education authorities around the promotion, facilitation and support of domestic abuse education in schools including related guidance, standards and reporting (Part 4 of the Bill).

8. The basis for the provisions in Part 1 is that the Member has identified that there is no bespoke risk management pathway for domestic abuse offenders as a group.

9. The Member seeks to create a specific pathway for risk management of domestic abuse offenders which will introduce the domestic abuse notification requirement. The existence of a specific pathway for domestic abuse offenders will reflect the serious risk that domestic abuse offenders pose in terms of reoffending and provide assurance to the public that the risk is being monitored.

10. The Member believes that the introduction of notification requirements for those convicted of domestic abuse could combine with the existing powers in MAPPA and the Disclosure Scheme (see further detail later in this document, including common obligations under MAPPA – see paragraph 42).

11. The Member hopes that this will ensure that offenders are aware of and comply with monitoring measures that would both deter them from re-offending and mean that information is readily available including to enable the Police to make more regular and effective interventions.

12. The Member therefore believes there needs to be a notification requirement linked to the existing MAPPA scheme aimed at managing offenders and any risk posed to the public. The notification scheme set out in Part 1 is based in large part on the approach taken for the sex offenders register under the Sexual Offences Act 2003.⁷ In addition to enabling the police and others to continue to actively monitor offenders, the stringent notification requirements also act as a regular reminder to the individual of

⁷ Sexual Offences Act 2003. Retrieved from: <https://www.legislation.gov.uk/ukpga/2003/42/contents>.

their conviction and the ongoing monitoring they are subject to which will have a punitive feel and create a deterrent effect on the individual. The existence of such a scheme and its impacts on an individual could also, the Member hopes, act as a wider deterrent in society.⁸

13. In relation to Part 2, the Member believes that while deterrents and punishments form a significant part of an effective domestic abuse strategy, so do rehabilitation measures which can be crucial in reducing reoffending. Lessons from other countries show that rehabilitation measures imposed on some of those convicted of domestic abuse can be genuinely effective in reducing reoffending rates. For example, the award-winning Project Mirabal research on Domestic Violence Perpetrator Programmes (DVPPs) at the University of Durham found that the DVPPs “play an important part in the quest to end domestic violence”.⁹ It should be noted that the findings of the Project Mirabal Final Report show that rehabilitation measures are more effective for physical abuse offenders, rather than those more likely to display traits of coercive control.¹⁰ This Bill therefore seeks to introduce a requirement for a number of suitable measures to be used by the Scottish justice system. The provisions in Part 2 seek to ensure that every key phase of an offender’s passage through the criminal justice system includes an assessment of their suitability for participation in a programme of appropriate rehabilitation services. This is to seek to ensure that effective rehabilitation features in every experience of the system by a domestic abuse offender in order to reduce the likelihood of an individual committing further domestic abuse offences. The Member acknowledges there is valuable rehabilitation working already taking place, such as through the Caledonian System (detailed further below), but such programmes are not available as standard across Scotland at present.

14. The provisions in Part 3 in part have a genesis in the Member’s own personal experiences growing up. The Member feels passionately about the importance of reporting domestic abuse and of seeking help and support. She draws on her personal experience from her childhood and growing up within the BAME community, when she would watch as survivors of domestic abuse entered her mother’s shop in Argyle Street in Glasgow, seeking help and support. These victims would rarely engage with the authorities and so the extent of the prevalence of domestic abuse was not recorded or understood at that time. The Member is determined that this needs to change, as the first step in addressing the extent of the impact of domestic abuse is understanding its prevalence. However, it is the Member’s view that to this day, the data collected by authorities is still lagging, making it difficult to determine where services are needed. The Member also understands that there is no ‘one size fits all’ approach, when dealing with domestic abuse due to cultural differences. For example, in some BAME communities, there may be a stigma associated with reporting domestic abuse.

⁸ A person convicted of a sexual offence automatically becomes subject to the notification requirements of the Sexual Offences Act 2003. They become a Registered Sex Offender (RSO). Schedule 3 of the Sexual Offences Act 2003 lists the relevant sexual offences.

⁹ Durham University. (2015, January). Project Mirabal Final Report. Retrieved from: <http://www.ignition-learn.co.uk/assets/resources/ProjectMirabalfinalreport.pdf>.

¹⁰ Durham University. (2015, January). Project Mirabal Final Report. Retrieved from: <http://www.ignition-learn.co.uk/assets/resources/ProjectMirabalfinalreport.pdf>.

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15. The Independent Strategic Review of Funding and Commissioning Violence Against Women and Girls (“Review”) identified the development of a core dataset and evaluation methodology as an immediate priority. The Review identified that there is currently a lack of “disaggregated intersectional data and research with minoritised groups.”¹¹ In doing so it highlighted international law provisions. The Review also highlighted that the current lack of a “core dataset” hinders the ability of public bodies to undertake work such as local needs assessments.

16. The Bill requires data to be collated at the point at which an individual first engages with the Police, meaning a dataset could be produced on the characteristics of those reporting crimes involving domestic abuse. The Bill also requires data to be collated by the Crown Office and Procurator Fiscal Service, meaning a dataset could be produced on the characteristics of victims where charges are brought against an offender. In addition, the Bill requires data to be collated by charities in certain circumstances, and this should provide datasets on the individuals accessing support services provided by charities such as counselling, advice and refuge. Comparing these datasets will give insight, for example on the extent to which people with different characteristics access informal support through charities and the extent to which people with those same characteristics (or combination of characteristics) engage with the authorities, specifically the police, after incidents of domestic abuse. It will be a valuable first step in establishing the extent to which different groups in society are victims of domestic abuse and the extent to which those groups seek some form of help or assistance as a result.

17. The Bill introduces a requirement for the Scottish Government to collect and report on the collected data regularly in order to understand the specific experiences of different communities and demographics and to then identify effective solutions to make the system work for all demographics. It specifically requires Police Scotland, the Crown Office and Procurator Fiscal Service and charities to collect data from victims of domestic abuse at the point at which that individual engages with their services. While this data is very valuable for the reasons set out, the Member is extremely aware that individuals will be in a traumatised, exposed and fearful frame of mind when in first contact with these bodies. In addition to these organisations calling on their existing expertise, the Bill includes provision for victims to decide they do not want to share information. In addition, charities can decide not to seek to collect data if they consider this would be unreasonable given the person’s circumstances or that it would be impracticable to do so having regard to the charity’s resources.

18. Lastly, in relation to Part 4, the Member believes that introducing domestic abuse education to young people will help raise understanding and awareness of domestic

¹¹ Scottish Government. (2023, September). The Independent Strategic Review of Funding and Commissioning of Violence Against Women and Girls Services. Retrieved from: <https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2023/06/violence-against-women-girls-independent-strategic-review-funding-commissioning-services-report/documents/independent-strategic-review-funding-commissioning-violence-against-women-girls-services/independent-strategic-review-funding-commissioning-violence-against-women-girls-services/govscot%3Adocument/independent-strategic-review-funding-commissioning-violence-against-women-girls-services.pdf>.

abuse and facilitate a longer-term cultural shift necessary to prevent domestic abuse in Scotland. In the shorter-term young people could come to be more aware of the types of domestic abuse and the indicators of it. As well as ensuring young people grow up mindful of the harm that domestic abuse causes, this education could also lead to more young people identifying concerning behaviour and confiding in school staff or their peers. Again, the Member is aware of ongoing valuable work in this area including through the Equally Safe in Schools initiative¹² (see paragraphs 77-80 for more detail), but the Member considers this is not happening across all education authorities in Scotland as standard. Part 4 is intended to ensure provision across Scotland as standard.

The policy and legislative landscape

Part 1 – Notification requirements for domestic abuse offenders

19. Part 1 of the Bill introduces notification requirements for domestic abuse offenders to ensure they can be effectively monitored and subject to management through the existing multi-agency public protection arrangements (MAPPA) under the Management of Offenders etc. (Scotland) Act 2005.¹³

20. The following sections set out the legal landscape and existing arrangements in relation to this provision, including: the existing domestic abuse offences that would trigger a requirement for an individual to be part of the new notification scheme, the scheme that the notification scheme is broadly based upon - the Violent and Sex Offender Register under the Sexual Offences Act 2003, and the existing schemes that data in the new notification scheme would feed into (specifically MAPPA, and by extension the Disclosure Scheme for Domestic Abuse Scotland and the Multi Agency Risk Assessment Conference).

Existing domestic abuse offences

21. Section 1(2) of the Bill sets out the relevant offences involving domestic abuse. A person convicted of one of these offences on indictment and given a sentence of imprisonment for 12 months or more, or a community payback order (in the terms set out in 1(1)(b)) would be subject to the notifications requirements set out in Part 1. These offences are set out in more detail below.

Crime of domestic abuse

22. Section 1 of the Domestic Abuse (Scotland) Act 2018 (“2018 Act”)¹⁴ created an offence of abusive behaviour towards a partner or ex-partner if certain conditions are satisfied. Section 2 of the 2018 Act then describes what constitutes abusive behaviour and the effects of that behaviour. The intention is that it covers behaviour that is

¹² Equally Safe at School. Retrieved from: <https://www.equallysafeatschool.org.uk/>

¹³ Management of Offenders (Scotland) Act 2005. Retrieved from: <https://www.legislation.gov.uk/asp/2005/14/contents>.

