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Responding to Gender-based Violence in Scotland

The Scope of the Gender Equality Duty
to Drive Cultural and Practical Change

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Final Report prepared by

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The views expressed in this document are those of the author and do not necessarily represent the policy or views of the Equality and Human Rights Commission.

This piece of research has its roots in well-established policy debates in Scotland. Following the passage of the Criminal Justice (Scotland) Act 2003, which introduced a new statutory aggravation for crimes motivated by religious prejudice, the then Scottish Executive convened a working group to explore and make recommendations on whether there was a case for similar provision for other social groups. The report and recommendations of the Hate Crime Working Group, published in 2004, recognised that the debate to introduce gender aggravation was one of the most contested issues which it had looked at, but it did not believe that at that stage it could recommend introducing such a provision.

These debates re-emerged with Patrick Harvie's member's bill which was to become the Offences (Aggravation by Prejudice) (Scotland) Act 2009. The Equality and Human Rights Commission, along with many organisations in the women's sector in Scotland, stated in its evidence on the bill that it did not believe that a statutory gender aggravation would be an effective additional criminal justice response to identifying and tackling crime motivated by gender prejudice. This of course begs the question about what is required to better address these types of crime. This piece of research, undertaken for the EHRC by the Scottish Centre for Crime and Justice Research, aims to be a useful contribution to this debate. It explores some of the arguments for and against a gender aggravation in Scots criminal law before considering the evidence thus far of the impact the Gender Equality Duty (GED) has had on Scotland's criminal justice system, and makes a number of useful recommendations for the future.

The EHRC subscribes to a gendered model of violence against women, which sees it as both a cause and consequence of wider gender inequality. We hope this report can help inform ongoing policy debate on criminal justice agencies' response to violence against women, particularly in light of the new single equality duty which Scottish Ministers will in due course place on Scottish public authorities under powers conferred on them by the Equality Act 2010. We believe that the appropriate regulatory framework for public bodies working in this area is one of the prerequisites for further improving on Scotland's record of identifying and tackling gender-based crime.

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1. INTRODUCTION

1.1 What is the Gender Equality Duty?

The Gender Equality Duty (GED) was introduced under Part 4 s.84 of the Equality Act 2006¹, which came into operation in April 2007. Part 4 of the Equality Act imposes both a general duty and specific gender duties on all listed public authorities. The general duty states that: a public authority shall, in carrying out its functions, have due regard to the need:

- (a) to eliminate unlawful discrimination and harassment, and
- (b) to promote equality of opportunity between men and women

This positive general duty means that all public authorities have a formal legal requirement to ensure that men and women are treated fairly, with their different needs being built into all public policies, practices and services. It is an overall duty to eliminate discrimination and promote equality, and is intended to affect activities undertaken and functions carried out by public authorities, including all aspects of policy formulation and implementation, service provision, employment practices, statutory discretion, and decision-making. It places the onus on public authorities to identify areas where they need to improve their services, policies and practice, and use this information to inform service delivery. Public authorities therefore need to ensure they take active steps to eliminate sources of discrimination, for example, by ensuring the proportion of women they employ at a senior level is appropriate, or that they pay their workforce in accordance with equal pay laws.

The specific gender duties are not objectives as such; rather they are a means of meeting the general equality duty. This includes the gathering of information on how the work of public authorities affects women and men; assessment of the impact of policies and practices on both sexes; the setting of gender equality objectives, and; the taking of action to achieve those objectives. There is also a requirement to publish and monitor a Gender Equality Scheme, and review its progress every three years.

The GED has been described as the most radical legislative advance since the introduction of the Sex Discrimination Act in 1975 (Rowena Arshad, EOC Commissioner Scotland). The latter legislation, which has been amended to incorporate the GED obligations, relied on a reactive

¹ For more information on the Equality Act 2006: http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060003_en.pdf The GED can be found in part 4 of the Act.

approach by individuals to take legal action to challenge discrimination once it had occurred. The GED moves away from an individualised approach by placing responsibility on public bodies to *identify* and *prevent* discrimination. It is therefore a proactive, rather than a reactive approach.²

Gender equality is often (mis)understood as a requirement to treat men and women in identical ways, in other words, to adopt a gender-neutral or ‘formal equality’ approach. Yet this approach can in fact lead to greater discrimination. For example, treating men and women as the same may lead to the (inappropriate) application of services and programmes which have been designed for men, to women. This ignores the fact that women have distinctive needs, characteristics and experiences that are different from men, and treating them as the same may result in adverse outcomes for women.

Gender equality is *not* about treating men and women the same; it is about recognising different needs and experiences, removing barriers and achieving systemic change by delivering equality of outcome. The GED imposes a legislative obligation upon public authorities to adopt a substantive equality - or outcome-based - approach to addressing gender inequality. This approach recognises that some inequalities are so persistent, durable and institutionalised (in both formal and informal structures and social, political and economic processes) that to treat men and women in the same way may simply be to reproduce disadvantage, thus perpetuating discrimination. The achievement of substantive equality requires taking account of differences in the needs, experiences, learning and relationship styles, and life circumstances, of women and men.

1.2 Gender-Based Violence as a Function of Gender Inequality

Gender-based violence encompasses the wide spectrum of violence and abuse perpetrated against women i.e. domestic abuse, rape and sexual assault, childhood sexual abuse, sexual harassment, stalking, commercial sexual exploitation, and harmful traditional practices such as female genital mutilation (FGM), forced marriage and so-called ‘honour’ crimes. There is a growing international recognition that gender-based violence stems from an interaction of individual, interpersonal,

² The GED does not mean that individuals are no longer able to take legal action following an experience of discrimination; rather it is an additional tool that can be used for tackling discrimination and promoting gender equality (EHRC 2007).

institutional, and structural factors (Fried, 2003) and that women experience gender-specific forms of violence that are different from those experienced by men. In 1993, the UN Declaration on the Elimination of Violence Against Women provided a consensus definition of violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life" (United Nations, 1993). The Declaration stresses that violence against women stems from gender inequality (and institutionalised unequal power between women and men) and can take a variety of forms (United Nations 1993; 1994)

Whatever form it takes, gender-based violence is a recurring theme of abusive and controlling behaviour through which the abuser seeks power and coercive control over their victim. There is therefore a need to understand such violence within the context of women and girls' status in society, and not in isolation from the norms and social structure and gender roles within the community, which greatly influence their vulnerability to violence.

1.3 The Nature, Scale and Consequences of Gender-Based Violence

Gender-based violence affects a large proportion of the population, and permeates all social strata. Only a small proportion of the violence that affects the lives of women are reported, but it is estimated that 3 million women across the UK experience rape and sexual assault, domestic violence, sexual harassment, forced marriage, trafficking, or other forms of violence each year (Fawcett Society 2009). The 2008/09 British Crime Survey self-completion module on intimate (domestic or sexual) violence shows that six per cent of women were victims of domestic abuse in the previous twelve months, and women are generally at higher risk than men (Home Office, 2009a). In England and Wales, domestic abuse accounts for 16 percent of all violent incidents reported to and recorded by the police (Home Office, 2004; Povey, 2004). This accounts for around one-third of all female homicide victims. Women who experience domestic abuse are most likely to experience repeat victimization (Walby and Allan, 2004). Repeat victimisation accounts for two-thirds (66%) of all incidents of domestic violence as measured by the British Crime Survey (Home Office, 2009a). In Scotland in 2007/08 the police recorded 49,655 incidents of domestic abuse, just under a 2% increase on the previous year, and; of those 49,655 incidents, 21,946 (44%) occurred where previous incidents had been recorded (Scottish Government, 2008f).

Although surveys vary considerably, estimates for lifetime prevalence of abuse by a partner or ex-partner tend to cluster together, with most studies suggesting that one in four adult women will experience physical violence by a partner in their life times (Mirrlees-Black, 1999; Dominy & Radford, 1996; McGibbon, Cooper & Kelly, 1989; Stanko et al, 1998). Morris & Gelsthorpe (2000) estimate that one in ten women have experienced at least one act of physical or sexual abuse in the previous 12 months.

There were 51,488 sexual offences recorded by the police in England and Wales in 2008/09 (Home Office, 2009a). In the same period, the number of sexual crimes recorded in Scotland was 6,552, of which 1,053 were cases of rape and/or attempted rape (Scottish Government, 2008f).

It is estimated that the Foreign & Commonwealth Office deal with around 400 cases of forced marriage annually (Fawcett Society, 2009). In January 2008 the UK Government's Forced Marriage Unit began to breakdown the origin of reported incidents of forced marriage/potential forced marriage. During the period January to October 2008, forty incidents came from Scotland (Scottish Government). No definitive statistics of the incidence of Female Genital Mutilation (FGM) are available (in any of the UK jurisdictions) because of the rarity of reporting, and also possibly due to ignorance of the matter. However, the FORWARD Report (2007) estimates that there are 65,000 first generation African immigrant women in the UK who have undergone some form of FGM; as many as 98,376 girls (under 15) estimated to have undergone or be at risk from FGM, and 16,000 girls (under 15) who have undergone, or are at risk of, infibulations (FORWARD 2007). Given the paucity of available data on this matter, there may be some scope for a review of the Female Genital Mutilation (Scotland) Act.

Gender-based violence has deep social and economic consequences. Its impact is far reaching: it can cause lasting damage to mental and physical health to those who experience it directly, on their children, as well as on their family and friends. The Council of Europe recognizes domestic abuse as the major cause of death and disability for women between the ages of 16 and 44 (Council of Europe, 2002). Incidents of gender-based violence also have a cumulative effect beyond that of individual incidents (Walby 2004). Victims suffer on many levels - health, housing, education - and lose the freedom to live their lives how they want, and without fear. Gender-based violence cuts across divisions of race, class, religion, age, ethnicity, sexuality, culture, and geographic region. Any woman anywhere can be a victim and a survivor of gender-based violence (Fried, 2003).

The financial costs of gender-based violence are huge. In 2004, a major study estimated the overall cost of domestic violence in England and Wales (Walby 2004). Updated to reflect the latest population numbers and prices, this cost was estimated at £25.3 billion for 2005-06.³ An estimate of the cost of domestic abuse in Scotland is calculated by ASSIST (2007) as being £0.57 billion per annum excluding human and emotional costs.

1.4 The GED and Gender-Based Violence

Gender is absolutely fundamental for any understanding of violence against women

Roundtable participant

Understanding of the causes and consequences of gender-based violence has greatly expanded in recent years. Feminist writers and those representing women who have experienced violence recognise the crucial role of gender inequality in such crimes. As Barnett (1998) argues ‘*only when gender is understood to be a means of social stratification, rather than an ostensibly neutral, rational arbiter between equal conflicting interests, will the position of women be understood and improved.*’ (1998: 133).

Any consideration of effective criminal justice responses to crime targeting, or disproportionately affecting, women needs to locate the question within the wider context of the deeply ingrained inequality experienced by women. Integrating a gender perspective into efforts to effectively prevent and respond to gender-based violence, means addressing the causes of gender-based violence and understanding its far reaching effects.

When the GED came into force in April 2007 it was seen as having the potential to transform public authorities’ response to gender-based violence by encouraging a more positive, proactive approach to ensuring gender equality.

