



The Domestic Abuse Bill: Lords Committee Stage briefing Post-separation abuse amendment

***'He can't physically get me, he can't emotionally hurt me, and yet still, economically he can cripple me.'*¹**

Key points

- Surviving Economic Abuse (SEA) and Cassandra Wiener, coercive control legal expert based at the University of Sussex, welcome the Domestic Abuse Bill and its potential to transform the response for victims.
- In particular, we welcome the inclusion of 'economic abuse' and post-separation abuse in the new statutory definition of domestic abuse. For SEA's explanation of economic abuse, please see the end of this briefing.
- Yet intentions to better address domestic abuse through the Bill are at risk of being undermined by other legislation and Government policies that lag behind the improved definition of domestic abuse in clause 1 of the Domestic Abuse Bill.
- Of particular concern is the fact that the crime of domestic abuse - the offence of controlling or coercive behaviour set out in section 76 of the Serious Crime Act 2015 - does not cover post-separation abuse. This would mean that once the Domestic Abuse Bill becomes law, the definitions of domestic abuse in the criminal law (s. 76 Serious Crime Act 2015) and in the Domestic Abuse Bill (clause 1) will conflict.
- Furthermore, the crime of domestic abuse in Scotland does include post-separation abuse.² This means that, currently, survivors are better protected in Scotland than they are in England and Wales.
- SEA and coercive control legal expert Cassandra Wiener, University of Sussex, with the support of SafeLives and others, are calling for a vital amendment to the Bill to include post-separation abuse in the offence of controlling or coercive behaviour and create a consistent definition of domestic abuse across Great Britain.
- This is needed as abusers commonly continue to use coercive control after separation and victims are at a heightened risk of homicide in this period.³ Economic abuse is a key example of the forms that post-separation abuse can take. One in four women reports experiencing economic abuse after leaving the abuser.⁴ In fact, given that economic abuse does not require physical proximity, it commonly continues, escalates and, in some cases, may begin after separation, creating a significant barrier for victims seeking to rebuild their lives.

Why legal change is essential

The current legal position means that much of the abusive behaviour victims are subjected to post separation is not a crime, yet would have been had they stayed with the abuser. It also has the unfortunate effect of obscuring which piece of law should apply in circumstances where a woman is in the process of leaving an abuser. As Wiener's research highlights, leaving is a difficult and dangerous exercise that can take days, weeks, months, sometimes years, and is when a woman is most in need of protection and support. Creating a legal boundary around

the relationship status makes it hard for police to know which crimes are being committed at this unstable time. This is unhelpful, and also confusing and demoralising for victims of abuse.⁵

The judiciary are aware of this problem. As one Crown Court Judge said: 'If you have had the strength to leave - we are suddenly not supporting those people? They have got the legislation wrong, haven't they? They are probably missing about 50 or 60 per cent of the people who need to be protected? Those that manage that to escape but are still being controlled? That has got to be wrong. We have to change the law.'⁶

For these reasons, SEA and Cassandra Wiener (University of Sussex) with the support of SafeLives and others, are calling for the legislation on controlling or coercive behaviour to be extended to post-separation abuse.

Post-separation economic abuse case study - 'Layla'

Layla was married for over 20 years and has three children. Her husband was controlling and coercive throughout the marriage both economically and emotionally, pressurising her to transfer money to his bank account and forcing her to let him use the credit card she had in her sole name.

He ran up debt on her credit card and, after separation, forced her to release hundreds of thousands of pounds of equity from the mortgage. Layla continues to pay debts he has put in her name, including bank loans of £70,000. He continues to use her contact details rather than his own, so she is being regularly chased by his creditors for money. Layla has been regularly visited by bailiffs demanding payment of the perpetrator's debts which she had to pay.

The police have said that the continuing economic abuse cannot be considered under the coercive control offence as the perpetrator had left her.

Why the Domestic Abuse Bill must be the route to addressing post-separation abuse

The Domestic Abuse Bill is the ideal opportunity to address post-separation abuse. The Bill rightly recognises that abuse happens after separation: the definition of domestic abuse in the Bill covers ex-partners and those that are no longer living together. The Domestic Abuse (Scotland) Act also covers partners and ex partners for this reason. The coercive control offence is therefore an anomaly, inconsistent with the statutory definition in the Bill and must be amended.

SEA called for an amendment on post-separation abuse and this was tabled before the House of Commons Bill Committee in June 2020. In his response Justice Minister Alex Chalk MP acknowledged the importance of the points raised, saying: '*I entirely agree with the Surviving Economic Abuse charity raising the issue, and it has done an important public service in doing so.*' The amendment was, however, withdrawn due to an ongoing Government review into the offence of controlling or coercive behaviour.

SEA and Wiener believe that this review, which looks across the entire spectrum of the offence, does not focus specifically on economic abuse and is limited to the offence's current application, should not stand in the way of the vital opportunity presented by the Bill to extend the offence and offer protection to victims.

Positively, the amendment received much support during the Second Reading of the Bill in the House of Lords in January 2021 from across the benches, and has now been tabled before the Lords – see Annex A.

It has been argued that abuse by an ex-partner or family member who no longer lives with the victim does not need to be included in the coercive control offence because it is captured under existing legislation on stalking and harassment. Indeed, updated statutory guidance published on Stalking Protection Orders (January 2021) attempts to include economic abuse as a form of stalking. However, this approach (trying to include economic and other post-separation abuse within legislation intended for stalking) is misguided.