¹⁴ Domestic Abuse (Scotland) Act 2018. Retrieved from: <https://www.legislation.gov.uk/asp/2018/5/contents>.

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abusive, coercive, or controlling. Section 11 of the 2018 Act provides that, for the purpose of the offence, “partner” means a person’s spouse or civil partner, as well as those cohabiting, or a person in an intimate personal relationship with the accused (such as boyfriends and girlfriends including same-sex relationships). Former relationships are also included.

23. The maximum sentence for an offence under section 1 of the 2018 Act is up to 12 months imprisonment and/or a fine on summary conviction; and up to 14 years imprisonment and/or a fine on conviction on indictment.

24. Section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016¹⁵ created a statutory aggravation of domestic abuse. This aggravation can be applied to any offence involving the abuse of a partner or ex-partner. Where the aggravation is proved, the court must take it into account during sentencing and record that the conviction is one aggravated by abuse of a partner or ex-partner.

25. Most recently, the Domestic Abuse (Protection) (Scotland) Act 2021¹⁶ introduced new forms of protection from domestic abuse. Part 1 of the Domestic Abuse (Protection) (Scotland) Act 2021 (“2021 Act”) makes provision for new forms of protection for partners and ex-partners by issuing Domestic Abuse Protection Notices (“DAPN”) and Domestic Abuse Protection Orders (“DAPO”).¹⁷ These orders are intended to fill a gap between reporting the domestic abuse and civil or criminal court procedure by allowing immediate protection for a short time for a person experiencing domestic abuse. The space created by these orders is intended to give the victim safety and time to consider appropriate steps to address their longer-term safety. Without these measures, a person wishing to obtain protection from domestic abuse, particularly in relation to keeping a perpetrator away from their home, can only do so if the perpetrator enters the criminal justice system or if the victim themselves takes out a civil court order against the perpetrator.

26. It is a criminal offence to breach a DAPN with a maximum penalty of imprisonment for up to 12 months and/or a fine. The maximum penalty for breaching a DAPO is imprisonment of up to 5 years and/or a fine. As the notification requirements are only imposed on those convicted on indictment, it is only the latter which is relevant for the Bill.

¹⁵ Abusive Behaviour and Sexual Harm (Scotland) Act 2016. Retrieved from: <https://www.legislation.gov.uk/asp/2016/22/contents>.

¹⁶ Domestic Abuse (Protection) (Scotland) Act 2021. Retrieved from: <https://www.legislation.gov.uk/asp/2021/16/contents>.

¹⁷ Part 1 of the Act is not in force, and it is not known when it will be brought into force by the Scottish Government. SPICe. (2023, October 5). Retrieved from: [https://spice-spotlight.scot/2023/10/05/domestic-abuse-a-civil-law-perspective/#:~:text=The%20Domestic%20Abuse%20\(Protection\)%20\(Scotland\)%20Act%202021,-For%20those%20with&text=Part%201%20of%20the%202021,police%20to%20enforce%20the%20law](https://spice-spotlight.scot/2023/10/05/domestic-abuse-a-civil-law-perspective/#:~:text=The%20Domestic%20Abuse%20(Protection)%20(Scotland)%20Act%202021,-For%20those%20with&text=Part%201%20of%20the%202021,police%20to%20enforce%20the%20law).

The latest update from the Scottish Government (2025, January 14). Retrieved from: <https://www.parliament.scot/-/media/files/committees/equalities-human-rights-and-civil-justice-committee/correspondence/2025/non-implementation-of-acts-of-the-scottish-parliament-14-january-2025.pdf>.

The Violent and Sex Offender Register

27. As mentioned above, the notification scheme is largely modelled on the existing Violent and Sex Offender Register (ViSOR). The Sexual Offences Act 2003 (the 2003 Act)¹⁸ currently requires that those convicted of a sexual offence will be subject to certain notification requirements.¹⁹ ViSOR is a secure UK wide national database that has been developed to support MAPPA by assisting cooperative working between the Responsible Authority agencies. It is used in the joint management of individuals posing a risk of serious harm. It is used by all UK police forces to record the details of all Registered Sex Offenders. It details their ongoing management while they remain Registered Sex Offenders.²⁰

28. ViSOR is also used by a number of other agencies including the National Probation Service, Criminal Justice Social Work and the Scottish Prison Service.²¹ As well as recording sex offenders, ViSOR has records of those imprisoned for more than 12 months for violent offences and unconvicted people thought to be at risk of offending. ViSOR is one of the systems used by MAPPA partners to facilitate the secure exchange and storage of information under the Duty to Cooperate. In Scotland all individuals subject to MAPPA should be entered onto ViSOR.²² While the database is an important tool for public protection and law enforcement, it is separate from the MAPPA.

29. In Scotland, the notification requirements apply to anyone convicted of an offence listed in Schedule 3 of the 2003 Act and any other offence where the court determines that there was a significant sexual aspect to the offender's behaviour in committing the offence.²³

30. There is no general right of public access to this information. However, in certain circumstances parents, carers, or guardians of children under 18 years old can make a request for information about someone who may have contact with their child, if they are concerned that they might be a child sexual offender.²⁴

¹⁸ Sexual Offences Act 2003. Retrieved from: <https://www.legislation.gov.uk/ukpga/2003/42/contents>.

¹⁹ Section 10 of the Management of Offenders etc. (Scotland) Act 2005 refers to the notification requirements of Part 2 of the Sexual Offences Act 2003.

²⁰ Police Scotland. Policing of Registered Sex Offenders. Retrieved from: <https://www.scotland.police.uk/about-us/what-we-do/specialist-crime-division/sex-offender-policing-units/policing-of-registered-sex-offenders/>.

²¹ Police Scotland. Policing of Registered Sex Offenders. Retrieved from: <https://www.scotland.police.uk/about-us/what-we-do/specialist-crime-division/sex-offender-policing-units/policing-of-registered-sex-offenders/>.

²² Scottish Government. (2016, March 3). Multi-Agency Public Protection Arrangements (MAPPA): national guidance 2016. Retrieved from: <https://www.gov.scot/publications/multi-agency-public-protection-arrangements-mappa-national-guidance-2016/pages/17/>.

²³ Sexual Offences Act 2003, paragraph 60 to Schedule 3. Retrieved from: <https://www.legislation.gov.uk/ukpga/2003/42/schedule/3>.

²⁴ Scottish Government. (2015, February 20). Sex offender community disclosure scheme: overview. Retrieved from: <https://www.gov.scot/publications/sex-offender-community-disclosure-scheme/>.

Multi-Agency Public Protection Arrangements

31. The purpose of MAPPA is public protection and managing the risk of serious harm. MAPPA is not a statutory body in itself, but it is a statutory framework through which the Responsible Authorities discharge their statutory responsibilities and protect the public in a co-ordinated manner.

32. MAPPA²⁵ are a set of statutory partnership working arrangements introduced in 2007 under Section 10 of the Management of Offenders etc. (Scotland) Act 2005.²⁶ Section 10 requires that responsible authorities must jointly establish arrangements for the assessment and management of the risks posed by certain categories of offender. In Scotland, MAPPA brings together Police Scotland, the Scottish Prison Service (SPS), Health Boards and the Local Authorities, in partnership as the Responsible Authorities, to assess and manage the risk posed by:

- sex offenders,
- certain violent offenders and
- those offenders considered to be a continuing risk to the public.

33. The categories of offender covered by section 10 are those subject to the sex offender notification requirements under Part 2 of the Sexual Offences Act 2003,²⁷ those convicted on indictment of an offence inferring personal violence who are subject to a probation order, or who are or will be on release from prison and subject to supervision in the community, and those considered by virtue of their conviction to pose a continuing risk to the public. The arrangements also apply to individuals acquitted on grounds of insanity or found to be insane following proceedings taken on indictment.

34. At present offenders who fall within the scope of section 10 of the Management of Offenders etc. (Scotland) Act 2005 are automatically referred to MAPPA however, many convicted of domestic abuse do not fall within the scope of MAPPA. In particular, if they have not been convicted on indictment, have not been placed under MAPPA as part of a supervision requirement or are not deemed to be a risk of serious harm they do not fall within the scope of section 10²⁸ -automatic referral to MAPPA.

35. Those who have functions in relation to the assessment and management of that risk (including the Responsible Authorities) are to have regard to the guidelines and standards issued by the Risk Management Authority for the purpose of ensuring the effective assessment and minimisation of the risk of a person who has been convicted of an offence.

²⁵ Scottish Government. Multi-Agency Public Protection Arrangements. Retrieved from: <https://www.gov.scot/policies/reducing-reoffending/public-protection-multi-agency-public-protection-arrangements-mappa/>.

²⁶ Management of Offenders etc. (Scotland) Act 2005. Retrieved from: <https://www.legislation.gov.uk/asp/2005/14/section/10>.

²⁷ Sexual Offences Act 2003. Retrieved from: <https://www.legislation.gov.uk/ukpga/2003/42/contents>.

²⁸ Section 10 of the Management of Offenders etc. (Scotland) Act 2005. Retrieved from: <https://www.legislation.gov.uk/asp/2005/14/section/10>.

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36. Within MAPPA there are 3 different levels of risk:

- Level 1: Routine Risk Management;
- Level 2: Multi-Agency Risk Management; and
- Level 3: Multi Agency Public Protection Panels (MAPPP).

37. Each area has discretion in deciding which level cases should be managed at based on the most current risk assessment, analysis of risk of serious harm and the Risk Management Plan (RMP).