Focusing on gender motivated violence shifts the emphasis so that we would be bringing into sharp relief the fact that women are not equal in society

Interviewee 2, women’s sector

³ This included a total cost to public services of £3.4 billion, £3.0 billion in lost employment, and £18.9 billion in costs to the victim. The breakdown of costs to services was as follows: criminal justice £1.1 billion; health services £1.5 billion; social services £0.25 billion; housing £0.17 billion, and civil legal costs £0.3 billion

2. THE RESEARCH STUDY

This research study, commissioned by the Equality and Human Rights Commission (EHRC) in Scotland, has the following aims:

- to summarise current Scottish devolved policy and legislation on violence against women in all its forms;
- to critically examine the arguments for and against a gender statutory aggravation as a criminal justice response to gender-based violence, looking, where appropriate, at examples in other jurisdictions;
- to explore the impact and future scope of the Gender Equality Duty as a policy tool for driving cultural and practical change in the way criminal justice bodies and other public authorities tackle gender-based crime.

The research was carried out primarily by means of documentary analysis and a set of 22 stakeholder interviews with representatives of central and local government, criminal justice bodies and, organisations that work with women who have experienced violence. Full details of the research methodology can be found in Appendix 1.

This report provides an overview of current Scottish policy and legislation in relation to gender-based violence, with a particular focus on developments that have taken place since the introduction of the GED. It also examines the case for a statutory aggravation for gender, and situates the debate on the viability or otherwise of such an aggravation within the wider debate on effective policy and legislative responses to gender-based violence. Drawing on research interviews, it examines what has thus far been achieved by the GED in relation to improving Scottish public authorities' response to gender-based violence, and explores what more the GED may potentially achieve in this area of gender (in)equality. In so doing, it sets out a vision for the future - a plan of necessary social, attitudinal and organisational change to ensure that gender-based violence is meaningfully and effectively tackled in Scotland.

3. SCOTLAND'S APPROACH TO GENDER-BASED VIOLENCE: A PROACTIVE GOVERNMENT?

The Scottish Government is recognised as being at the international forefront of work to tackle violence against women (Coy et al 2008; Coy and Kelly 2009). Scotland's innovative domestic abuse strategy has been in place for over a decade, and has since been broadened to cover all forms of violence against women. Since its inception following Devolution in 1999, the Scottish Parliament has also demonstrated a commitment to tackling violence against women, although significant work had already been undertaken in this area prior to the establishment of the Parliament, by both women's organisations and statutory agencies. The Scottish Government has incepted an integrated, broad and strategic approach to tackling violence against women, and is currently the only UK jurisdiction to adopt an explicitly gendered approach. The recent Government publication *Shared Lives, Changed Lives: A Shared Approach to Tackling Violence Against Women* (Scottish Government 2009b) explicitly recognises that violence against women is not only a consequence of gender inequality, it also perpetuates it. The document (re)states that the protection of women and children from all forms of violence is a Governmental high priority, and provides a definition, a set of guiding principles and a focus for multi-agency activities and partnership working with the aim to: "to provide a shared understanding and approach which will guide the work of all partners to tackle violence against women in Scotland." (Scottish Government 2009b).

The Scottish Government has drawn closely on the definition of violence against women contained within the *United Nations Declaration on the Elimination of Violence Against Women* (1993), which views such violence as a form of gender inequality, taking the form of actions that result in physical, sexual and psychological harm or suffering to women and children, or affront to their human dignity, including threats, coercion or deprivation of liberty, whether occurring in public or private life.⁴ A broad definition has been adopted which covers different forms of violence against women – including emotional, psychological, sexual and physical abuse, coercion and constraints – and which makes the links between domestic abuse, rape and sexual assault, child sexual abuse, honour crimes, and commercial sexual exploitation.

⁴ A brief thematic summary of current policy and legislation, in terms of its substantive focus (i.e. physical, sexual or psychological abuse, rape and sexual violence, stalking and harassment, forced marriage, female genital mutilation, trafficking and the sexual exploitation) can be found in Appendix 2

3.1 Advances at Policy level

In the years before, and particularly since Devolution, Scotland has seen the introduction of significant policy, legislative and organisational developments designed to improve the response to violence against women, particularly in relation to domestic abuse. In 2001, the then Scottish Executive made violence against women a government priority, with the present administration following this up in 2008 by setting out 13 priorities for action over the next three years; these focused on the four main themes of protection, provision, prevention and participation.

The Scottish Government views violence against women as having its roots in the inequality between men and women in society, and tackling such violence is stated as a prerequisite to reducing inequality between women and men in Scotland (Scottish Government 2009b). There is a clear acknowledgement that acts of violence and abusive behaviour are perpetrated predominantly by men, and affect women and children disproportionately (Scottish Executive 2001; Scottish Government 2009b). The high level of attention has led to an improved infrastructure for the Government response to violence against women, particularly for the delivery of services, and also led to closer working between the criminal justice sector and government Equality Units.

The Scottish Government and local authorities have committed significant resources to tackling violence against women. In 2004, two new funding streams were announced – the Rape Crisis Specific Fund (RCSF) and the Violence Against Women Fund (VAWF). The Scottish Government have allocated over £44 million for violence against women work for the period 2008 - 2011. From 2008, a Concordat agreement set out the terms of a new relationship between the Scottish Government and local government, which underpins the funding provided by central to local government. As part of the Concordat, there has been the adoption of a single outcome agreement for every council, based on an agreed set of national outcomes (underpinned by agreed national indicators). Of the 15 national outcomes included in the Concordat, a number have direct relevance to the violence against women agenda. The provision of services is delivered within the context of the Concordat arrangements. Local authorities, through community planning processes, have assumed autonomy for how they choose to deliver local services. Under this new non-ring fenced approach, service provision is the vehicle for delivery of outcomes.

'The things which distinguish the Scottish Government in its approach to this, is the profile which is being given to each of the areas, the fact that things have been taken forward.... ongoing work around domestic abuse.... thinking around violence against women, and the partnership approach, both internal and external to Government, where the notion of agencies working together to achieve change has been quite an important feature of the development of thinking and also the development of delivery.'

Interviewee 14, central government

In common with other UK jurisdictions, Scotland has developed partnership and inter-agency working protocols with a primary focus on crime prevention and community safety. Violence against women, in particular domestic abuse, is situated as a community safety concern, and domestic abuse is included within both national and local community safety initiatives. The recognition of domestic abuse as a community safety concern has resulted in awareness raising campaigns, improving accessibility to services for those affected by domestic abuse and the appointment of specialised co-ordinators to oversee the implementation of local policies. Such initiatives serve to increase public knowledge about domestic abuse, and the services available to those affected by domestic abuse.

'I think the fact that there is a national definition and there is a strategy make a big difference particularly if you are someone like me if you are trying to see, you know, if people are saying why should we change, then you can say well because the country said we should change, it is not just somebody's wee notion somewhere that this is something we should be working on.'

Interviewee 8, criminal justice

A joint protocol between the Association of Chief Police Officers in Scotland (ACPOS) and the Crown Office and Procurator Fiscal Service (COPFS), commits the police to treating all incidents of domestic abuse as high priority (ACPOS 2004). The Protocol sets out a presumption that all cases in which there is sufficient corroborative evidence of a crime will be reported to the Procurator Fiscal and there is also a presumption that, save in exceptional circumstances, alleged offenders will be detained in custody pending appearance at court. Where there is sufficient evidence in cases involving violence against the victim there is a presumption in favour of prosecution.

Recent years have also seen the establishment of a pilot specialist domestic abuse court located in a dedicated courtroom. Set up as a pilot project in 2004 to deal with summary domestic abuse cases from one police division (G Division) in Strathclyde Police, the court has since been expanded to cover all areas covered by Glasgow Sheriff Court. Specialist sheriffs sit in the court and a dedicated team of prosecutors provide further continuity. ASSIST, a specialist victim support service, within Glasgow Community and Safety Services, has been established to support victims of domestic abuse and their dependent children.⁵ ASSIST is recognised as playing a pivotal role of coordinating the work of the various agencies, including the police, criminal justice agencies, social work, and voluntary sector agencies. Protocols have been established, with key partners involved with the day to day operation of the domestic abuse court - including Strathclyde Police, COPFS, Victim Information and Advice (VIA), Victim Support Scotland (VSS) and the Witness Service. ASSIST services include: ability to contact victims within 24 hours of notification by the police, while the accused is normally in custody, which allows early initial risk assessment and risk management; safety planning arrangements for domestic abuse advocacy; the continuity of contact with victims; the regular flow of information to the procurator fiscal (prosecutor), informing them of the victim's views; and the provision of advanced safety planning, in particular through Multi-Agency Risk Assessment Conferencing (MARACs).

Strathclyde Police have established arrangements for remote reporting of domestic abuse and, in late 2008, launched a specialist domestic abuse task force dedicated to proactively tackling domestic abuse by identifying perpetrators of domestic abuse and targeting high risk offenders.

Whilst the Scottish Government recognised the gendered nature of domestic abuse in its *National Strategy on Domestic Abuse* as early as 2000 (Scottish Executive, 2000a), until the recent publication of the Scottish Government's *National Domestic Abuse Delivery Plan for Children & Young People* (Scottish Government, 2008e), the impact on children who have experienced or witnessed domestic abuse has received less attention. While no exact prevalence figures are available, Scottish Women's Aid estimates that 100,000 children and young people in Scotland are currently living with domestic abuse (Scottish Women's Aid, 2004).

⁵ <http://www.saferglasgow.com/services/reducing-violence-against-women/assist.aspx>

In the recognition that significant negative outcomes can result from experiencing or witnessing domestic abuse during childhood (Mullender, 2004; Hester, Pearson, & Harwin, 2007), the Government's *National Domestic Abuse Delivery Plan for Children & Young People* (Scottish Government, 2008e) identifies a broad range of priorities for children, young people and their families in the areas of protection, provision, prevention through education and participation. An intervention that provides separate but linked support for both the child and their mother was recommended in a recent review for the Scottish Government (Humphreys, Houghton & Ellis, 2008) and led to the Cedar Project, an interagency project seeking to enhance the provision of services for children and young people who have experienced domestic abuse.

Since Devolution, activists in statutory and voluntary sector organisations have worked with the Scottish Government to influence the way forward in relation to gender-based violence. Rape Crisis provision has developed significantly in recent years due largely to ring-fenced government funding. The Rape Crisis Specific Fund (RCSF) has made a significant difference to the rape crisis movement in Scotland, by allocating funding of £50,000 per year for every rape crisis centre in Scotland, thereby guaranteeing a basic level of capacity and improving services for women and girls (Coy and Kelly 2009). In 2007, Rape Crisis Scotland also received funding to develop and establish a national rape crisis helpline to provide initial and crisis support to anyone affected by sexual violence. The RCSF funding for the national helpline and funding for Rape Crisis Scotland have all been continued under the SNP administration. Research carried out for the End Violence Against Women Coalition found that Scotland is the only area of the UK where the number of rape crisis centres is increasing rather than decreasing (Coy et al 2008).

In recent years, a raft of significant policy reforms and initiatives aimed at improving the criminal justice response to rape and sexual offences have been introduced. In 2006, the Scottish Executive provided funding for a three year pilot Sexual Assault Referral Centre (SARC) for Scotland, providing forensic medical examinations, sexual health screening, follow-up support and counseling to victims of recent serious sexual assault. Funding for this initiative, totaling £1.6 million for the period 1st April 2006 to 31st March 2009, was split between ministerial portfolios – Justice, Communities and Health – reflecting the cross cutting nature of the issue of sexual violence. In November 2008, local funders – NHS Greater Glasgow and Clyde, Strathclyde Police & Glasgow City council – agreed funding for Archway Glasgow post pilot. However, SARC facilities are only currently available in one region in Scotland.