In terms of the 'Stalking Protection Order': if, as often happens, economic abuse is the sole form of abuse that has taken place post separation, a 'Stalking Protection Order' seems an unlikely step. The prohibitions and requirements that police are advised to include in an application for a Stalking Protection Order⁷ do not cover economic abuse, and it is not clear how they could. Most importantly, however, prosecuting post-separation abuse, and in particular economic abuse, via laws that were introduced to address stalking is counterproductive. There is widespread recognition that 'economic abuse' and 'stalking', are entirely different types of abusive behaviour. Clear labelling is the primary function of the criminal law – clarity is essential in order for the criminal law to fulfil its preventative function. People need to know what crimes are so that they can avoid committing them. Naming 'economic abuse' as 'stalking' therefore interferes with the proper purpose and functioning of the criminal law. For this reason (clear labelling), the Court of Appeal has historically been resistant to 'stretching' the Protection from Harassment Act to deal with behaviours other than stalking.⁸ It is entirely possible that there would be judicial resistance to convicting a defendant of 'stalking' under the Protection from Harassment Act where there is evidence of economic abuse, but not of stalking.

It is vital that the Domestic Abuse Bill is used to change the inconsistent definition of 'connected persons' in s. 76 Serious Crime Act so that the law on controlling or coercive behaviour properly protects women who have separated from their abusive partners. Existing 'protection' offered by the stalking legislation is patchy, misplaced and not good enough. This amendment is needed and will help police and prosecutors keep vulnerable survivors safe. It will save lives.

What is economic abuse?

Economic abuse is form of domestic abuse that is designed to reinforce or create economic dependency and/or instability; limiting women's choices and their ability to access safety. 'Economic abuse' as a term recognises that it is not just money and finances that can be controlled by an abuser (known as 'financial abuse') but also things that money can buy, including food, clothing, transportation and housing.

- One in five women in the UK report having experienced economic abuse from a current or former intimate partner.⁹
- 95% of domestic abuse victims experience economic abuse.¹⁰
- Economic abuse rarely happens in isolation; 86% of those reporting economic abuse also experience other forms of abuse.¹¹
- Economic abuse is linked to physical safety. Women who experience it are five times more likely to experience physical abuse.¹²
- 60% of domestic abuse survivors are in debt as a result of economic abuse.¹³
- One in four women reports experiencing economic abuse after leaving the abuser.¹⁴

About Surviving Economic Abuse

SEA is the only UK charity dedicated to raising awareness of and transforming responses to economic abuse. Our work is informed by Experts by Experience – a group of over one hundred women who speak about what they have gone through so that they can be a force for change.

About Cassandra Wiener

Cassandra is a legal academic, currently based at the University of Sussex. She specialises in coercive control and the criminal law, and advises governments and activists around the world on the doctrinal implications of domestic abuse law reform. Her book, *Coercive Control and the Criminal Law*, will be published by Routledge in the Spring.

For more information on the post-separation abuse amendment please contact:
cyrene.siriwardhana@survivingeconomicabuse.org or c.wiener@sussex.ac.uk

¹ Sharp-Jeffs, N. (2015) *Money Matters: Research into the extent and nature of financial abuse within intimate relationships in the UK*. London: The Co-operative Banks/Refuge

² Domestic Abuse (Scotland) Act 2018

³ Home Office (2016), *Domestic Homicide Reviews: Key Findings from Analysis of Domestic Homicide Reviews*.

⁴ Sharp-Jeffs, N. (2015)

⁵ Cassandra Wiener, 'From Social Construct to Legal Innovation: the Offence of Controlling or Coercive Behaviour in England and Wales' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control* (Springer 2020).

⁶ Cassandra Wiener, *Coercive Control and the Criminal Law* (Routledge, forthcoming).

⁷ Home Office, Stalking Protection Orders – Statutory Guidance for the Police, January 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/951354/SPOs_statutory_guidance_English_with_changes__002_.pdf

⁸ Curtis [2010] EWCA Crim 123; *Widdows* [2011] EWCA Crim 1500

⁹ The Cooperative Bank & Women's Aid (2015), *My Money, My Life*.

¹⁰ <https://survivingeconomicabuse.org/report-finds-that-6-in-10-domestic-abuse-survivors-are-struggling-with-coerced-debt/>

¹¹ Sharp-Jeffs, N. with Learmonth, S. (2017) *Into Plain Sight: How economic abuse is reflected in successful prosecutions of controlling or coercive behaviour*.

¹² Outlaw, M. (2009) *No One Type of Intimate Partner Abuse: Exploring Physical and Non-Physical Abuse Among Intimate Partners* *Journal of Family Violence*. 24: 263-272

¹³ <https://survivingeconomicabuse.org/report-finds-that-6-in-10-domestic-abuse-survivors-are-struggling-with-coerced-debt/>

¹⁴ Sharp-Jeffs, N. (2015)

ANNEX A

Proposed amendment to the Domestic Abuse Bill on post-separation abuse

As tabled and displayed on the Parliament website:

BARONESS LISTER OF BURTERSETT
LORD HARRIES OF PENTREGARTH
BARONESS BERTIN
LORD ROSSER

Insert the following new Clause—

“Controlling or coercive behaviour offence: post-separation abuse

(1) Section 76 (controlling or coercive behaviour in an intimate or family relationship) of the Serious Crime Act 2015 is amended as follows.

(2) Leave out subsection (2) and insert—

“(2) “personally connected” has the meaning as set out in section 2 of the Domestic Abuse Act 2020.”

(3) Leave out subsections (6) and (7).”

Member’s explanatory statement

This new Clause would ensure that those who were previously personally connected are protected from any coercive and controlling behaviour (including economic abuse) that occurs post-separation.