38. It is worth noting that, for individuals who have been convicted on indictment of a domestic abuse offence (as defined in section 1(2) of the Bill), the following will currently fall within section 10 and thus be referred to MAPPA:

- Where the offence infers personal violence and the individual is subject to a community payback order imposing a supervision requirement.
- Where the offence infers personal violence and by reason of that conviction the offender is required on release to be subject to supervision in the community by any enactment, order or licence.
- Individuals who are assessed by the Responsible Authorities as posing a risk of serious harm to the public at large.²⁹

39. Therefore, those offenders that will be added to the remit of section 10 and thus automatically referred to MAPPA are:

- Individuals convicted on indictment of a domestic abuse offence under section 1(2) of the Bill and subject to a community payback order or other supervision requirement on release, for behaviour that did not amount to an offence inferring personal violence.
- Individuals convicted on indictment, and sentenced to over 12 months imprisonment for a domestic abuse offence as defined in section 1(2) of the Bill and not assessed as causing serious harm to the public at large.

40. A referral will be made to MAPPA by the Responsible Authority with evidence and an assessment will then be made of whether the criteria for inclusion have been met.

41. Where an offender is referred to MAPPA they are required to comply with certain obligations and conditions as part of their supervision and management. The specific requirements can vary depending on the individual's risk level, the nature of their offences and the recommendations made by the multi-agency panel. Management plans will be tailored to the individual.

²⁹ Scottish Government. (2022, March 31). Multi-Agency Public Protection Arrangements (MAPPA): national guidance. Retrieved from: <https://www.gov.scot/publications/scottish-government-multi-agency-public-protection-arrangements-mappa-national-guidance/pages/31/>.

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42. Common obligations that offenders referred to MAPPA may be required to fulfil include:

- Regular reporting to ensure compliance with conditions;
- Participation in programmes addressing offending behaviour;
- Restrictions on contact with individuals/groups;
- Restrictions on going to certain areas;
- Accommodation at specific approved premises;
- May include covert monitoring/disclosure to members of the public for their protection.

43. In summary, through this Bill a larger cohort of individuals convicted of serious domestic abuse offences would be subject to the monitoring processes and common obligations under MAPPA.

Disclosure Scheme for Domestic Abuse Scotland

44. In Scotland, provision already exists for those who fear that their partner, or the partner of someone they know, may have a violent or abusive past. The Disclosure Scheme for Domestic Abuse Scotland (DSDAS) was set up in Scotland in 2016, following the roll out of a similar scheme in England and Wales known as “Clare’s law”. The scheme is named after Clare Wood,³⁰ who was murdered by her abusive ex-boyfriend in 2009. It was formally rolled out in England and Wales in 2014, following the landmark campaign led by Clare’s father Michael Brown.³¹

45. DSDAS enables the concerned person to request whether someone has a history of domestic abuse and if so, for that information to be disclosed to their partner.

46. DSDAS gives Police Scotland the power to disclose this information where they believe an individual may be at risk of abuse.³² Before the police disclose information, they will investigate the information they've received and meet with partner agencies, such as Social Work Services or the Prison Service to decide whether disclosing information is “lawful and necessary”. They will disclose information if police checks show that the partner has a record of abusive behaviour and there is other information that suggests a potential victim is at risk. In deciding whether to disclose, a balance needs to be struck between on the one hand protecting the public and the maintenance of law and order, and on the other hand the protection of individuals’ legal rights and any duty of care to them and their families.

³⁰ Clare’s Law website. Retrieved from: <https://clares-law.com/>.

³¹ Clare’s Law website. Retrieved from: <https://clares-law.com/>.

³² Police Scotland, Disclosure Scheme for Domestic Abuse Scotland. Retrieved from: <https://www.scotland.police.uk/advice-and-information/domestic-abuse/disclosure-scheme-for-domestic-abuse-scotland/>.

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47. The police will gather information from various sources including MAPPA, as well as previous reports of domestic abuse, convictions, cautions, non-conviction information and other relevant information.

48. Under DSDAS, Police Scotland proactively tell people that they may be at risk. This information can be given if it is not asked for. Information disclosed is confidential and only for use by the person at risk.³³

49. Under MAPPA instances of disclosure of information about a person subject to MAPPA to a third party can include:

- Where there are child protection concerns;
- Where an individual is employed in work which affords them inappropriate access to children or vulnerable people; and
- Where an individual is a partner or potential partner and they may be subject to an abusive relationship.³⁴

50. Therefore, adding more domestic abuse offenders to MAPPA through this Bill would presumably lead to an increase in the number of proactive disclosures to members of the public, specifically partners of those with previous domestic abuse offences where the police deem that person to be at risk.

Multi Agency Risk Assessment Conference

51. A Multi Agency Risk Assessment Conference (MARAC)³⁵ is a local meeting where representatives from statutory and non-statutory agencies meet to discuss individuals at high risk of serious harm or murder as a result of domestic abuse. The meeting allows agencies to share relevant and proportionate information about current risk, after which the Chair will summarise risks and ask agencies to volunteer actions to reduce risk and increase safety. The primary focus of the MARAC is to safeguard the adult victim. However, the MARAC will also make links with other agencies to safeguard children and manage the behaviour of the perpetrator. MARACs are now operating in all local authority areas in Scotland.

52. While MARACs do not have direct access to the ViSOR database, they can request information from the relevant agencies that have access to the database. The purpose of MARACs is to facilitate the exchange of information and expertise. MARACs do not have direct access to the MAPPA system. MAPPA is primarily focussed on managing the risks posed by high-risk offenders and developing management plans for those offenders. However, there may be cases where information shared during the

³³ Scottish Government. Multi-Agency Public Protection Arrangements (MAPPA): national guidance, 13. Disclosure. Retrieved from: <https://www.gov.scot/publications/scottish-government-multi-agency-public-protection-arrangements-mappa-national-guidance/pages/14/>.

³⁴ Scottish Government. (2022, March 31). Multi-Agency Public Protection Arrangements (MAPPA): national guidance: Disclosure. Retrieved from: <https://www.gov.scot/publications/scottish-government-multi-agency-public-protection-arrangements-mappa-national-guidance/pages/14/>.

³⁵ Safe Lives. Marac in Scotland. Retrieved from: <https://safelives.org.uk/resources-for-professionals/safelives-scotland/multi-agency-work-in-scotland/marac-in-scotland/>.

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MARAC meetings can be relevant to MAPPA. Sharing of information between MARAC and MAPPA is done on a case-by-case basis.

Part 2 – Assessment of offenders for rehabilitation programmes and services

53. The following sections set out the legal landscape and existing arrangements in relation to rehabilitation programmes and services, including: rehabilitation of those convicted of domestic abuse, the Parole Board for Scotland, and the Caledonian System.

Assessment of offenders prior to sentencing

54. Section 17 of the Bill amends the Criminal Procedure (Scotland) Act 1995. The amendment made by section 17 is intended to ensure that, prior to sentencing a court must obtain from the relevant local authority assessing the suitability of the offender for participation in a programme of appropriate rehabilitation services. It may be established by the court that an offender would benefit from such a programme and also that a prison sentence is not required. It is the Member's view that an offender deemed suitable who does not receive a prison sentence should be able to access such rehabilitation services. The Bill does not specifically make provision for such services but establishes a pathway to ensure all offenders are assessed for eligibility. The Member supports the expansion of the Caledonian System and other accredited programmes to ensure Scotland wide provision so that all those assessed as eligible can receive such support. The Scottish Government has committed to such an expansion by the end of this Parliamentary session (March 2026).³⁶

The Caledonian System

55. In Scotland, programmes aimed at the rehabilitation of offenders are accredited by the Scottish Advisory Panel on Offending Reduction (SAPOR).³⁷

56. The Caledonian System is the primary means of delivering rehabilitation services for offenders convicted of domestic abuse in Scotland.³⁸ The Caledonian System is a behaviour programme for men convicted of domestic abuse offences, as well as a support service for their partners and children. It is an integrated multi-agency approach underpinned by the principles of:

- A 'systems approach' – the combination of services for men, women and children.

³⁶ Scottish Government. (2022, May 26). Equality Budget Caledonian funding: October 2021 to March 2023. Retrieved from: <https://www.gov.scot/publications/equality-budget-caledonian-funding-october-2021-to-march-2023/>.

³⁷ Scottish Government. Scottish Advisory Panel on Offending Reduction (SAPOR): Overview. Retrieved from: <https://www.gov.scot/groups/scottish-advisory-panel-on-offending-reduction-sapor/>.

³⁸ Scottish Government. (2016, November 4). Caledonian System Evaluation: Analysis of a programme for tackling domestic abuse in Scotland. Retrieved from: <https://www.gov.scot/publications/caledonian-system-evaluation-analysis-programme-tackling-domestic-abuse-scotland/pages/3/>.

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- Working towards 'good lives' – the Caledonian System does not focus only on deficits, but also on personal goals for a 'good life' and how they could achieve these as a means of motivating them towards positive change.
- An 'ecological model' of behaviour – that abusive behaviour is influenced at various levels, from the individual, to the familial, to broader social and cultural contexts.

57. It is managed by Criminal Justice Social Work Services in local authorities and supported by a national team consisting of a co-ordinator, a national trainer and a data co-ordinator. The Caledonian System of rehabilitation is not on a statutory footing.