COPFS emerged as a key driver of policy reform in the area of sexual violence in Scotland. Victim Information and Advice (VIA) was set up to meet information needs of victims and witnesses, in 2002, with roll-out over Scotland in 2004. Later that same year, COPFS embarked on a Review of its handling of rape and other serious sexual offences, which culminated in a Report in June 2006. The Report made 50 recommendations for change, most of which have now been implemented. These include; guidance issued to police on the investigation of serious sexual offences (ACPOS 2008); the specialist training of prosecutors in sexual offence cases (COPFS 2006; 2008); the publication of a comprehensive information pack for those who have been raped or sexually assaulted (Scottish Government 2008a), and; in 2009, the inception of a specialist National Sexual Crimes Unit, a specialist prosecution team comprised of Crown Counsel with a remit for close involvement in the investigation and prosecution of sexual crime.

The Association of Chief Police Officers in Scotland (ACPOS) also undertook a parallel review of their procedures. A set of recommendations from the review have been released, which relate to a variety of aspects of the investigation process, including: the updating of the guidance manual for police officers on the investigation of sexual assault; the establishment of a Scotland wide *Moorov* database (to assist in the gathering of intelligence of cases which are similar enough to have the potential of corroborating each other), and; agreeing a standard reporting protocol with COPFS. In 2008, ACPOS provided updated guidance for officers responding to complaints of sexual assault, publishing the *Scottish Investigators' Guide to Serious Sexual Offences* which provides guidance on interviewing planning and forensic issues (ACPOS 2008).

The previous devolved administration with the Home Office jointly published an *Action Plan on Tackling Human Trafficking* in March 2007, and have committed to implement the Action Plan and ensure Scotland's compliance with the Council of Europe Convention on Action Against Trafficking. Since 2004, the Government has provided funding via the Violence Against Women Fund to the TARA project in Glasgow to provide advice and support to women who have been trafficked into Scotland for the purposes of commercial sexual exploitation, and to collate information in order to enhance intelligence and raise awareness among front-line service providers about trafficking. The TARA project was established in 2005 as a service to help identify and support women who may have been trafficked for the purpose of commercial sexual exploitation.

3.2 Legislative Reforms

There have also been several significant legislative reforms in Scotland in recent years. These include:

- the Protection from Harassment Act 1997, in its application to Scotland (sections 8-11), provides for non-harassment orders, which can be obtained through criminal and civil procedures;
- an extension of the number, type and powers attached to civil protection orders, and the introduction of the Protection from Abuse (Scotland) Act 2001, which allows anyone who has obtained, or who is applying for, an interdict against an abusive person to apply to the court to have a power of arrest attached to the interdict;
- the Sexual Offences (Procedure and Evidence (Scotland) Act 2002 introduced new 'rape shield' legislation to protect victims of sexual offences from distressing and humiliating questioning on their sexual history and character during a sexual offence trial;
- the Vulnerable Witnesses (Scotland) Act 2004 introduced special measures (e.g. screens, supporter, a live television link from either another room within the court building or from out-with the court in a remote site, evidence by a Commissioner and use of a prior statement) to assist child witnesses and those defined as vulnerable adult witnesses in giving their evidence in all cases, including sexual offences cases;
- the Prohibition of Female Genital Mutilation (Scotland) Act 2005 re-enacts for Scotland the provisions of the Female Genital Mutilation 1985 Act passed in Westminster. It increases the sentencing maximum for female genital mutilation (FGM), and makes additional forms of FGM unlawful;
- the Prostitution (Public Places) (Scotland) Act 2007 criminalises loitering or soliciting in a public place for the purpose of obtaining the services of someone engaged in prostitution (i.e. kerb-crawling);
- following an extensive review and consultation conducted by the Scottish Law Commission, the law of rape has been reformed by the introduction of the Sexual Offences (Scotland) Act 2009, which modernises and broadens out the definition of rape and provides statutory clarification of consent.

3.3 Gap between Policy and Practice?

Whilst there is little doubt that criminal justice bodies in Scotland have continued to make advances at the strategic policy and at the legislative level, there remains a worrying gap in terms of the effective implementation of policy into practice. Despite very positive policy developments, there remains rather patchy provision of violence against women services across Scotland, particularly in rural areas (Coy et al 2008). Moreover, the provision of special measures, interpretation, and support for women during the court process is inconsistent (Burman et al 2007).

“There has been the development of high level policy and strategic plans in relation to gender based violence, within the justice sector. Although I don’t see that happening to the same extent in relation to sexual violence as I do in relation to domestic abuse”

Interviewee 2, women’s sector

Although the criminal justice response to rape is an area characterised by change and reform, the rate of convictions for rape and other sexual offences remains very low, and women continue to feel that they are not being taken seriously when they report rape. Over the 30 year period from 1977 to 2007, Scottish official recorded crime data show that there was an increase of 451 percent in the number of rapes reported to the police (Scottish Government, 2008f; Lovett and Kelly 2009). In marked contrast to reporting, however, there has been virtually no change in the number of prosecutions for rape over the same period. The number of prosecutions grew by just 15 percent (from 60 to 69), representing a fall in the proportion of reported cases prosecuted from 34 percent in 1977 to seven percent in 2006. What is more, conviction rates have actually decreased over the same period in a manner not dissimilar to England and Wales. Using the national statistical data, Scotland currently has the lowest conviction rate for rape in Europe, at under four percent (Lovett and Kelly, 2009).

“Legislative change, though welcome, will not on its own lead to improved conviction rates for rape, nor will women have greater protection from crimes of sexual violence without a sustained challenge to widely held public attitudes to rape”

Interviewee 21, women’s sector

The ordeal of the witness box is one of a set of inter-related concerns about the criminal justice response to rape and sexual assault in Scotland. Much of the concern about women's experience of giving evidence in court relates to the use of questioning and evidence about her sexual history and sexual character. Scotland first introduced 'rape shield' legislation to restrict the use of sexual history and character of complainers in sexual offence trials in 1986, by means of the Criminal Procedure (Scotland) Act 1975 ss.141A/141B and 346A/346B (as inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 section 36). This legislation was found to be largely ineffective in restricting the use of sexual history and sexual character evidence (Brown et al 1992; 1993; Burman et al 2005) and was subsequently reformed in 2002 by means of the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002. The 2002 Act aimed to widen and strengthen the existing restrictions on sexual history and character evidence, and to sharpen the focus on the relevance of such evidence. It was a clear attempt to address the perceived deficiencies of the earlier legislation (Jamieson and Burman, 2001; Scottish Executive 2000b). Yet following this second legislative attempt, the volume of sexual history and character evidence introduced in sexual offence trials has substantially increased, such that seven out of ten complainers in serious sexual offence trials are now virtually guaranteed to be questioned on intimate sexual matters (Burman et al, 2007). Such evidence about the practical experiences of women alleging rape demonstrates that, despite well-intentioned reform, legal practice can weaken reform intent such that the criminal justice system continues to fail to provide women with the support, safety and justice they need.

3.4 Wider Social Attitudes inhibit Reform

While the pace of change in relation to the criminal justice response to gender-based violence has been generally steady, the findings of research studies into public perceptions of, and attitudes towards, gender-based violence are sobering (ICM 2005). For example, attitudes and expectations as to how a 'proper victim' of rape should behave and who might be considered responsible for domestic abuse continue to shape wider responses to violence against women in Scotland. A Scottish study involving young people aged 14 to 18 years found that a third of young men and a sixth of young women thought that using violence in intimate relationships was acceptable under certain circumstances (Burman and Cartmel 2005). Worryingly, there is a still prevalent idea that a woman can in some way be responsible for being

raped, depending on how she was dressed, or how much she had had to drink, or because of her sexual history. Recent research undertaken for the Scottish Government found that twenty seven percent of respondents think a woman can be at least partly responsible if she is drunk at the time of a sexual assault; twenty six percent thought that a woman bore responsibility if she wore revealing clothing; thirty two percent said that there should be some burden of responsibility for rape if the woman is flirting, and: eighteen percent believe that rape can be the woman's fault if she is known to have had several sexual partners (TNS System Three 2007).

‘Wider societal issues are important. We have school campus officers at schools throughout Strathclyde. We ask the question: ‘Your girlfriend insults your mother, would you slap her?’ We try and intervene before 10 years old. There is a lack of good male role models – kids under 10 may have only seen a domestically violent man. It is a generational thing. I visit men in prison and men involved in domestic abuse have no empathy – you ask them ‘how could you batter her to a pulp’ they don’t care and they don’t have an understanding.

Interviewee 20, community safety,
speaking about the role of campus officers in schools

The work of the Scottish Government in the development and implementation of an integrated strategy to tackle violence against women is clearly encouraging, as are the reforms that have occurred within the criminal justice system. Yet legal and policy reform in the absence of parallel social and cultural reform cannot eradicate men’s violence against women (see for example, Smart, 1989; Snider, 1998; Walklate 2008). The prevalence of gender-based violence, in all its forms, remains high in Scotland, and there are major concerns that more needs to be done to tackle such violence, and improve the effectiveness of the criminal justice response to it.

Good policy development will not have the intended impact on the ground, unless resources and targets are directed towards creating a shift in attitudes and cultural beliefs about gender-based violence. Gender equality will only succeed if there is real commitment to confront the basis of, and challenge widely-held views that gender-based violence can be excused or explained away, and that women are responsible for the violence inflicted upon them.

3.5 More Work to be Done

Many of those working with women who have experienced gender-based violence acknowledge the value of the high level policy work, and are supportive of the development of strategic plans within the justice sector. Yet there is a concern, voiced by several of those interviewed as part of this research, is that the focus thus far has been predominantly on developing strategic awareness and service delivery in relation to domestic abuse, and that activity has not taken place to the same extent in relation to other areas of gender-based violence.

A key criticism relates to the perception that policy, planning and implementation work on the different forms of gender-based violence at both a national and a local level has largely been developed separately, despite the strong links that exist between different forms of violence. Although the Government espouses an integrated approach, and explicitly acknowledges the links between different forms of gender-based violence, the impression retained is that, in practice, a rather atomised approach has been taken to tackling gender-based violence. According to several interviewees, this has had the (unintended) effect of ring-fencing work and activity in relation to gender-based violence, and at the same time clouding awareness of the inter-relatedness of different forms of violence experienced by women. The adoption of the Concordat arrangements between central and local government, which heralded an outcome-focused, non-ring fenced approach to policy and service delivery, may assist in the removal of any barriers and provide a framework to support more integrated working and provision across different forms of gender-based violence.

4. TAKING A LEGISLATIVE ROUTE: A STATUTORY AGGRAVATION FOR GENDER?

Alongside the wider debate about Scotland's response to gender-based violence, in recent years, there has been a debate on the merits of a gender-based statutory aggravation as a possible criminal justice response to gender-based violence.

