

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately



The Scottish Government
Riaghaltas na h-Alba

1. Name/Organisation

Sheriffs' Association

Title Mr Ms Mrs Miss Dr Sheriff

Surname

O'Carroll

Forename

Derek

2. Postal Address

Sheriff's Chambers

Airdrie Sheriff Court

Graham Street

Airdrie

Postcode

Phone

Email

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public? (on the Scottish Government Consultation Hub)

Please tick as appropriate

Yes No

(b) If you answered yes, please select an option below.

Please tick ONE of the following boxes

(c) Do you agree to your organisation's **details** and **response** being made available to the public? (on the Scottish Government Consultation Hub)

Please tick as appropriate

Yes, publish my response and details
 No, do not publish my response

(form continues below)

Yes, make my response
and name all available

or

Yes, make my response
Available without my
name (anonymously)

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate **Yes** **No**

CONSULTATION QUESTIONS

1. Are you content that any specific offence of domestic or partner abuse should be drawn so as to encompass both conduct, such as threats or physical abuse, which is currently criminal, and psychological abuse & coercive control?

Yes No

In its response to the initial 'Equally Safe' consultation paper the Sheriffs' Association drew attention to the value of such an offence as marking public abhorrence at such behaviour but also noted that such perceived benefits have to be counter-balanced by resistance to the trend towards over-criminalisation, with the result that such a movement requires careful scrutiny in order to assess whether the measure is truly warranted." If the Scottish Parliament is persuaded that the current range of criminal offences is insufficient to deal with all types of behaviour which may be considered as domestic abuse the precise scope of any such offence which it considers is appropriate is a matter of policy. It is not something on which the Sheriffs' Association would normally comment that being a matter for the Scottish Parliament.

2. Do you have any comments on the general structure of the offence set out above, in particular:

- **the requirement that a reasonable person would consider the accused's behaviour would be likely to cause the victim to suffer physical or psychological harm;**
- **the requirement for a course of behaviour consisting of behaviour on at least two occasions;**
- **the mental element of the offence to be intention to cause harm or recklessness as to harm being caused?**

If Parliament considers that this legislation is necessary the Sheriffs' Association sees merit in the adoption of an objective test as proposed.

3. Do you have any comments on the definition of 'abusive behaviour' contained in the draft offence?

The Sheriffs' Association has no comments.

4. Do you have any comments on the relationships the offence should apply to?

Whilst it is clearly a matter of policy the Sheriffs' Association is content that the limitation of this offence to the type of intimate relationship described in the

proposed legislation is appropriate.

5. Do you have any comments on the proposed defence to the offence?

The Sheriffs' Association considers that if Parliament considers that the proposed offence is necessary it is also necessary to set out the defences in the statutory provision creating the offence. The Association is content with the proposed drafting of this defence.

6. Do you have any comments on the proposed maximum penalty for the offence?

The issue of penalty is a matter of policy on which the Association would not normally comment.

7. Do you have a view on whether provision should be made to enable a court to convict the offender of 'alternative' offences without the need for these to be labelled in the complaint or indictment? If so, what offences do you think should be included as 'alternative offences'?

If the intention, as indicated in the Consultation document, is to make provision for cases in which the court is satisfied that the accused engaged in corroborated conduct on at least one occasion which constitutes a distinct criminal offence – for example, threatening and abusive behaviour or common law assault, but is not satisfied that the accused engaged in such conduct on more than one occasion and therefore cannot convict of a contravention of the domestic abuse offence then it is unnecessary to include any specific alternative for common law alternatives as in terms of the Criminal Procedure (Scotland) Act 1995 Schedule 3 para. 12: "Under an indictment or complaint charging a statutory offence, where the facts proved do not amount to a contravention of the statute, but do amount to a crime at common law, the accused may be convicted of the common law crime". It would, however be necessary for provision to be made for any statutory alternative such as threatening and abusive behaviour contrary to section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.

8. Do you have any other comments on the draft offence attached to this consultation?

The Sheriffs' Association has no further comments.