58. According to a [written answer](#) to a parliamentary question on 16 May 2024,³⁹ the Scottish Government announced additional investment of £11.4 million for justice social work services for 2024-25. The Scottish Government wrote to the 12 local authorities who currently do not deliver the Caledonian System seeking views on whether in light of the additional sums provided they wanted to consider roll out of the Caledonian System in their area and wished to access central training and support. All 12 areas responded and the majority of local authorities advised that their additional funding was being used for other areas that they considered to be of priority and they would not wish to consider rolling out of the Caledonian System at this time. Several areas did note potential interest and intention to meet the Caledonian National Team in Community Justice Scotland (CJS) to discuss the potential for any further roll out. Some local authority areas have committed themselves to delivering alternative domestic abuse programmes and therefore advised that they would not wish to change delivery to the Caledonian System at this time.

59. The core elements of the Caledonian System are: a Men's Programme,⁴⁰ a Women's Service⁴¹ and a Children's Service.⁴² Men are referred to the Caledonian

³⁹ Scottish Parliament. (2024, May 16). Written question and answer S6W-27628. Retrieved from: <https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S6W-27628>.

⁴⁰ A Men's Programme lasting at least two years and comprising a minimum of 14 one-to-one preparation and motivation sessions (Pre-Group stage), a Group Work stage of at least 26 weekly three-hour sessions, and further post group one-to-one work (Maintenance stage). Retrieved from: <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2016/11/caledonian-system-evaluation-analysis-programme-tackling-domestic-abuse-scotland/documents/00507596-pdf/00507596-pdf/govscot%3Adocument/00507596.pdf>.

⁴¹ A Women's Service, which provides safety planning, information, advice and emotional support to women partners and ex-partners of men referred to the Men's Programme. It is provided by dedicated Women's Workers, who aim both to reduce the risk to women and their children, and to improve women's social and emotional wellbeing. In contrast with the Men's Programme, the Women's Service is voluntary – women are not obliged to accept the support they are offered. Retrieved from: <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2016/11/caledonian-system-evaluation-analysis-programme-tackling-domestic-abuse-scotland/documents/00507596-pdf/00507596-pdf/govscot%3Adocument/00507596.pdf>.

⁴² Children's Service, which aims to ensure that the needs of children (whose father or whose mother's (ex) partner is on the Men's Programme) are met and their rights upheld. It is supported by Caledonian Children's Workers, who do not necessarily work with children directly but rather ensure their rights and needs are being considered both within the Caledonian System and by wider services. Retrieved from: <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and->

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Men's Programme following receipt of a court order, either as part of a Community Payback Order or Probation Order or as a requirement of post release supervision. On receipt of a court referral, the manager from the relevant service allocates an assessor (typically one of the case managers working with men on the programme) to undertake the man's assessment.⁴³ In certain areas of the country, men can also self-refer without going through the court process.⁴⁴

60. There are also other programmes available in certain council areas, such as UP2U and Fergus Programme.⁴⁵

Assessment of offenders while in custody

61. There is no existing statutory provision for rehabilitation measures specific to those convicted of domestic abuse offences. The general rehabilitative provision made available to those convicted of any criminal offence is referred to as "throughcare". "Throughcare" is used to provide services to all prisoners both during and after their sentences. This service can be statutory or discretionary. "Throughcare" is the co-ordinated provision of a range of social work and associated services to prisoners and their families to a person beginning when they first enter prison, either sentenced following conviction or on remand, throughout their period of imprisonment and following release into the community.

62. The Bail and Release from Custody (Scotland) Act 2023 amends the Community Justice (Scotland) Act 2016 to require Scottish Ministers to produce minimum standards for throughcare support. It also allows the Scottish Ministers to add further provision in connection with throughcare support as the Scottish Ministers consider appropriate.

63. The Scottish Prison Service, an executive agency of the Scottish Government, is tasked with holding prisoners in a safe and secure environment. It also seeks to provide services which support the rehabilitation of prisoners. This is often referred to in the criminal justice system as "purposeful activity". The term "purposeful activity" is generally used to cover a range of constructive activities within prisons and young offender institutions, including:

- work;
- education and vocational training;

[analysis/2016/11/caledonian-system-evaluation-analysis-programme-tackling-domestic-abuse-scotland/documents/00507596-pdf/00507596-pdf/govscot%3Adocument/00507596.pdf](https://www.gov.scot/publications/caledonian-system-evaluation-analysis-programme-tackling-domestic-abuse-scotland/documents/00507596-pdf/00507596-pdf/govscot%3Adocument/00507596.pdf).

⁴³ Scottish Government. (2016, November 4). Caledonian System Evaluation: Analysis of a programme for tackling domestic abuse in Scotland. 3.1 Uptake, engagement and attrition in the Men's Programme, p. 30.

Retrieved from: <https://www.gov.scot/publications/caledonian-system-evaluation-analysis-programme-tackling-domestic-abuse-scotland/documents/>.

⁴⁴ Scottish Sentencing Council. (2022, June 15). Community Justice Scotland Caledonian System Blog. Retrieved from: <https://www.scottishsentencingcouncil.org.uk/news-and-media/spotlight-on-sentencing-blog/cjs-caledonian-system-blog>.

⁴⁵ Community Justice Scotland. Domestic Abuse-Related Training by Local Authority. Retrieved from: <https://communityjustice.scot/community-justice/resources/domestic-abuse-training-by-local-authority/>

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- counselling and other rehabilitative programmes.

64. Local authorities are responsible for prison-based social work services. Other services, such as group work or support programmes may be provided or co-delivered in prisons by the local authority. Prison based social work services remain subject to the National Objectives for Social Work Services in the Criminal Justice System: Standards – Throughcare (2004).⁴⁶

65. The Member wants to introduce a new section into the Community Justice (Scotland) Act 2016⁴⁷ through section 18 of the Bill, that requires the Scottish Ministers to produce minimum standards for “throughcare support” for offenders in domestic abuse cases including provision for appropriate rehabilitation services and an assessment of the suitability of offenders for rehabilitation services.

Parole Board for Scotland

66. The Parole Board for Scotland is a Tribunal non-departmental public body. The Board is a judicial body which is independent of the Scottish Government and impartial in its duties. Its main aim is to ensure that those prisoners who are no longer regarded as presenting a risk to public safety may serve the remainder of their sentence in the community on licence under the supervision of a supervising officer. It is not the responsibility of the Board to consider questions of punishment and general deterrence. These issues are regarded as discharged, in the case of determinate sentence⁴⁸ prisoners, when a case is referred to the Board by the Scottish Ministers and on which the judiciary has deliberated in the case of indeterminate sentence⁴⁹ prisoners.⁵⁰

67. The Parole Board for Scotland will only recommend that prisoners are released into the community when it considers that they are no longer a danger to the public (while under the conditions of their licence). The Board’s recommendation, along with conditions of supervision, goes to the Scottish Ministers who make the decision.⁵¹

⁴⁶ Scottish Government. (2004, July 16). Justice social work guidance: Throughcare for long term prisoners and prisoners subject to supervised release orders: social work guidance. Retrieved from: <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2011/04/throughcare-for-long-term-prisoners-and-prisoners-subject-to-supervised-release-orders-social-work-guidance/documents/throughcare-for-long-term-prisoners-and-prisoners-subject-to-supervised-release-orders-social-work-guidance/throughcare-for-long-term-prisoners-and-prisoners-subject-to-supervised-release-orders-social-work-guidance/govscot%3Adocument/THROUGHHCARE%2BPROVISION%2BFOR%2BLONG%2BTERM%2BPRISONERS%2BAND%2BPRISONERS%2Bcircular.pdf>.

⁴⁷ Community Justice (Scotland) Act 2016. Retrieved from: <https://www.legislation.gov.uk/asp/2016/10/contents/enacted>.

⁴⁸ Determinate sentences are sentences that are set for a certain length of time. Retrieved from: <https://www.scottishsentencingcouncil.org.uk/sentencing-information/custodial-sentences>.

⁴⁹ Indeterminate sentences are sentences that do not have a set end point, such as a life sentence. Retrieved from: <https://www.scottishsentencingcouncil.org.uk/sentencing-information/custodial-sentences>.

⁵⁰ Scottish Parole Board. What We Do. Retrieved from: <https://scottishparoleboard.scot/what-we-do/>.

⁵¹ The Scottish Sentencing Council. Parole Board for Scotland. Retrieved from: <https://www.scottishsentencingcouncil.org.uk/sentencing-information/custodial-sentences>.

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68. The Parole Board (Scotland) Rules 2022⁵² set out the matters which may be taken into account by the Board in considering references by the Scottish Ministers. Matters which may be taken into account by the Board include:

- the nature and circumstances of any offence of which that person has been convicted or found guilty by a court of law;
- that person's conduct since the date of his / her current sentence(s);
- the likelihood of that person committing any offence or causing harm to any other person if he / she were to be released on licence, remain on licence or to be re-released on licence as the case may be; and
- what that person intends to do if he / she were to be released on licence, remain on licence or be re-released on licence, as the case may be, and the likelihood of his / her fulfilling those intentions.⁵³

69. The Member's policy, through section 19 of the Bill, is that the Parole Board should have before it in domestic abuse cases, along with other information currently required, a report from the local authority in whose area the offender resides setting out an assessment of suitability of the offender for participation in a programme of appropriate rehabilitation services.