In this section the arguments for and against a statutory aggravation for gender as a response to violence against women are examined. A key question is whether statutory aggravations for gender, modeled on those for homophobic, transphobic and disability-related hate crime are the most appropriate and effective policy response to violence against women. The discussion draws on debates on hate crime prompted through the Scottish Executive's Working Group on Hate Crime, the provisions of the Offences (Aggravation by Prejudice) (Scotland) Bill and subsequent Act, and the published evidence provided to the Scottish Parliament Equal Opportunities Commission in relation to the Act. It also draws on interview material undertaken with a range of stakeholders (see Appendix 1 Research Methodology).

4.1 Background

In recent years, along with other UK jurisdictions, Scotland has given close consideration to 'hate crime' legislation. In December 2002, an amendment was lodged to the Criminal Justice (Scotland) Bill by Donald Gorrie MSP to make provision for the statutory aggravation of an offence by *religious prejudice*. This later became section 74 of the Criminal Justice (Scotland) Act 2003, which requires the courts to take any such *aggravation* into account when determining sentence, and also to state the extent of, and reasons for, any consequent difference in sentence. In early 2003, Robin Harper MSP lodged a similar amendment to the Criminal Justice (Scotland) Bill to make provision for statutory aggravations of any offence motivated by prejudice against someone's actual or presumed *gender, sexual orientation, disability or age*. The Scottish Executive did not support this second amendment at the time, but set up a Working Group on Hate Crime to consider the most appropriate measures needed to combat crime based on hatred towards particular social groups.

What is Hate Crime?

"Hate crime" is generally understood to be crime motivated by malice and ill-will towards a social group which leads to the targeting of individuals, groups and communities because of who they are or who someone believes they are (Home Office, 2009b). It covers any act of intimidation, harassment, physical force, or threat directed against a person who is either a member, or perceived to be a member, of a particular social group. Hate crime can range from threatening phone calls to murder, and is intended to intimidate or injure an individual because of his or her actual or presumed membership of that group.

The Working Group on Hate Crime focused on, among other areas, how improvements may be made to the criminal justice system, and sought views on whether and how different parts of the system could be improved in order to deal more effectively with hate crime. Following a period of consultation, the report of the Working Group was published in October 2004 (Scottish Executive, 2004a). It made 14 recommendations, the first of which was that the Scottish Executive should introduce a statutory aggravation as soon as possible for crimes motivated by malice or ill-will towards an individual based on their sexual orientation, transgender identity or disability (Scottish Executive, 2004: 4). So, although the Working Group focused on the four areas of social prejudice identified by Robin Harper MSP – i.e. age, gender, disability and sexual orientation - ultimately the recommendation for the introduction of a statutory aggravation did not extend to offences motivated by hatred on the basis of gender or age. However the Working Group's first recommendation went on to state that the legislation should be framed in such a way as to allow statutory protection to be extended to other social groups over time if evidence emerges that other groups are subject to a significant level of hate crime (Scottish Executive, 2004: 4), allowing for a future consideration of crimes motivated by gender hatred. The recommendation also called for better recording by criminal justice agencies, specifically the recording of hate-motivated incidents (by the police), reports and decisions of proceedings (by Crown Office and Procurator Fiscal Service), and convictions (by Scottish Criminal Records Office (Scottish Executive, 2004: 4, Recommendation 1).

What is a Statutory Aggravation?

Provisions made in statute in relation to offences which are aggravated (made more serious) by prejudice or hatred of particular groups (Scottish Executive 2004a). The provision of a statutory aggravation does not create a new offence; rather it is a means of increasing the penalty of an existing offence. The aggravation ensures that where the context of a crime has been prejudice or hatred towards a certain social group, then that context is taken into account at the point of sentence.

The aggravation is stated as part of the charge, and must be proved separately to the criminal offence itself, for example assault. So, in the case of a gender aggravation to a criminal act of assault, it would have to be proved that the assault was motivated by a general gender prejudice or hatred of women (or men) on the part of the perpetrator.

4.2 Why was Gender left out?

Both 'gender' and 'age' were flagged as 'complicated' categories early on in the consultation process. The impracticality of making statutory provision for hate crime against large and encompassing social groups, i.e. men and women in the case of gender, was identified. The consultation paper drew attention to the very wide protection that statutory provision in relation to gender would bring, in that it would apply to such a large section of the population, and questioned the feasibility of making a change in the law to highlight motivation of hatred of a victim because they are male or female (Scottish Executive 2004a.) Whilst recognising that women may be targeted as victims because the perpetrator is motivated by a generalised gender prejudice or hatred of women, the Working Group also drew attention to the practical difficulties in gathering evidence in individual cases of malice and ill-will on gender grounds, and the potential difficulties in proving that the predominant motivation of the criminal act was indeed on the basis of the victim's actual or presumed membership of a particular social group, rather than a perception of the victim's vulnerability or some other reason:

"It is possible that circumstances could arise in which such a wide protection would be appropriate in order to penalise someone who had become embittered against men or women and who target that gender for crime. The question is always "what is the motivation for the offence?" - is it hatred for that gender, hatred for the individual or something else altogether? (Scottish Executive, 2004a: 11)

There was support for the introduction of hate crime legislation in relation to gender primarily, but not solely, from those who work with women who experience gender-based violence. In general, proponents for understanding violence against women as a form of hate crime see acts of violence based on gender as crimes against individuals, which are meant to terrorize the larger group of women, and not just isolated crimes against persons who happen to be female (see Noel, 1997). From this standpoint, it is seen as mistaken to conceptualise violence motivated by hatred on the basis of gender as existing only if the victim is a stranger to the perpetrator. Simply because a perpetrator knows his victim, as is always true in domestic abuse, and commonly the case in sexual violence, does not mean that the crime does not reveal hatred or ill will towards women as a whole. So, for example, whilst domestic abuse is often viewed as an individual dispute between a man and a woman who live together, or the pathological problem of a particular man, it reveals deep historical, cultural and legal roots in relation to the subordination of women.

All crimes motivated by hatred are both individual and socially damaging and should not be tolerated. So for us, we believed that [the Offences (Aggravation by Prejudice)] Bill should also be extended to all social groups, and therefore include gender as well.

Interviewee 4

Drawing on submissions from women's groups, the Report of the Working Group acknowledged that there are different facets to gender-based violence; that men are overwhelmingly responsible for violence directed towards women, and; that women and girls suffer disproportionately from such violence:

"...we recognise that violence against women is related to the attitudes and behaviours in our society which undermine women's position and their equality to men, ranging from the media's sexualisation of girls and young women through to pornography, prostitution and the trafficking of people." (Scottish Executive, 2004: 28 (5.37))

Furthermore, the Report acknowledged that when women are abused because they are women, then that implies gender-based malice and ill-will on the part of the perpetrator. At the end of the consultation however, agreement could not be reached on whether a statutory aggravation on grounds of gender could be used effectively to tackle the complex and diverse issues that underpin crime motivated by gender hatred, and ultimately the Working Group did not recommend the provision of

a statutory aggravation for gender. It did, however, recommend that the Scottish Executive review the area of criminal law on violence against women and continue to investigate the link between the undermining of women in society and crimes of violence against women with a view to combating both, and that it consider a statutory aggravation for domestic abuse (Scottish Executive, 2004: 4, Recommendation 3).

Arguments for Statutory Aggravations

There are a number of well-rehearsed arguments in favour of statutory aggravation (Scottish Executive 2004). In brief: it aggravates (or increases) the seriousness of the criminal act; it acts as a symbolic or 'declaratory' message from the State to perpetrators that such acts motivated by a prejudice or hatred towards a particular group won't be tolerated, and; it signals to victims and society that such acts are being taken seriously.

The inclusion of statutory aggravations has the potential for more accurate recording of particular types of hate crime and hence greater knowledge of the scale of the problem. Clear and consistent recording enables greater statistical information about numbers of prosecutions, criminal proceedings undertaken and convictions for such crimes. As such it encourages greater transparency and accountability of the criminal justice response.

4.3 Continuing the Debate on a Statutory Aggravation for Gender

Closely modelled on existing Scottish legislation for statutory aggravations for race and religion⁶, the subsequent Offences (Aggravation by Prejudice) (Scotland) Bill was introduced in the Scottish Parliament in May 2008, and the debate on the merits of a statutory aggravation as a possible criminal justice response to gender-based violence continued. Whilst the Justice Committee considered the Bill's main proposals to extend hate crime legislation to cover sexual orientation, transgender identity and disability, the Equal Opportunities Committee focused its consideration of the Bill on whether similar provisions concerning age and gender should also be included.

Following a call for evidence, written responses were provided to the Equal Opportunities Committee by a range of individuals and

⁶ Section 96 of the Crime and Disorder Act 1998 (race) and section 74 of the Criminal Justice (Scotland) Act 2003 (religion)

groups (Scottish Parliament Equal Opportunities Committee Report, 2008). Various respondents were in favour of including gender as an aggravation within the Bill, on the grounds that all six 'equality strands' should be treated equally, and that selecting specific social groups for special protection, and not others, may lead to the promotion of a perception of a hierarchy of rights.⁷

Some of those opposed to the introduction of hate crime legislation argued that existing Scots common law was sufficiently flexible to deal with hate crimes, and preferable to the introduction of legislation, and, related to this, that there would be practical problems involved in the workings of statutory aggravations, particularly in relation to gender. It was argued that the common law system in Scotland already allows for aggravating factors to be taken into account when courts determine sentencing. Currently in Scotland, sentencing is at the discretion of the court and the background context (of domestic abuse for example) may be taken into account at point of sentence. The identity of the victim, the offender, and the mode of assault are elements that are taken into account at the discretion of the sentencer, rather than forming part of the substantive definition of the offence.

Oral evidence opposing the inclusion of a gender aggravation in the Bill was also provided by several representatives from women's groups, representing a change of collective position since the earlier Working Group consultation in 2004, where there was some, albeit cautious, support for a gender aggravation from the women's sector. There were several reasons put forward for the inappropriateness of a gender aggravation for the effective prevention of and response to gender-based violence. They cohered around the recognition of difficulties in proving that a crime was committed against someone purely because of their gender; the potential for creating a spectrum of seriousness, whereby some cases are allegedly motivated by gender hatred and others are not. The oral evidence also drew on lessons learned from other jurisdictions, which suggest that the provision of a gender aggravation does not address the deep complexities of the multiple, but inter-linked, forms of violence against women.

Following the lengthy process of consultation and debate, the subsequent Offences Aggravated by Prejudice (Scotland) Act 2009 was introduced extending the existing aggravations of targeted or hate crime for race and religion to also include offences aggravated by prejudice in

⁷ These groups included the Association of Chief Police Officers in Scotland (ACPOS), Victim Support Scotland, the Evangelical Alliance Scotland, and Care for Scotland

areas of sexual orientation, transgender and disability (but not gender). The statutory provisions in the Act focus on the *motivation* of the offender rather than the identity of the victim and applies where an offence is found to be motivated by racial, religious, disability-related, or homophobic or trans-phobic malice, regardless of the actual identity of the victim.

4.4 The Limitations of a Statutory Aggravation for Gender

So what are the main arguments against the adoption of a statutory gender aggravation? The arguments against this approach span conceptual, as well as legal-evidential grounds. Given what is known about the multi-faceted nature, wide-spread scale and far-reaching consequences of gender-based violence, then a gender aggravation is not the most pressing priority in addressing violence against women. It is also questionable whether the provision of a gender aggravation represents the most appropriate criminal justice response to this deeply complex problem. This is most certainly not due to the problem of violence against women being any less prevalent or less serious than other forms of hate crime, but because the range of manifestations of violence against women are so wide, and the structures of gender inequality so entrenched, that a gender aggravation could be seen as merely addressing some of the overt symptoms rather than the deep and underlying structural causes.