70. The Bill does not specifically make provision for such services but establishes a pathway to ensure offenders are assessed for eligibility at this stage of the process. As mentioned above, the Member supports the expansion of accredited programmes such as the Caledonian System to ensure Scotland wide provision so that all those assessed as eligible can receive such support.

Part 3 – Data collection and reporting

71. Part 3 of the Bill introduces the provision for the collection, submission and reporting of the relevant personal data provided by domestic abuse victims on the voluntary basis to Police Scotland, the Crown Office and Procurator Fiscal Service ("COPFS"), and charities.

72. There is no legal requirement to collect data about victims of domestic abuse. The data currently published by Police Scotland and COPFS is taken from an operational database and relates to the crimes reported, investigated, prosecuted and the number of convictions and associated sentences. There is a reporting requirement on the Scottish Ministers to produce a report on domestic abuse offenders in section 14 of the Domestic Abuse (Scotland) Act 2018 ("2018 Act"). That section places a duty on Scottish Ministers to report to the Scottish Parliament on offences and criminal justice proceedings. It imposes a reporting requirement on Scottish Ministers, so that every 3 years a report is laid before the Scottish Parliament with specific information about

⁵² The Parole Board (Scotland) Rules 2022. Retrieved from: <https://www.legislation.gov.uk/ssi/2022/385/contents/made>.

⁵³ Scottish Parole Board. Legislative Basis. Retrieved from: <https://scottishparoleboard.scot/legislative-basis/>.

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proceedings, convictions and harassment orders for offences under section 1 of the Act and section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. In addition to quantitative information in terms of statistics, the report must also include information about the experience of witnesses (including witnesses who are children) at court.

Part 4 – Domestic abuse education in schools

73. Part 4 of the Bill introduces a provision requiring Scottish Ministers and education authorities to promote, facilitate and support domestic abuse education in schools.

Education (Scotland) Act 1980 and the Standards in Scotland's Schools etc. Act 2000

74. In Scotland, unlike other UK jurisdictions,⁵⁴ there is no prescribed national curriculum set out in statute. The curriculum in Scottish school settings is known as Curriculum for Excellence.⁵⁵ The Education (Scotland) Act 1980 ("1980 Act"), is the principal piece of legislation in terms of the role of local authorities as education providers ("education authority"). The Scottish Ministers may prescribe standards for education authorities by regulations. The use of guidance, rather than regulation, has been described as a distinguishing feature of Scottish education.⁵⁶

75. Section 1 of the Standards in Scotland's Schools etc. Act 2000 ("2000 Act") provides that all children of school age have a right to school education.⁵⁷ Section 2 of the 2000 Act places the corollary duty on education authorities to secure education "directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential".⁵⁸

76. Both the 1980 Act and the 2000 Act confer a general power to make regulations prescribing the standards and requirements to which every education authority shall conform in discharging their functions under these Acts.⁵⁹ The Scottish Ministers also have an express power to issue guidance to education authorities on sexual matters.⁶⁰

Scottish Government's Equally Safe Strategy

77. The Equally Safe Strategy is the Scottish Government's strategy to tackle gender-based violence. The latest iteration was published in 2023, and "developed by the Scottish Government and COSLA in association with a wide range of partners from

⁵⁴ Curriculum and Assessment (Wales) Act 2021 asc 4; the Education Act 2002 c. 32 (for England); the Education (Curriculum Minimum Content) Order (NI) 2007/46.

⁵⁵ Education Scotland. Curriculum for Excellence. Retrieved from: <https://education.gov.scot/curriculum-for-excellence/>.

⁵⁶ Janys Scott, Education Law in Scotland (2nd Edition), para 5-01.

⁵⁷ Section 58 of the 2000 Act imports definitions from the 1980 Act; s 135 of that Act (interpretation) refers to the definition of "school age" in s.31 as being between the ages of 5 and 16.

⁵⁸ 2000 asp 6.

⁵⁹ 1980 c. 44, s 2A; 2000 asp 6, s 59.

⁶⁰ 2000 asp 6, s 56.

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public and third sector organisations.” It aims to “eliminate the systemic gender inequality that lies at the root of violence against women and girls” through a “relentless focus on prevention”.⁶¹

78. The strategy lists a range of priorities and objectives, including early and effective interventions to prevent violence, a robust and effective response to perpetrators, promoting positive gender roles and relationships, and effective, integrated services for those affected by violence.

79. In 2017, the Scottish Government published a delivery plan of Equally Safe for 2017-21. The measures set out include teaching children about consent and healthy relationships, funding Rape Crisis Scotland’s sexual violence prevention programme, and developing an accreditation scheme for employers.⁶²

80. The Member believes that while the focus behind this strategy is welcome, there is no means to establish the extent to which domestic abuse education is taking place in schools across Scotland. The Member notes that there is no requirement in the curriculum for this to take place with a specific focus on understanding domestic abuse.

Provisions of the Bill

Detail of the Bill

81. Below is an overview of the provisions of the Bill. For detailed information on the contents of every section of the Bill, please refer to the Explanatory Notes.

Part 1: Notification Requirements for Domestic Abuse Offenders

82. Part 1 of the Bill creates notification requirements for domestic abuse offenders and the information provided from this new system will enable monitoring and management of these offenders under MAPPA and potentially disclosure of information under DSDAS in order to minimise the risk to the public.

83. Section 1 sets out which individuals are subject to notification requirements based on the offences they were convicted of and the penalties received for those convictions. The approach taken seeks to ensure that all those convicted of serious offences involving domestic abuse that are not already subject to MAPPA are included in the notification scheme (section 1(2)). The offences in section 1(2) are described in more detail in paras 22 to 26 above.

⁶¹ Scottish Government. (2023, December 7). Equally Safe 2023 - preventing and eradicating violence against women and girls: strategy. Retrieved from: <https://www.gov.scot/publications/equally-safe-scotlands-strategy-preventing-eradicating-violence-against-women-girls/>.

⁶² Scottish Government. (2017, November 24). Equally Safe: Delivery Plan. Retrieved from: <https://www.gov.scot/publications/equally-safe-delivery-plan-scotlands-strategy-prevent-violence-against-women/>.

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84. The provision is not retrospective. The requirement to notify applies only to those convicted after the coming into force of the Act.

85. Section 2 provides details of the notification period, for example in the case of those domestic abuse offenders subject to sentences between 12 and 30 months, the notification period is proportional to the length of the sentence following a ratio of 3:1, i.e. for every one month sentenced to custody, the offender would spend 3 months subject to the notification requirements. So, if an offender is subject to 12 months in custody, they would then be liable to notification requirements for 36 months. For under 18s the ratio approach is replicated and then halved. The maximum notification period for children sentenced to 30 months would therefore be 3.5 years, as opposed to adults where it would be 7.5 years.

86. In the case of domestic abuse offenders subject to sentences longer than 30 months, the notification period is indefinite.

87. Within three days of being made the subject of the requirements, which will normally be on the date of conviction (or release from prison if in custody), the offender must make an initial notification to the police and provide a range of personal information as set out in section 3 of the Bill.

88. Under section 4 of the Bill the offender must also notify the police of any changes to the required information within three days of changes taking place.

89. Under section 5 the offender must also re-confirm their details at least every 12 months, even if there are no changes, to ensure the information is accurate.

90. If the offender is in prison, in hospital, or outside of the United Kingdom on the day that the requirement to confirm or re-confirm their current details becomes due, they must make this notification within three days of their release from custody, hospital, or arrival in the United Kingdom.

91. Section 6 sets out the method of notification, for example any notification must be given in person to a police officer, or any authorised person, at certain police stations.

92. Section 7 creates a new offence of failure to comply with any of the notification provisions without a reasonable excuse. If it is prosecuted under summary procedure⁶³ the maximum penalty is imprisonment for 12 months, or a fine not exceeding £10,000, or both. If it is prosecuted under solemn procedure⁶⁴ the maximum penalty is imprisonment for five years.

93. Sections 8 to 14 of the Bill make provision for a system for the review of indefinite notification requirements for those offenders subject to an indefinite notification from the

⁶³ Summary proceedings are court proceedings for less serious criminal offences.

⁶⁴ Solemn proceedings are court proceedings for more serious criminal offences.

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date of their first notification.⁶⁵ The offender can apply for a review after a period of 15 years if they are aged 18 or over and after 6 years if they were under 18 at the time of conviction. The Chief Constable must then review the risk posed by that individual and decide as to whether a person subject to the indefinite notification requirement should be required to notify the police of their personal details on a continuing basis. In the alternative, the notification requirement will cease and the indefinite term will come to an end. The Bill sets out a range of factors the Chief Constable must take into account in deciding whether to make a notification continuation order, for example, the seriousness of the offence or any assessment of risk posed by the offender.

94. Where the Chief Constable fails to review the indefinite notification requirements, the domestic abuse offender may make an application to the Sheriff Court for an order that the offender is no longer subject to the notification requirements under the Bill.

95. The offender has the right to appeal the Chief Constable's decision to the Sheriff Court and thereafter to the Sheriff Appeal Court whose decision is final.

96. Section 15 of the Bill makes the link between the new notifications system and the MAPPA. Under this provision, the domestic abuse offenders subject to notification requirements in the Bill will be monitored and managed under the arrangements set out in the Management of Offenders etc (Scotland) Act 2005.

Part 2: Assessment of Offenders for Rehabilitation Programmes and Services

97. Part 2 of the Bill covers assessment of offenders for rehabilitation programmes and services. The assessment for suitability for rehabilitation provision will be carried out at three points in the process to maximise the potential for the offender to be rehabilitated. The Member believes this will reduce the likelihood of re-offending upon release, reducing risk to the community.

98. The three points in the process are:

- prior to sentencing;
- whilst in custody serving a sentence;
- prior to a parole board hearing.

99. Section 17 refers to the assessment of offenders prior to sentencing and amends section 203 (reports) of the Criminal Procedure (Scotland) Act 1995.⁶⁶ It creates a requirement for the court to obtain a report from the local authority in whose area the offender resides setting out an assessment of the suitability of the offender for participation in a programme of appropriate rehabilitation services.

⁶⁵ Being subject to indefinite notification requirements without a review mechanism has been the subject of litigation on ECHR compatibility.

⁶⁶ Criminal Procedure (Scotland) Act 1995. Retrieved from: <https://www.legislation.gov.uk/ukpga/1995/46/contents>.

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100. This report would be received before disposal (in other words before the sentence or outcome of a criminal case is established). The outcome of the assessment of the offender for suitability for rehabilitation services will then be considered by the judge after conviction but before sentencing. If the convicted person is considered suitable, the requirement for them to participate in rehabilitation services or courses may then form part of their disposal for the domestic abuse offence.

101. This section also defines the term “offender”. Under Part 2 of the Bill, this assessment of suitability for rehabilitation provision is carried out in the following cases:

- any case where there has been a conviction on indictment in respect of a crime involving domestic abuse; and
- any domestic abuse case at any level of the court system where the offender has been convicted on a second or subsequent occasion for a crime involving domestic abuse.

102. Section 18 refers to the assessment of offenders whilst in custody. This section amends section 34C (throughcare support standards: duty to comply) of the Community Justice (Scotland) Act 2016⁶⁷ by introducing throughcare support for offenders in domestic abuse cases. It requires Scottish Ministers to ensure that throughcare support standards for domestic abuse offenders in custody, include appropriate rehabilitation services and an assessment of the suitability of the individual for provision of appropriate rehabilitation services.

103. Section 19 refers to the assessment of offenders prior to release. This section amends section 20 (Parole Board for Scotland) of the Prisoner and Criminal Proceedings (Scotland) Act 1993⁶⁸ and creates a provision for the Parole Board, in considering and disposing of the case of a prisoner to whom this section applies, to obtain from Scottish Ministers and take into account a report from the local authority in whose area the prisoner resides setting out an assessment of the suitability of the prisoner for participation in a programme of appropriate rehabilitation services.

Part 3: Data Collection and Reporting

104. Part 3 introduces a statutory duty on Police Scotland, COPFS and charities to request data from victims and record the data received in relation to offences involving domestic abuse (as defined in section 21(6) and in section 23(7) in relation to charities). The data is to be provided by victims on a voluntary basis, they may decline to provide any of the data requested. Section 20 sets out the data to be collated including whether they have a disability, and their ethnic origin. It also makes a provision for the Scottish Ministers, by regulations, to amend the definition of “relevant personal data”, subject to the affirmative procedure.

⁶⁷ Community Justice (Scotland) Act 2016. Retrieved from: <https://www.legislation.gov.uk/asp/2016/10/contents/enacted>.

⁶⁸ Prisoners and Criminal Proceedings (Scotland) Act 1993. Retrieved from: <https://www.legislation.gov.uk/ukpga/1993/9/contents>

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105. Section 23 in relation to charities includes provision for situations where charities do not need to collect this personal data, for example where it would be impracticable given the charity's resources. These provisions seek to balance the value of the data charities could collate with an understanding of the pressures on these often small organisations with limited funding. Section 24 enables Scottish Ministers to modify data collation through regulations where victims or alleged victims are under the age of 16. It is recognised that given the terms of who is classified as a victim under the relevant domestic abuse legislation only a very small number of victims will be under 16, for example peer to peer abusive behaviour in an intimate personal relationship. However, in such cases, the Member wishes to ensure that there is flexibility for any extra precautions to be taken.

106. Sections 25 and 26 require the information to be submitted to Scottish Ministers who are required to publish and lay a report before the Scottish Parliament on this data. Section 21 specifies the timings of such reports.

Part 4: School Education

107. Part 4 creates a requirement for Scottish Ministers and education authorities to promote, facilitate and support domestic abuse education in schools. The duty on Scottish Ministers applies to all schools, and the duty on education authorities covers schools under their management (state primary schools and secondary schools). Given the age range involved the definition of schools would not cover nursery schools. In practice the Member envisages the education provided to be focussed on secondary schools.

108. The Member believes that parents, carers or guardians should have the ability to opt the children in their care out of education on domestic abuse. Subsection 28(3) creates that provision stating that a pupil may be withdrawn by their parent from any domestic abuse education provided in any school, and no pupil in any school is to be placed at any disadvantage by reason of their being withdrawn from any domestic abuse education. Subsection 28(4) defines domestic abuse education as "education consisting of teaching and learning about the causes of, occurrence of and prevention of domestic abuse, including about what constitutes domestic abuse and the law relating to domestic abuse".

109. Section 29 creates a provision for the Scottish Ministers to issue, review, and publish guidance to education authorities in schools. Subsection 29(3) places a requirement on an education authority to have regard to guidance issued by the Scottish Ministers. In achieving the Member's policy intention to deliver domestic abuse education with input from experts, subsection 29(4) places a consultation requirement on the Scottish Ministers to take views from charities or other bodies providing specialist domestic abuse support.

110. Part 4 also includes a regulation making power to prescribe standards of the domestic abuse education. Section 30 creates a provision that the Scottish Ministers may, by regulations, specify the standards and requirements to which an education

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authority must conform in discharging its functions relating to domestic abuse education in the schools under its management.

111. Section 31 places Scottish Ministers under a duty to report on the progress of delivery of domestic abuse education in schools, using the information provided by an education authority to Scottish Ministers.

Alternative approaches

112. The Member is seeking to introduce substantial changes to the existing law and therefore it was considered that it can only be achieved through primary legislation.

113. The Member considers there are complementary measures that can be pursued at a policy level as opposed to through primary legislation. For example, adequately resourcing and ensuring the roll out of accredited rehabilitation programmes such as the Caledonian System across the whole of Scotland is crucial to the effective implementation of the provisions in the Bill related to rehabilitation as an alternative to custody or following custody. In addition, the Member is very supportive of current work undertaken under the auspices of the Equally Safe programme in schools. Her concern is that the provision of domestic abuse education is not happening on a systematic basis and she is seeking, through her provisions in the Bill, to ensure that such education is available on a Scotland wide basis.

114. The Member made changes to her approach based on responses received to her consultation. For example, the initial proposal for a bill included mandatory rehabilitation measures. Scottish Women's Aid, among others, suggested that some offenders would not be considered suitable for rehabilitation and that making it mandatory could therefore have a negative effect. The Law Society of Scotland and others suggested that making rehabilitation measures mandatory could have a negative impact and be disproportionate in some cases. The Scottish Association of Social Work also expressed concerns regarding the potential impact on victims: "Mandatory rehabilitation would be extremely expensive and again, it risks offering false reassurance to victims that an offender has been rehabilitated and therefore risk reduced".⁶⁹ In light of these responses, the Member changed her policy and the rehabilitation of a domestic abuse offender will now be based on an assessment of suitability prior to sentencing, while in custody, and prior to release.

115. Taking into account the consultation responses, the Member also reconsidered her approach to delivering mandatory school education on domestic abuse. For example, Scottish Women's Rights Centre highlighted possible negative consequences of mandatory domestic abuse education: "Making something mandatory is not a good approach to the delivery of this type of education. There are some situations where this would be inappropriate and could be traumatising to particular young people"⁷⁰. In light

⁶⁹ Scottish Parliament. Consultation Summary on the Proposed Domestic Abuse (Prevention) (Scotland) Bill. Consultation available at: [consultation-summary-domestic-abuse-final.pdf](#).

⁷⁰ Scottish Parliament. Consultation Summary on the Proposed Domestic Abuse (Prevention) (Scotland) Bill. Consultation available at: [consultation-summary-domestic-abuse-final.pdf](#).

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of this, provision had been made in the Bill to enable parents to decide that their child should opt out from domestic abuse education and the standards to be issued under section 30 can provide for exemptions and reasonable adjustments.

Consultation

Draft proposal

116. On 23 August 2022, the Member lodged a draft proposal for a Member's Bill to:

“make provision for the prevention of domestic abuse and improve support for those affected, including by requiring: those convicted of offences related to domestic abuse to provide information for a register; use of this information to prevent further harm; use of rehabilitation measures in relation to offences related to domestic abuse; collation and reporting of data related to domestic abuse; and domestic abuse education in schools”.

117. A consultation document accompanied the draft proposal⁷¹. The consultation⁷² ran from 24 August 2022 to 20 November 2022. During the consultation the Member met with a range of stakeholders to consult them on the proposal.

118. In total, 247 responses were received. The responses can be categorised as follows:

- Three (1%) from representative organisations;
- Five (2%) from public sector organisations;
- One (<1%) from a commercial organisation;
- Twenty-three (9%) from third sector organisations;
- One (<1%) from another type of organisation;
- Seven (3%) from individual politicians;
- Twenty-five (10%) from a professional with experience in a relevant subject;
- Three (1%) from an academic with expertise in a relevant subject; and
- One hundred and seventy-nine (72%) from private individuals.