The provision of a statutory aggravation does not create a new offence. Rather, it is a potential means of exacerbating the seriousness, and hence increasing the penalty, of an existing offence. The aggravation is stated as part of the charge, and must be proved separately to the criminal offence itself, for example assault. So, in the case of a gender aggravation to a criminal act of assault, it would have to be proved that the assault was motivated by a general gender prejudice or hatred of women (or men) on the part of the perpetrator. Studies show that domestic abuse, rape, sexual violence and honour crimes are all targeted crimes, overwhelmingly committed by men, and motivated by control, power and misplaced notions of honour and hierarchy. A gender aggravation premised on the idea that violence is motivated by (generalised) gender-hatred will not necessarily reduce the scale or the impact of such violence, or change its nature.

4.5 Gender-based violence in the public and private spheres

Violence against women takes a multitude of forms – physical, sexual, emotional and psychological - and it takes place in a wide variety of settings, both in the public and private spheres. Statutory aggravations tend to be more commonly used in relation to public order offences, or crimes committed in a public space. As such they do not apply so obviously to crimes which take place in the private sphere or, indeed, those crimes where the perpetrator is known intimately by the victim. In other jurisdictions around the world where a gender aggravation exists (e.g. Canada, US), the aggravation is infrequently invoked, and the offence is largely reserved for cases in which perpetrators did not know their victims. There is little evidence that legislation in any of those jurisdictions makes a material difference. It does not enhance women's safety and does not guarantee the delivery of justice for women. The introduction of a gender aggravation that is impractical and unworkable may give women false hope that justice would be delivered, when lessons from elsewhere clearly show this not to be the case.

The physical, emotional and sexual violence endured by women in abusive relationships does not fit the public character of many crimes currently dealt with by statutory aggravations. In many cases of gender-based violence, the victim is known to the perpetrator, indeed they may share aspects of their lives together, may co-habit or have children together. Gender-based violence, especially domestic abuse, 'honour killing' and female genital mutilation expose the dichotomy of the private home and the public sphere. There is therefore a very complex dynamic of such offending and particular vulnerabilities on the part of the victim that mark this sort of crime out from other forms of hate crime' that are motivated by hatred towards a particular group of people.

4.6 Potential for a Two-Tier System

As well as having the potential for enshrining an unhelpful public/private distinction there are concerns that the introduction of a gender aggravation could result in a two tier system, whereby some cases of violence against women are considered to be motivated by gender hatred or malice, and others are not. So for example, one might envisage two cases of sexual assault; one in which the perpetrator was known in some way to the victim (as is commonly the case) and the other in which the assault was carried out by a stranger. Would a gender aggravation be more likely to be proven in one case and not the other? Would a gender aggravation be more easily applied in cases with certain characteristics?

If so, what would these be? Given the continued prevalence of pervasive myths about what constitutes ‘real’ rape (Kennedy 1992; Lees, 1996; Temkin and Krahe 2008; ICM 2005), there is a not inconsiderable risk that the stranger case may be more easily considered to be motivated by a generalised gender malice, than the case where the accused is known to the victim. Differentiating between cases of violence against women in this way is not only unhelpful, it also misses fundamental points about the inter-connectedness of such violence, and its underlying causes. A gender aggravation could (albeit unintentionally) sustain widespread misconceptions about the nature of violence against women, by supporting the idea that assault by a stranger is somehow more serious than assault by known person.

4.7 Masking Differences and Similarities?

Relatedly, and given the very broad spectrum of violence endured by women, a key question is whether a gender aggravation would prove useful and effective in *all* instances of violence against women. Would all forms of violence against women be appropriately responded to through the introduction of a gender aggravation? Or would it be more useful, while recognising the common factors in the spectrum of gender-based violence, to develop responses which are better attuned to its different manifestations? Rather than the creation of a broad umbrella category within which all forms of violence against women are subsumed, responses to specific crimes, there are calls for the creation of specific crimes, for example honour crimes (see Reddy 2008) and domestic abuse (see Schneider 2000) to be recognised as gender-motivated.

4.8 Proving Gender Hatred

Although the standard of proof is lower as corroboration is not required to prove the aggravation (although corroboration is still required to prove the main offence itself), there are some potential difficulties in proving that a crime was committed against someone purely because of their gender. For a gender aggravation to be proved, essentially it would have to be shown that a woman was assaulted *because she was a woman*. This may lead to more scrutiny of women’s lives to establish the motivations behind the violence to ascertain whether it was in fact motivated by gender. One of the most significant concerns arising from this is the potential it would have for a women’s demeanour, lifestyle and behaviour to become the focus of attention in any investigation and subsequent trial, in ways not dissimilar to what happens in rape

investigations. It is well-established that women who experience gender-based violence undergo much scrutiny during the course of an investigation and the potential for re-traumatisation is high (HMCPs and HMIC 2007). Going to court is but part of a chain that requires re-living the entire distressing and traumatic event (see for example, Campbell and Raja 1999; Chambers and Millar 1986; Lees 1996). The need to prove gender hatred may lead (inadvertently) to closer scrutiny of the victim and exacerbate the potential for secondary victimisation. Arguably there is also the potential this may have for women to be seen as somehow provoking the assault simply by being a woman.

4.9 Legal practice commonly weakens reform intent

As discussed in section 3, in recent years, there have been a raft of reforms to policy, procedure, evidence, statute and successive sets of agency guidelines in relation to sexual crimes in Scotland. But there remain significant challenges posed by the levels of under-reporting, the dismal fact that Scotland has one of Europe's lowest conviction rates for rape, and the prevalence of unenlightened social attitudes about sexual assault and those who experience it (ICM 2005; TNS System 3 2007).

Discretion within the criminal justice system gives rise to the concern that whilst the motivation to change legislation can be valid, there are potential problems with interpretation and legal practice can weaken that validity and the intention of policy reform. Legislation is only as good as the drafting and the attitudes of those who interpret it. Research in relation to the criminal justice response to sexual violence has shown that legal practice and attitudes of the profession is crucial to the effectiveness of any statutory provision (see Burman et al 2007; Kelly and Regan 2001). Moreover, legal practice has the potential to undermine the spirit of any reform. Society's continuing acceptance of myths and false beliefs about rape can also be held by the key players in the criminal justice system, such as police officers, prosecutors, judges and juries (Temkin and Krahe 2008).

4.10 Statutory Gender Aggravation not seen as Appropriate

In summary this highlights there are a number of risks and unintended consequences associated with statutory provision of this nature. For the most part, these mirror concerns arising from the implementation of legislation elsewhere. What is apparent in these concerns is that legislation does not tackle wider societal issues that are at the root of the

causes of gender-based violence. A criminal justice response only part of the solution to addressing gender-based violence.

Women who are victims of violence, especially those alleging sexual violence, continue to be seen by many as unreliable and lacking credibility, prone to making false allegation, and ultimately regarded as culpable for their victimisation (ICM 2005; TNS System 3 2007; Temkin and Krahe (2008). Legislative change can not on its own lead to improvements in this regard, and indeed may contribute to the problem. Violence against women still occurs with relative impunity and this fact has to be acknowledged. A gender aggravation could prove very difficult to use and it may even prove to be counter-productive. Women's inequality runs so deep, and at such an unconscious level, that a gender aggravation would be an inadequate response, aimed at the symptoms rather than the underlying causes. An aggravation would not necessarily help make explicit in law the link between widespread misogynistic attitudes, entrenched gender inequality and violence against women.

A culture of gender equality cannot take root within the criminal justice system unless there is support for the rights of (all) women, their equal participation in society, and an understanding of the distinct needs and requirements of women experiencing gender-based violence. There needs to be a widespread belief that the incorporation of informed thinking about gender equality is integral to the effective development and implementation of policy.

5. WHAT HAS THE GENDER EQUALITY DUTY ACHIEVED IN RELATION TO GENDER-BASED VIOLENCE IN SCOTLAND?

The introduction of a public sector duty to have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity between women and men is an important step in removing the barriers and challenging the attitudes and behaviours that prevent gender equality in Scotland.

This section draws on the research interviews to examine the impact of the GED thus far, and in particular what is considered to have been achieved by the GED in relation to Scotland's response to gender-based violence. It describes first, how the GED is perceived and used by those whose work is (or is potentially) affected by it. Finally, it examines the scope of the GED for engineering further reform in Scotland's response to gender-based violence, and puts forward a set of recommendations.

5.1 Awareness and Understanding of the GED

'It is more top level awareness, rather than at the coal-face'.

Interviewee 4, local government

A first question concerns levels of awareness of the GED. At the time of the research, the GED has been in operation for just over two years. However, despite the 'smallness' of Scotland, and the close cross-sectoral working relationships that have developed between those who work in the areas of criminal justice, equality and gender-based violence, there is a general consensus amongst interviewees that wider awareness of the GED within public bodies is somewhat limited. There is a strong perception that knowledge about the details and requirements under the GED are largely restricted to certain key individuals within organisations, particularly those with equality and diversity responsibilities. There are variable levels of awareness by other personnel.

5.2 Impact of the GED

A key message from interviews and the roundtable session is that the GED has made more of an impact at a strategic national level by encouraging the development of policy statements that incorporate GED principles, but that implementation at both a local and an operational level is a challenge. Numerous examples of initiatives which demonstrate innovation and good practice were provided by interviewees, as may be expected given levels of activity in this area in recent years, but the extent to which these have been influenced by the GED is rather a moot point. For example, neither the move towards more comprehensive recording of data on domestic abuse by the police, and the use of that information to coordinate more effective responses; nor the COPFS Review of the investigation and prosecution of rape and sexual offences and the implementation of recommendations from the review can be said to be a direct result of the GED. The establishment of initiatives such as Archway, ASSIST, and the specialist domestic abuse court have led to key procedural and/or practice changes but their development owes more to other imperatives. Indeed, their inception pre-dates the implementation of the GED in April 2007.

5.3 GED and Gender Equality seen as Low Priority

What might be the reasons behind this (perceived) lack of impact? Several interviewees believe that gender-based violence is still a relatively low priority, with some notable exceptions, at local authority level. Although some local authorities have taken action to tackle gender inequality, it is not yet common practice, and there is a lack of specific specialist services for women, especially those from an ethnic minority background. This in turn affects the establishment of equitable working arrangements and protocols between organisations. Gender equality is not being mainstreamed into all local authority policies and processes, and there is a dearth of mechanisms to ensure accountability. This implies that there is a need for more articulation, within local authorities, of the relationship between gender inequality and gender-based violence.

Basically[the GED] is a way of trying to make it clear to the local authority they have responsibility under the equality duty to provide specific specialist services for women who are experiencing violence –

Interviewee 3, local government

5.4 Embedding Training

You can have all the policies in the world but [they are] worthless unless there is training to take it forward as it is intended.....

Interviewee 14, government official

This research suggests that there is a continuing lack of understanding about the detail of the GED and how it should be/may be utilised. For example, staff training and awareness sessions are being conducted within some public bodies, but there remains a lack of understanding about the specific duties within the GED, in particular what a 'gender analysis' might encompass. This suggests the need for more targeted and accessible training aimed at all staff, not just those with responsibilities for compliance with the GED, and that templates for training are kept under review.

5.5 Specific Duties

There were mixed views about the effectiveness of the specific duties in realising meaningful change, and in particular about the role of Gender Impact Assessments. Public bodies are required to assess the impact of current and proposed policies and practices on gender equality, and to pay due regard to the results of those impact assessments; implement the actions set out in Gender Equality Scheme within three years, unless unreasonable/ impracticable to do so; report against the scheme every year, and; review the scheme at least every three years.

It is difficult to develop policy unless you know the impact on those it is supposed to have an impact on.

Roundtable participant

Whilst, in some cases, implementing the specific duties is perceived as an overly bureaucratic means towards compliance, there was nevertheless agreement amongst most interviewees that the requirement for Gender Equality Schemes, and the carrying out of Gender Impact Assessments are essential for providing a clear framework and a focus for action. For this group of interviewees, implementing the specific duties is fundamental to improving services, and results from Impact Assessment can and do play a core role in service planning and delivery. The NHS Equality Strategy, in particular, was identified as a good practice example by several interviewees, primarily because of its clarity

and transparency, and because it is carried out in consultation with employees, experts, and service users.

There is a clear view that Gender Equality Impact assessments are most effective when carried out at the beginning of policy formulation and service review processes, rather at the end of the process of implementation.

The monitoring, review and reporting duties, have led, in some organisations in Scotland, to appropriate action in relation to violence against women services, based on an understanding of different need... but this not so evident at local authority level

Interviewee 7

Some interviewees were also of the view that the specific duties are a lever for (sometimes significant) change in policy and service development within their own organisations. In particular, that the requirement for systematic monitoring and review has led to greater transparency and accountability within their own organisations (the above-mentioned NHS Equality Strategy is a clear example) and provides a means for measuring the *achievement* of equality as opposed to leading to the creation of new initiatives. That said, interviewees who held this view, also identified that the specific duties were most effective when strong leadership is visible through accountability and support from senior staff.

But there was no clear consensus on this issue of transparency. Others held the rather different view that the practical application of the GED through the specific duties has been disappointing, in that it is often reduced to the development and (variable) completion of Gender Impact Assessments, rather than the mainstreaming of gender within core business through addressing the different needs of men and women. This group voiced concern at the utility and effectiveness of Gender Impact statements. Although allowing for the formation of a base-line, against which progress can be monitored, simply completing Gender Impact Assessments is not the same as undertaking a rigorous and informed gender analysis.

Gender Impact Assessments can just be a tick box mentality... with no real focus on outcomes or analysis

Interviewee 12

Whilst the research identified some examples of Gender Impact Assessments (mainly from statutory criminal justice agencies) not all public bodies have yet produced these. Gender Impact Assessments are essential if public bodies are to be really aware of the implications their strategy and policies can have on different groups. They also need to be robust; if there is a lack of transparent consultation, public bodies will not understand different needs of men and women.

Although Impact Assessments are seen as a good discipline for embedding an understanding of diverse needs into planning actions, and thereby driving change, it is not altogether clear how many public bodies are compliant with the specific duties. Some interviewees expressed concern that evaluations tend to be of initiatives that ‘seem to work’ rather than across the board.

I think more importantly than what you put in a strategic plan, is about how you integrate all of that stuff into professional practice, and professional responsibilities in the lines of accountability in terms of all the work we do

Interviewee 4

Relatedly, there are concerns arising from perceptions that evaluation and assessments, where they are carried out, may be too overly focused on plotting process, rather than assessing substantive outcome. For example, where information has been collected there has been a tendency for the focus to be on collecting information *about* women as an undifferentiated group, without an analysis of need. As discussed in section 1, the GED is primarily concerned with the achievement of substantive equality and so this lack of attention to longer-term outcome is worrying and requires addressing.

There is a balance to be struck with regard to organisations taking on the GED and making it their own but difficulty is in the ‘how’ to do this. We should not be developing policies without thinking how we could do this.

Roundtable participant

5.6 A Question of Compliance?

The EHRC has formal powers of enforcement which can be used if it has evidence that public bodies are not taking action required by the GED. Enforcement can be by judicial review or compliance notices. The EHRC as the equalities compliance body needs to be able to be seen to take action against a public body where this is considered necessary. Yet there is some confusion, most evident amongst the women's sectors representatives interviewed for this research, whether there has ever been a compliance issue in Scotland and, if so, how this was resolved.

The Scottish Government also has a role in providing strategic lead in this regard. Through the move towards decentralisation, there is opportunity to give ownership and responsibility to local authority areas. Responsibilisation may simultaneously empower and engage local authorities to identify and respond to priority needs in relation to gender-based violence. There is however a need to ensure consistency in provision between local areas (to avoid postcode lottery provision).

Scrutiny bodies such as HMIC and Audit Scotland also have a role to play and they are bound by the GED in their own functions. Such bodies need to ensure that the GED becomes an integral part of the inspection process, built into their inspection regimes and informing their judgments on what constitutes good performance.

Routinely and proactively responding to consultations on Gender Equality Schemes produced by public bodies was identified by women's sector representatives as a key way to ensure greater accountability of public bodies' work. Roundtable participants called for a greater response from other public sector organisations to be forthcoming in relation to such consultations.

5.7 Concerns: Misinterpretation of GED requirements

Several interviewees raised concerns that a misunderstanding of equality as requiring same treatment for men and women, means that the GED may lead to a re-direction of funds away from designated women-only services to support services for men, particularly at the local authority level. Further that this misunderstanding of equality will lead to male-defined practices and programmes being applied to women.

This apprehension that equality will be interpreted to mean 'equal treatment' has arisen following well-publicised concerns in England and Wales that adherence to the GED has meant that previously women-only services (such as Women's Aid Refuges) now have to

include provision for men, as well as women, despite provisions in the SDA for single sex services. Whilst there were no concrete examples provided of this occurring in Scotland, these fears must be read against the wider context of the current funding environment. Voluntary and community organisations are making significant compromises in seeking sustainability for their work. A competitive funding environment places them in a position of promising to be ‘all things to all people’, extending their work in sometimes contradictory ways and leading providers to accept funds which offer circumscribed and under-funded opportunities to provide services and meet needs.

5.8 Concerns: Gender and the Single Equality Duty

Interviewees also raised concerns that the proposed Single Equality Duty for public bodies could potentially lead to a reduced focus on gender inequality, with gender becoming lost amongst the other inequality strands. There is an anxiety about how the Single Equality Duty will operate in practice. Related concerns were raised about the feasibility of implementing a single impact assessment tool for all seven equality strands, when some strands require a different assessment approach.

5.9 Scope for the GED: as a Performance Measure

The GED has considerable scope for assisting the criminal justice system deliver on public service style agreements, the targets used by Government to measure performance. However delivering on gender equality through this route requires that gender equality is a core and central part of business planning and performance delivery, for example, for resource allocation and when contracting services. The GED reinforces existing equality and diversity mechanisms, in that recognising and reacting to shortfalls in existing practice falls within the best practice guidance of the GED.

The GED may provide the tool for monitoring and ensuring more formalised action plans on diversity and equality, as well as the monitoring of existing practice. Regular monitoring and independent evaluation of policy initiatives is essential to ensure that policy intentions are met. The GED offers an opportunity to insist on independent evaluation of both policy and practice in relation to responses to gender-based violence.

The managerialist approach embodied by the specific duties are congruent with other areas of public sector reform. As one interviewee said, 'The GED is a useful tool to hold statutory bodies to account.' There is a need to ensure that services are GED-compliant including in relation to procurement matters, which can in turn, broaden the reach for purposes of the GED.

5.10 GED as a Means of Obtaining Better Statistics and Data on Gender-based Violence

The GED should assist us in getting much better statistical data on violence against women, shouldn't it?

Interviewee 1

The routine collection of relevant data and the disaggregation of statistics has been a fundamental requirement in all recent United Nations policies in order to ensure that the intersections between gender and other inequalities such as age, race and disability can be taken into account.

The provision of gender disaggregated statistics by government departments and statistical services in the UK has improved over the past decade. Since Government Statistical Services gave a commitment in 1998 to the systematic collection and publication of gender disaggregated statistics, there has been a marked improvement in the provision of such statistics by government departments and National Statistics. This has led to a more systematic approach to the publication of gender disaggregated statistics within some policy areas, notably education, health, and criminal justice.

The Scottish Government Justice Department collates and publishes administrative data on recorded crime, court proceedings, sentences and other disposals such as community orders, and the prison population. Data are provided by police forces, local authority returns on social work and probation services, and computerised records systems such as the Scottish Offenders' Index, the Scottish Criminal Records Office, and the Prison Records System.

There are a number of well-documented limitations on currently available criminal justice statistics (see Breitenbach, 2006; Burman 2004). A major limitation lies in the lack of disaggregation of statistics by gender combined with other key variables, especially age, ethnicity and disability. Relationship between perpetrator and victim is not routinely available. Recommendations have been made (see Breitenbach, 2006; Walby 2004) for more comprehensive data, including: data on the nature and extent of physical and sexual violence and stalking, and on the incidence and prevalence of domestic abuse in Scotland. This is crucial. There is a need for comprehensive and up-to-date statistics in order to plan, deliver and evaluate services and measure policy impact.

With the caveats that administrative data is more of an indication of the routine activities of public services, and not an accurate guide to levels of gender-based violence, such data can nonetheless provide a guide to services, and is useful to inform policy discourse. Criminal justice data would be considerably more useful if it was to routinely cross-classify crimes/offences by whether or not they took place in a domestic context and provided the gender of both victim and perpetrator. This would allow mainstream Statistical Bulletins to be used for measurement of extent to which forms of gender-based violence are addressed by the criminal justice system.

Similarly, if the gender of applicants were routinely recorded for applications for relief under civil law this would provide much-needed information. Currently, it is not routinely recorded whether divorce/separation matters are as a result of domestic abuse. The systematic collection of data on whether domestic abuse is a contextual factor in civil legal cases would allow cross-classification by whether or not domestic abuse was a matter and so inform the provisions of appropriate services.

5.11 The GED as a Driver for Change?

I see the potential for the GED to be really helpful... but I'm not sure it really is yet

Interviewee 5, advocacy worker

The GED is intended to be a powerful tool for tackling discrimination against women and men. Yet the evidence from this research suggests that the scope for the GED to enhance responses to gender-based violence has yet to be fully realised. This research has revealed low levels of awareness of the GED and its underlying principles. There is a need for an improved – and collective - understanding of what gender equality is and how it can be achieved. Institutional change is required in order to achieve a criminal justice system which recognises and responds to the unique needs, and experiences of women who experience gender-based violence. In the recognition that it is difficult to embed equality within all organisations and across all sectors, there nonetheless needs to be a wider recognition that, despite the fact that change is difficult to do, it is not impossible and is deserving of effort.

Creating and maintaining a criminal justice system which is premised on a level of gender awareness that informs equality of outcomes for both men and women requires consistent and focused hard work on the part of criminal justice agencies and associated organisations. Moreover, if the GED is to be as effective as intended there is a need for practical and cultural change at every stage of the policy-making cycle, from early stage strategising through to implementation that takes into account the different needs of men and women, so that equality of outcomes are assured.