119. A large majority of respondents (86%) were supportive of the proposal. Of the individual respondents, 92% were fully supportive and 3% were partially supportive. There was less support overall from organisations: 45% were fully supportive, 21% were partially supportive, whereas 18% were partially opposed and 9% were fully opposed.

⁷¹ [Proposed Domestic Abuse \(Prevention\) \(Scotland\) Bill | Scottish Parliament Website.](#)

⁷² Scottish Parliament. Consultation on the Proposed Domestic Abuse (Prevention) (Scotland) Bill. Consultation available at: [domestic-abuse-register--consultation-final.pdf](#).

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120. It is notable that just over half of respondents (52%) requested that their response was kept anonymous or was “not for publication.” This is, at least in part, attributable to the subject matter covered in these responses, including individual experiences of domestic abuse.

121. There were high levels of overall support expressed for the four main provisions set out in the consultation document. 94% of respondents were supportive of mandatory education on domestic abuse in schools, while 89% supported the establishment of a domestic abuse register, 85% supported mandatory rehabilitation measures and 83% supported the proposed data collection and reporting measures.

122. Although strong support was expressed overall for the intentions behind the proposal, such as reducing the incidences of domestic abuse and improving rehabilitation, concerns were raised in many of the responses (particularly from organisations) in relation to the proposed policy approaches set out in the proposed Bill. In addition, it was suggested by numerous organisations that there was not enough supporting evidence on the likely effectiveness of the proposed Bill’s provisions. It was also suggested by many organisations that the proposed Bill would create significant cost and resource implications and that some of the proposed provisions may not be suitable in certain circumstances. For example, concerns were raised about making rehabilitation mandatory when it may not be appropriate for some offenders to undertake such processes.

123. The consultation responses on the domestic abuse register were the most diverse. While there was support from individual respondents, organisational respondents raised concerns (37% of organisations were ‘fully supportive’). Some organisations, such as Social Work Scotland and Scottish Women’s Aid, raised concerns about how effective a register would be in practice. The Law Society of Scotland and Committed to End Abuse both highlighted the risks that a blanket approach applied to all offenders may have negative consequences. Both were of the view that resources should be targeted towards repeat offenders and those who commit the most serious offences. Organisations also raised concerns that an unintended consequence to a register may be that some victims of domestic abuse find themselves on the register.

124. There was widespread support for increasing the availability of rehabilitation programmes across Scotland however some organisations questioned the detail of the proposal as the best means of achieving this. For example, a number of organisations highlighted the merits of rolling out the Caledonian System across Scotland as an alternative to primary legislation. A particular issue was whether there was any benefit in making rehabilitation mandatory. Edinburgh Women’s Aid for example stated that for rehabilitation to be successful participants had to be willing and open to changing their behaviours. Scottish Association of Social Workers, Brodie’s Trust and the Law Society of Scotland held a similar view. Some respondents queried whether anger management, which was one of the proposed forms of rehabilitation, was appropriate in domestic abuse cases. Reference was made to the fact that often domestic abuse does not result from anger or loss of temper but rather coercive control, which comprises a wide range of behaviour targeted over an extended period. The use of restorative

justice as part of the rehabilitation process was not fully supported by some organisations working in the area. Victim Support Scotland expressed concerns regarding the use of restorative justice in cases involving domestic abuse. Committed to End Abuse highlighted the need for any rehabilitation programme to be trauma informed and sensitive to the position of the person who had experienced the abuse.

125. There was wide support amongst individuals for the proposal in relation to data collection. Amina (Muslim Women's Resource Centre) was supportive, highlighting that women from minority ethnic groups are marginalised and welcomed any steps that would promote equality. Victim Support Scotland highlighted that improved data collection could lead to better support for domestic abuse victims. Scottish Women's Aid was also fully supportive of the proposals regarding data collection. In their view urgent action was required to improve reporting on those with protected characteristics under the Equality Act 2010. Scottish Association of Social Workers, which partially supported the proposal, referred to the disproportionate impact of domestic abuse on individuals from diverse backgrounds, and supported changes which lead to a better understanding of how minority groups were impacted.

126. There was support from organisational respondents regarding domestic abuse education in schools as a preventative tool and part of a culture shift required to tackle domestic violence. Some organisations such as Edinburgh Women's Aid stressed the need to consult with education providers and experts in the field as they were best placed to advise on the implementation of any new scheme and how that might sit alongside existing provision and the broader school curriculum. Scottish Association of Social Workers emphasised that, to achieve its aim, mandatory education would require significant resources to ensure a consistent national approach and proper training for education providers. The need for any educational provision to be trauma informed and alert to the issues arising for young people who may have direct experience of domestic abuse was highlighted by Victim Support Scotland and Scottish Women's Rights Centre. It was also considered by some respondents that education in this area would have a positive effect, with one anonymous member of the public stating that: education is key to help young adults understand the consequences of domestic abuse.

127. A summary of responses to the consultation was published by the Member on 7 September 2023, and is available at: [consultation-summary-domestic-abuse-final.pdf](#).⁷³

⁷³ Proposed Domestic Abuse (Prevention) (Scotland) Bill. Consultation available at: [consultation-summary-domestic-abuse-final.pdf](#).

Effects on equal opportunities, human rights, island communities, local government, sustainable development and rights of the child.

Equal opportunities

128. The Member has carried out an Equalities Impact Assessment which assesses the policy intention of the Bill's provision against protected characteristics. This will be sent to the lead committee during Stage 1. Three protected characteristics are highlighted below as relevant to the provisions in the Bill.

Sex

129. The Member considers that it is evident that women are more likely to be victims of domestic abuse and would therefore be more likely to benefit from the Bill. Police Scotland statistics for 2020-21 show that, where gender information was recorded, four-in-five (80%) incidents of domestic abuse in 2020-21 involved a female victim and a male accused. That figure has remained stable for the preceding 10 years.⁷⁴ Therefore reducing the incidents of domestic abuse, including reducing reoffending rates, through the measures in the Bill would have a proportionately much greater positive impact on women than on men.

Disability

130. The Member also considers that while there does not appear to be any Scotland-specific data available, it is likely that disabled people are more likely to experience domestic abuse than non-disabled people. Statistics published in relation to England and Wales show that between April 2019 and March 2020, 5% of non-disabled people experienced domestic abuse compared to 14% of disabled people.⁷⁵

Race

131. Within some BAME communities there are significant cultural barriers which may prevent victims from accessing domestic abuse services or reporting incidents of domestic abuse. These can range from language barriers to more complex issues, such as what may be perceived as the shame of being seen to access domestic abuse services.

⁷⁴ Scottish Government. (2021, November 30). Domestic abuse: statistics recorded by the Police in Scotland - 2020/21. Retrieved from: <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2021/11/domestic-abuse-recorded-police-scotland-2020-212/documents/domestic-abuse-recorded-police-scotland-2020-21/domestic-abuse-recorded-police-scotland-2020-21/govscot%3Adocument/domestic-abuse-recorded-police-scotland-2020-21.pdf>.

⁷⁵ Office for National Statistics. (2019, December 2). Disability and crime UK, 2019. Retrieved from: <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/bulletins/disabilityandcrimeuk/previousReleases>.

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132. The Bill seeks to improve data gathering and publication to better understand the level of domestic abuse services available and the access and uptake for different groups in society including BAME people and individuals with disabilities.

Human rights

133. The Member considered the Bill's impact on convention rights. She acknowledges that the introduction of domestic abuse offender notification requirements, which require offenders to share personal information with the police, engages their right to respect for private and family life (Article 8 of the European Convention on Human Rights ECHR). The personal information provided to the police will not be published and therefore will not be publicly accessible. However, the information could be used in the management of offender under MAPPA and to inform a decision on whether to release this information under the Disclosure Scheme for Domestic Abuse Scotland (DSDAS). This is an established process for sex offenders under ViSOR and the Member has only sought to require offenders convicted of serious offences to be part of similar notification requirements introduced by this Bill. The Member considered the proportionality of the measures, including the type of information offenders are required to provide and the length of time which they can be subject to the notification requirements. The Member believes that the requirements are proportionate and justified. The Member also considers that the provision of the reviews of indefinite notification requirements and the associated appeals process strikes a fair balance between the rights of the individual and the community.

134. The Member considered Article 8(2) of the ECHR in relation to the circumstances in which a public authority may exercise functions in accordance with the law as is necessary in a democratic society.⁷⁶ The Member believes that the domestic abuse notification requirements and the use of this information for MAPPA are justified under this article as they will be carried out in the interests of public safety, for the prevention of disorder or crime and for the protection of the rights and freedoms of others.

135. The Member believes the notification requirements for domestic abuse offenders will play a key part in preventing the occurrence of domestic abuse, reducing reoffending, and increasing public safety. Therefore, it is the Member's view that the Bill will have a positive impact on the right to respect for private and family life (Article 8), given the positive impacts that domestic abuse notification requirements and other measures in the Bill will have on potential victims and their families by mitigating the risks posed by domestic abuse offenders.

⁷⁶ European Convention on Human Rights, Article 8(2): "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." Retrieved from: <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/II/chapter/7>.