Scotland's approach to domestic abuse– at a policy level- is ground-breaking and this should be acknowledged. However there is a need for continuous improvement and scope for further innovation. In particular, there is a pressing need to acknowledge the strong links that exist between the different forms of gender-based violence, particularly in terms of the impact that such violence has on the everyday lives of those affected by it. With its focus on achieving substance equality outcomes, the GED has potential for drawing attention to diverse needs. Only by recognising the diverse needs and responding appropriately may gender equality be achieved.

The GED is potentially an important tool. It can assist organisations to be proactively involved in decision-making regarding public services.

Roundtable participant

As is also evident, there also needs to be a shift in wider social and cultural attitudes, both within the criminal justice sector, and beyond. Currently, the criminal justice approach is very incident focused – and driven by processes and procedures. More account needs to be taken of impact of these processes on those who experience them, and this could lead to real innovation. The GED offers real scope to do this but, unless messages are enforced and compliance observed, then its potential will never be fully realised. There is still much to be done to challenge the prejudice and discrimination that prevails in Scotland

We haven't done enough yet on using the GED as the way to push the debate within the criminal justice system. Yes, [the system] has to adopt a gender neutral position in responding to victims of crime, but that doesn't mean that they can't take account of the gendered nature of some crimes....

Interviewee 21, women's sector

RECOMMENDATIONS

1. The GED is never going to be effective if there continues to be limited awareness of its existence and its scope for use in day-to-day practice. Clearly, more work needs to be done to raise awareness of the GED, especially how it may be used to inform practice. Strong leadership is required in order to give strategic direction on implementation of GED within those organisations affected by it.
2. There should be more effective awareness raising of responsibility for ensuring gender equality, particularly directed at staff who do not have core responsibilities in equality or diversity matters.
3. Consideration needs to be given to the development and implementation of an education, awareness raising campaign and training in the (broadly conceived) criminal justice sector to increase understanding of substantive equality and the practical implications of the GED.
4. It is essential training on the GED is embedded in existing training structures and its implementation is relevant, timely and targeted, and followed up at regular intervals. Relatedly, it is also important that all training and implementation guidance and templates are clear, accessible and kept under review.
5. Clear guidance should be issued to local authorities to ensure they fully understand their obligations under the GED in relation to the provision of services and to ensure effective and measureable implementation.
6. Clear guidance should also be issued to local authorities about how working on gender- based violence helps them to meet the GED obligations.
7. Appropriate mechanisms should be developed for the identification of best practice in tackling and responding to gender-based violence, along with a variety of appropriate forms of targeted dissemination of best practice across the public and voluntary sectors.
8. Consideration should be given by the EHRC to provide clear and accessible information on progress being made by the GED, both to support public authorities' continuous improvement, and to improve accountability to the public.
9. Consideration should be given by the EHRC to the issuing of further follow-up information to public bodies on matters of compliance.
10. There should be exploration of the feasibility of a process of independent review of Gender Impact Assessments carried out independently of the organisations that implement them.

11. There needs to be clear guidance in relation to the Single Outcome Agreements that the GED does not necessarily mean the same treatment, rather it means 'appropriate' or 'tailored' treatment, in order to achieve substantive equality.
12. There is a need to ensure that equality duties are embedded within other key improvement drivers within organisations. The GED can and should be used as a marker for 'quality' and incorporated within key performance indicators (KPIs) and Single Outcome Agreements.
13. The monitoring and review of Action Plans should be built into the performance management framework of organisations and reported regularly to Executive level. Audit and inspection regimes should have equality and diversity mainstreamed in their assessment criteria.
14. There is a need for careful evaluation and research as to the effect that strategy formulation and policy development is having in practice. This would allow for regular assessment of how the GED has been used, and in particular, what concrete things have been done in order to meet the GED in Scottish public bodies.
15. The Scottish Government should fund a rolling national awareness raising campaign on the relationship between gender equality and gender-based violence, similar to awareness raising campaigns in relation to drink driving and drugs.

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APPENDIX 1: RESEARCH METHODOLOGY

The research which forms the basis of this report entailed, first, an initial information gathering exercise in order to identify and collate current devolved policy and legislation with a substantive focus on gender-based violence in Scotland.

Second, a total of twenty two semi-structured research interviews (telephone and face-to-face) were undertaken with representatives from a range of statutory agencies (e.g. police, COPFS, courts); criminal justice practitioners; local and central government policy officials; specialist service providers and non-statutory organisations and groups providing information and services for those who have experienced gender-based violence (e.g. Rape Crisis Scotland; Scottish Women's Aid, Amnesty International).

Interviewees were selected in consultation with the EHRC on the basis that their organisations play a significant role in responding to gender-based violence in Scotland. Interviewees do not therefore represent a random sample from the public sector, but were selected on the basis that they were likely to have relevant experience of the GED, either in terms of its implementation within their organisation or its impact on provision of service. Interviewees were drawn from Scottish central government departments, local government, health, criminal justice, development agencies, and women's sector organisations. Most interviews took place between February and April 2009 with a small number carried out in June 2009. Typically, interviews lasted between 45 and 60 minutes.

Interviews had the aims of obtaining participants' views on the potential for use of a statutory gender aggravation, the scope for use of GED as a driver for further reform in Scotland's response to gender-based violence; and the identification of current 'good practice' examples of the application of the GED in addressing gender-based violence. The evidence gathered was primarily qualitative, and content analysis of interviews is focused on broad themes and recurring concerns which are addressed throughout the report. Interviews were followed by a roundtable event at which twelve statutory and non-statutory organisations who work on issues relevant to gender-based violence were represented. Participants were presented with a set of preliminary findings from the research for discussion, and asked to share their views on their experiences of the application of the GED in their organisations. Many of the issues raised in the roundtable discussion were also reflected in feedback from individual interviews.

APPENDIX 2: LEGISLATION AND POLICY WITH A FOCUS ON GENDER VIOLENCE

APPENDIX 2 - LEGISLATION				
LEGISLATION	Date	Gender-based Violence Focus	Evaluated?	Descriptor
Matrimonial Homes (Family Protection) (S) Act 1981	1981	Domestic Violence (marriage; property rights)	not known	<p>Gave spouses certain rights in their matrimonial home. The underlying principle is that, where one spouse is the owner or tenant of the home in which the couple normally live, the other spouse will have the right to occupy that home and to remain in occupation, notwithstanding the actions of the owner/tenant spouse. The 1981 Act gave the courts powers to regulate the occupation of a matrimonial home, e.g. by excluding one of the spouses from the home and – where necessary – by granting powers to the police to arrest a spouse who may be in breach of a Court Order.</p> <p>Act designed primarily to protect the rights of a person who is married to the owner or tenant. There is limited provision for the courts to protect the rights of an unmarried cohabiting partner of the owner or tenant where ‘a man and a woman are living with each other as if they were man and wife or two persons of the same sex are living together as if they were civil partners’.</p> <p>Enables married/cohabiting women right to stay in family home, have an abuser removed; introducing interdicts and interdicts with power of arrest. Limitations of ordinary interdict and interdict with power of arrest only for married women and only enforced until divorce.</p>

LEGISLATION	Date	Gender-based Violence Focus	Evaluated?	Descriptor
Civic Government (S) Act 1982 (c45) s.46	1982	Soliciting and importuning by prostitutes		Repealed by Prostitution (Public Places) (Scotland) Bill
Protection from Harassment Act 1997 (Westminster Act has application to Scotland)	1997	Stalking and Harassment (domestic violence)	Morris et al (2002) <i>Stalking and Harassment in Scotland</i> Edinburgh: Scottish Executive Research into the existing criminal and civil law procedures and practices in relation to stalking and harassment see: http://www.scotland.gov.uk/Publications/2002/11/15756/13113	Legislation to address a course of conduct, behaviour causing someone to be in a state of fear and alarm. Includes a non harassment order (NHO) to be applied for in civil proceedings or raised in criminal proceedings by PF after conviction. NHO also has a power of arrest.
Sexual Offences (Amendment) Act 2000 (Commencement No. 2) (S) Order 2000	Jan 2001	sexual violence and abuse	not known	Reduces the age at which certain sexual acts are lawful and provides certain defences to under age persons. Introduces a new offence of abuse of a 'position of trust'. reduces the age at which certain sexual acts are lawful and provides certain defences to under age persons.
Sexual Offences (Procedure and Evidence) (S) Act 2002	Nov 2002	Sexual Violence (rape and sexual assault); restrictions on sexual history and character evidence in court room	Burman et al. (2007) <i>Impact of Aspects of Evidence in Sexual Offence Trials</i> Edinburgh: Scottish Government	Prohibition of personal conduct of defence; Restrictions on use of sexual history and character evidence of complainer in sexual offence trials; disclosure of accused's previous convictions where court allows questioning/evidence on sex history and/or character

LEGISLATION	Date	Gender-based Violence Focus	Evaluated?	Descriptor
Sexual Offences Act 2003 (Westminster parliament – has application to Scotland)	2003	Sexual Offences; Sex Offenders; Protection of Children	not known	Westminster Act making new provision about sexual offences, their prevention and the protection of children from harm from other sexual acts, - but parts regarding sex offenders (has application to Scotland)
Protection of Children (S) Act 2003	Mar 2003	Sexual and physical abuse	not known	Requires Scottish Ministers to keep a list of individuals whom they consider to be unsuitable to work with children; enhances safeguards for children in respect of people working with children.
Vulnerable Witnesses (S) Act 2004	2004	Vulnerable witnesses in criminal proceedings, inc children and 'vulnerable' adults		Introduced procedural changes in criminal trials, including the introduction of special measures (e.g. screens, supporter, a live television link from either another room within the court building or from out-with the court in a remote site, evidence by a Commissioner and use of a prior statement) to assist child witnesses and those defined as vulnerable adult witnesses in giving their evidence in all cases, including sexual offences cases.