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Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

136. Pam Gosal MSP has made a statement that, in her view the Bill as a whole further embeds UNCRC requirements.

137. The overall aim of the Bill is to reduce the incidences of domestic abuse (including reducing levels of re-offending) and this would have a positive impact on the rights of children who are victims of domestic abuse (directly by their partner or ex-partner) or who have family members that have been victims of domestic abuse. Therefore, these measures should further embed children's rights under Article 3 to receive protection and care, and to a safe and health family life, as well as under Article 19 to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.

138. Part 1 of the Bill introduces requirements to notify the police of personal information for those convicted of serious domestic abuse offences and this information will then be used by relevant authorities for management of the risk posed by the offender under MAPPA. This could include offenders who are children and such notification requirements would have a detrimental impact on their right to privacy under Article 16 and engage their rights under Article 40 in relation to their interaction with the criminal justice system. Therefore, the Bill seeks to mitigate the impact on children by ensuring that the length of time which they would be subject to the notification requirements (if sentenced to between 12 and 30 months imprisonment) is proportionate to the sentence received and half of what an adult would be subject to. In the rare case where a child is sentenced to over 30 months and subject to the notification requirements for an indefinite period, this would be reviewed after 6 years, rather than 15 years (for those aged 18 or over). In any event, prior to a child becoming subject to the notification requirements the police, COPFS and the courts will have to consider the child's rights under Articles 3 (best interests of a child), 12 (to express a view), 37 (to be treated fairly, have age taken into account and be detained for as short a period as possible) and 40 (specific measures for children accused of crimes) in any decision in relation to charging, prosecuting, convicting and sentencing the child. This combined with the provisions in the Bill as to the types of offences covered, that the conviction be on indictment and the types of sentences involved, means that in practice it will be rare for children to be subject to these requirements. For those children subject to the requirements those authorities responsible for managing risk under MAPPA (such as the police and local authorities) will also be required to comply with the UNCRC requirements in any decisions made in relation to the child.

139. For children convicted of domestic abuse offences, Part 2 of the Bill will ensure that consideration is given at various stages (pre-sentencing, while in custody and prior to release) as to their suitability for appropriate rehabilitation services. To the extent that information is shared this will engage children's right to privacy under Article 16. All the public authorities involved in reporting on and making this assessment will require to consider the children's rights, including Articles 3 and 12.

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140. Part 3 of the Bill provides for the collection of relevant personal data of victims of domestic abuse by the police, COPFS and charities providing support. This could include children, who have been the victim of domestic abuse by a partner or ex-partner and would engage their right to privacy under Article 16. The Bill provides that the sharing of this data is voluntary and provides that regulations can put in place specific measures for children under 16. The aim of this data collection is reporting in an anonymised manner to support better provision of domestic abuse services which would have a positive impact on children's rights.

141. Part 4 introduces domestic abuse education in schools. Children have a right under Article 28 to education and the provisions in the Bill will have a positive impact by further embedding children's right to education which develops respect for others' human rights under Article 29. This Bill is also respectful of the rights of parents under Articles 5 and 14 and the best interests of the child under Article 3 as the Bill provides that pupils' parents can decide for their child to opt out of domestic abuse education and the related standards may provide exemptions from any requirement to participate in domestic abuse education (for example, if a child would be negatively affected) and impose requirements to make reasonable adjustments.

Data protection

142. The Member has carefully considered the handling of personal data, including special category data and personal data relating to criminal convictions and offences under the UK General Data Protection Regulation (GDPR) throughout the development of her policy.

143. The Member recognises that the creation of the notification requirements for domestic abuse offenders in Part 1 of the Bill will introduce new arrangements for the sharing of personal data, including personal data relating to criminal convictions and offences. The proposed notification requirements would increase the collection, retention and sharing of personal data of serious domestic abuse offenders, with the intention that this is shared with other third parties. The introduction of notification requirements for domestic abuse offenders will involve processing of personal data of the offender by Police Scotland and potentially other public bodies such as Scottish Prison Service, local authorities and health boards as part of MAPPA arrangements. The information might also be shared with individuals close to the offender, for example, their partner through the DSDAS.

144. As part of the domestic abuse offender notification requirement, some of the personal data will be collected directly from the data subject (i.e. they would be responsible for providing the information), however, some details may already be held by/or shared with Police Scotland, COPFS, Scottish Prison Service, the Parole Board for Scotland etc as part of their case and any conviction. The collected data will be subject to the same management (and retention periods) as other personal information held by the above bodies in Scotland under MAPPA. The Bill requires that the offenders described above provide the personal details to the police as set out in sections 3 and 4 of the Bill.

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145. The rehabilitation element of the process in Part 2 of the Bill may involve processing of personal data of offender (i.e. information about their personal circumstances, convictions etc) by courts, COPFS, local authorities, Scottish Ministers, the Parole Board for Scotland, Scottish Prison Service and those providing rehabilitation services as part of referral process. The sharing of data will replicate existing circumstances in local authority areas where accredited rehabilitation programmes are in operation and offenders are assessed for suitability to attend those programmes at present.

146. The Member has also considered the GDPR implications for Part 3 of the Bill which introduces data collection and reporting requirements.

147. The Member recognises that the provisions in Part 3 create a new obligation to collect data on the victims of domestic abuse which includes special category personal data, such as details of their race and any disability. The data is also being sought from individuals at an incredibly sensitive time when individuals will feel traumatised and exposed (for example when reporting a domestic abuse incident that may have just happened to the police or when seeking refuge at a centre run by a charity). Importantly, people can provide this data voluntarily to the police, COPFS, and charities. Charities can choose not to collect the data, if, for example, the charity considers that it would be unreasonable to do so having regard to the person's circumstances.

148. Compiling the report on behalf of Scottish Ministers for publication will involve processing of personal data and special category personal data, such as ethnic and national origin. Special category data may include disability in so far as they may reveal information about a person's health.⁷⁷ The Member recognises that special category data needs to be treated with greater care because collecting and using it is more likely to interfere with these fundamental rights or open someone up to discrimination.⁷⁸ Section 25(2) of the Bill seeks to mitigate this as it provides that the relevant personal data submitted to the Scottish Ministers must not disclose the identity of the person to whom it relates. The data published in the report would not be presented in such a way as to enable any particular individual to be recognisable, and it is assumed that any small datasets from areas with a low population would be carefully presented in order to ensure anonymity is protected. Section 26(2) of the Bill states that Ministers can determine the form and manner the information is presented in. As referred to above, section 24 also allows the Ministers by regulation to modify data gathering measures where offences involve victims under the age of 16.

⁷⁷ Information Commissioner's Office. What is special category data. Retrieved from: <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/lawful-basis/special-category-data/what-is-special-category-data/#scd1>.

⁷⁸ Information Commissioner's Office. What is special category data. Retrieved from: <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/lawful-basis/special-category-data/what-is-special-category-data/#scd1>.

Island communities

149. The Bill applies uniformly across Scotland. It is acknowledged that there may be challenges for some people in remote and rural parts of Scotland to access services as easily as in more populated and accessible parts of the country, for example the system of notifications at police stations may require offenders to travel more considerable distances, including travel from one island to another or to the mainland.

150. It was not considered appropriate by the Member to vary any of the provisions in the Bill or to differentiate the way the process operates on the basis of geographical location.

151. In relation to data collection, it is acknowledged that any reporting of data collected in relation to the islands, will have to be mindful of taking measures to protect the identifies of victims given the small population.

152. In relation to school education, it may be more challenging to source specialist expertise to deliver education sessions in island schools, or to train school staff on the delivery of these sessions.

Local government

153. The Member considers that there will be some impacts on local government. Under Part 1, the Bill introduces notification requirements for domestic abuse offenders which extend the MAPPA. Local authorities are one of the MAPPA partners, so the extension of the risk management pathway to the most serious domestic abuse offenders will have an impact on the local authorities' resources.

154. Under Part 2, local authorities will also be required to produce assessment reports of suitability for rehabilitation for offenders prior to sentencing, while in custody, and prior to release.

155. Under Part 4, the requirements to promote, facilitate and support domestic abuse education including the implementation of guidance and oversight of the delivery of education in schools fall to local authorities in their role as education authorities.

Sustainable development

156. A sustainable development impact assessment was carried out on behalf of the Member during the development of her consultation document accompanying her draft proposal. As highlighted in her consultation document, the Member hopes that the introduction of notification requirements of those convicted of domestic abuse related offences will assist with ensuring public safety as well as deterring those required to make notifications from re-offending and deterring those aware of the requirements from offending.

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157. The Bill also seeks to introduce rehabilitation measures for those convicted of domestic abuse related offences which would also contribute to reducing re-offending. These steps would improve the wellbeing of individuals who do not become victims of abuse as a result of the preventative effect of the Bill and also on those who are victims of domestic abuse who feel more reassurance and associated safety as a result of the measures in the Bill. Beyond the valuable impact on individuals, this would have a positive impact on wider families, communities and on society as a whole. Furthermore, effective rehabilitation would have a positive impact on the outlook and associated actions of the offenders themselves.

158. In addition, the Member believes that providing education will have a long-term positive effect in reducing incidences of domestic abuse for future generations. It should also enable people to better identify domestic abuse experienced by others or to feel emboldened to say when they are experiencing it themselves.

159. The Member hopes that a reduction in the level of domestic abuse would reduce the pressures on valuable services in our society such as the National Health Service, police, social services and other local authority provided services, the Scottish Court Service and third sector organisations facing high demand for their support services.

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Policy Memorandum

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