LEGISLATION	Date	Gender-based Violence Focus	Evaluated?	Descriptor
<p>Protection of Children and Prevention of Sexual Offences (S) Act 2005</p>	2005	Sexual violence against children; child pornography	not known	<p>Aims to improve protection given to children and young people from those who would wish to cause them sexual harm, or exploit them for sexual purposes. Also aims to improve the protection given to adults and children alike from those convicted of sexual offences who still pose a risk of sexual harm. Introduces new offence of sexual grooming of a person under 16; introduces Risk of Sexual Harm Orders (RSHOs) designed to protect children from those who display inappropriate behaviour towards them; introduces a new offence of paying for sex of a person under 18; introduces new offences of causing, inciting, controlling, arranging or facilitating the provision of sexual services by children or child pornography; t removes the statutory time limit for prosecution of the offence of unlawful intercourse with a girl between 13 and 16; amends current legislation criminalising the taking, possessing and distribution of indecent images of children so that it applies to images of people under 18 rather than only to images of those under 16;</p> <p>It extends the use of Sexual Offences Prevention Orders (SOPOs) so that they can be imposed on those convicted of sex offences by the court when they are sentenced.</p>

LEGISLATION	Date	Gender-based Violence Focus	Evaluated?	Descriptor
Family Law (S) Act 2006	Jan 2006	Domestic Violence (marriage; divorce; confers rights in relation to property ;automatic parenting rights for unmarried men)	not known	Amends law in relation to marriage, divorce. Amends Matrimonial Homes (Family Protection) (Scotland) Act 1981; to make further provision as respects responsibilities and rights in relation to children; to make provision conferring rights in relation to property, succession and claims in damages for persons living, or having lived, together as if husband and wife or civil partners; enables unmarried men to have automatic parental rights. <i>Potential problems for abused women and their children during contact and residence proceedings.</i>
Protection of Vulnerable Groups (S) Act 2007	April 2007	Vulnerable Groups (children and protected adults)	not known	Protection of vulnerable groups: establishes lists of individuals unsuitable to work with children and unprotected adults; introduces new disclosure records for those working with vulnerable groups; establishes vetting scheme and suitability assessment for those working with vulnerable groups.
Prostitution (Public Places) (S) Act 2007	April 2007	Prostitution	not known	Introduces offence for a person to solicit or loiter in a "relevant place" for the purpose of obtaining the services of someone engaged in prostitution.
Criminal Proceedings (Reform etc) (S) Act	Feb 2007	Crime Victims	not known	Legislative framework for bail; Determination of conditions of bail; victim notification scheme;

LEGISLATION	Date	Gender-based Violence Focus	Evaluated?	Descriptor
Criminal Justice and Immigration Act 2008 (Westminster Act – has application in Scotland)	May 2008	Sections on Criminal Law and Pornography	not known	<p><i>Consultation in Scotland on extreme pornography</i>; s.63 to 67 offence to possess pornographic images that depict acts which threaten a person's life, acts which result in or are likely to result in serious injury to a person's anus, breasts or genitals, bestiality or necrophilia; Ss.69 and 70 extend the definition of an indecent photograph in the Protection of Children Act 1978; substitutes a new section 72 into the Sexual Offences Act 2003 which allows for the prosecution of sexual offences against children committed abroad. s. 73 amends the offence of meeting a child following sexual grooming; also amends the Sexual Offences Act 2003 and the Adoption Act 1976 as regards sexual offences and adoption.</p> <p>Section 74 extends the offences of inciting hatred against people on religious grounds to cover hatred against people on grounds of sexual orientation.</p>
Offences (Aggravation by Prejudice) (S) Bill	May 2008	'Statutory Aggravator for gender		Creates statutory aggravations to protect victims of crime who are targeted as a result of hatred of their actual or presumed sexual orientation, transgender identity or disability
Criminal Justice and Licensing (S) Bill 2009	2009	sexual exploitation of children, extreme pornography, trafficking, non harassment order - change to legislation	in Parliament	Wide-ranging piece of legislation strengthening criminal law in a range of areas. Many aspects controversial

APPENDIX 2 - POLICY					
POLICY	Date	Gender-based Violence Focus	Agency/ Organisation	National Focus	Descriptor
Hitting Home A Report on the Police Response to Domestic Violence see: http://www.scotland.gov.uk/library/documents4/hithom03.htm	Published August 1997	Domestic Abuse	HM Constabulary	Scotland	Report of a thematic inspection by HM Inspectorate of Constabulary of all 8 forces' responses to domestic violence; 1997. The report indicates that repeat victimisation is high and that demand from victims for police services has increased in recent years. Aims to spread existing good practices identified in a number of police forces with key aim of improving response to domestic abuse, including impact on children.
National Strategy to Address Domestic Abuse in Scotland see: http://www.scotland.gov.uk/library3/law/stra-00.asp	Published November 2000	Domestic Abuse	Scottish Executive; Scottish Partnership on Domestic Abuse	Scotland	Strategy for Scottish local authorities to respond to domestic abuse: Identifies the key actions which are required to tackle domestic abuse from 2000-2003
Preventing Violence Against Women: Action Across the Scottish Executive see: http://www.scotland.gov.uk/library3/social/pvaw-01.asp	Published October 2001	Violence Against Women	Scottish Executive	Scotland	Action Plan, which reports on progress since the 1998 consultation as well as setting out a programme of action

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Responding to Domestic Abuse: Responding to Domestic Abuse: Guidelines for Health Care Workers see: http://www.scotland.gov.uk/Publications/2003/03/16658/19383	Published 2003	Domestic Abuse	NHS Scotland	Scotland	Guidelines describing the nature and prevalence of domestic abuse in Scotland. Presents a definition of domestic abuse underpinning national policy and outlines the Scottish Executive's strategy for tackling domestic abuse in Scotland. Sets out the role and responsibilities of the NHS in Scotland, and of health professionals, in responding to domestic abuse.
Preventing Domestic Abuse; A National Strategy see: http://www.scotland.gov.uk/Publications/2003/09/18185/26437	2003	Domestic Abuse	Scottish Government	Scotland	Prevention Strategy on domestic abuse. The ultimate objective of Strategy is to change attitudes, behaviour and culture in such a way as to secure the progressive elimination of violence against women. Primary prevention measures, lie at the heart of the Strategy, and can be grouped under two headings; Public Awareness Raising and Education. In addition however, the Strategy embraces shorter-term objectives: Training Strategies, Work with Men who use Violence, Legislation, Workplace Strategies and Services for Women, Children and Young People.

POLICY	Date	Gender-based Violence Focus	Agency/ Organisation	National Focus	Descriptor
<p>Review of Investigation and Prosecution of Sexual Offences in Scotland http://www.copfs.gov.uk/Publications/2006/06/RevSexOff</p>	<p>Review announced in 2004, reported 2006</p>	<p>Rape and Sexual Offences</p>	<p>COPFS</p>	<p>Scotland</p>	<p>Wide-ranging review undertaken by COPFS into investigation and prosecution of sexual offences. Report produced 50 recommendations ranging from specialist training of prosecutors to provision of information to victims – all of which now implemented.</p>
<p>Review of Police procedures in investigation of rape and sexual offences</p>	<p>Review announced in 2004</p>	<p>Rape and Sexual Offences</p>	<p>ACPOS</p>	<p>Scotland</p>	<p>Recommendations from the review, of which there are 31, relate to a variety of aspects of the investigation process, inc.: the updating of the guidance manual for police officers on the investigation of sexual assault; establishment of a Scotland wide Moorov database (to assist in the gathering of intelligence of cases which are similar enough to have the potential of corroborating each other), and; agreeing a standard reporting protocol with COPFS. Also recommended that ACPOS commission a study of a large cross sample of closed rape cases which have been categorized as ‘insufficient evidence’, ‘dubious crimes’ and ‘false allegations’ to establish whether there are any specific areas where the attrition rate could be improved, along with a review of the current structure and remit of specialist units across Scotland to identify the best approach.</p>

POLICY	Date	Gender-based Violence Focus	Agency/ Organisation	National Focus	Descriptor
Being Outside: Constructing a Response to Street Prostitution see: http://www.scotland.gov.uk/Publications/2004/12/20410/48751	Published 2004	Prostitution	Expert Group on Prostitution	Scotland	Expert Group set up in 2003 with the aim of considering the legal, policing, health and social justice issues surrounding prostitution in Scotland
National Strategy for Survivors of Childhood Sexual Abuse see: http://www.survivorscotland.org.uk/downloads/files/strategy_document.pdf	Published 2005	Child Sexual Abuse	Scottish Government	Scotland	Sets out a strategic way forward to improve services for survivors, to ensure greater priority and joined-up working in national and local mainstream services, and improve the lives of all who have suffered childhood trauma. Also aims to raise public awareness; Improve knowledge and awareness, and; develop training and skills for frontline workers.
Consultation on Extreme Pornography	Consultation published August 2005; Responses published August 2006	Extreme Pornographic Material	Joint Home Office/ Scottish Executive	UK wide	A joint Home Office/Scottish Executive Consultation was published in August 2005. A summary of the responses to this public consultation was published a year later (August 2006) and can be found at: www.homeoffice.gov.uk/documents/cons-extreme-porn-3008051/). <i>Sections 63 to 67 of the Criminal Justice and Immigration Act 2008 give effect to these proposals</i>

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<p>Consultation on the Possession of Extreme Pornographic Material see: http://www.scotland.gov.uk/Topics/Justice/criminal/17543/Extreme Pornographic Material/ AnalysisReport</p>	<p>Published June 2006</p>	<p>Extreme Pornography</p>	<p>Scottish Government (Law, Order and Public Safety)</p>	<p>Scotland</p>	<p>Analysis report on the responses to the consultation on the possession of extreme pornographic material</p>
<p>Lord Advocate's Guidelines to the Police on the Investigation and Reporting of Sexual Offences http://www.copfs.gov.uk/Resource/Doc/7/0000508.doc</p>	<p>2008</p>	<p>Rape and Sexual Offences</p>	<p>Lord Advocate</p>	<p>Scotland</p>	<p>Developed in consultation with ACPOS; provides Police Forces with clarity on standards and best practice in rape and sexual offences; emphasises that police officers are required to work closely with PFs from outset of rape investigations.</p>
<p>Scottish Investigators' Guide to Serious Sexual Offences</p>	<p>2008</p>	<p>Rape and Sexual Offences</p>	<p>ACPOS</p>	<p>Scotland</p>	<p>Developed in consultation with COPFS; dispels rape myths; provides guidance in best practice in investigation of serious sexual offences</p>

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Thematic Inspection: Domestic Abuse see: http://www.scotland.gov.uk/Publications/2008/08/21125841/0	2008	Domestic Abuse	HMICS	Scotland	Thematic inspection review assessing progress made since <i>Hitting Home</i> . Inspection focused upon: strategic policy approach to domestic abuse; domestic abuse police initiatives; use of information and communications technology (ICT); the role of the domestic abuse officer (DAO); recording of domestic abuse incidents. Makes 5 recommendations: the requirement for a national database of perpetrators and victims be urgently addressed by all forces; that the domestic abuse officer role is reviewed in line with the identified good practice in this report; that all forces work together to develop a common approach to training and support for officers; that all forces adopt a model of victim risk assessment and risk management ; that review and reinforce their quality assurance practices and processes for recording domestic abuse incidents.
Revitalising Justice - Proposals To Modernise And Improve The Criminal Justice System	Published 2008			Scotland	Summarises the proposals to be contained in the Criminal Justice and Licensing Bill (early 2009) ; Includes closure of premises used for trafficking or child exploitation; possession of extreme pornography; indecent images of children;

POLICY	Date	Gender-based Violence Focus	Agency/ Organisation	National Focus	Descriptor
Joint Protocol Between Association of Chief Police Officers in Scotland (ACPOS) and Crown Office and Procurator Fiscal Service (COPFS) see: http://www.fife.police.uk/pdf/dom_abuse_joint_protocol.pdf	2008	Domestic Abuse	ACPOS and COPFS	Scotland	Aims to obtain consistency of approach in the investigation, reporting and prosecution of domestic abuse, with a view to improving the service to victims, in dealing with criminal conduct arising from domestic abuse incidents.
VAW Strategic Framework – Scottish Government	2008	Violence against women	Scottish Government	Scotland	Framework for Local authorities in Scotland to report to domestic abuse
Safer Lives, Changed Lives: A Common Approach to Tackling Violence Against Women	2009	Violence against women	Scottish Government		Recognises that violence against women is not only a consequence of gender inequality, but also perpetuates it. Re-states that the protection of women and children from all forms of violence is a Governmental priority, and provides a definition, a set of guiding principles and a focus for multi-agency activities and partnership working with the aim to: <i>“to provide a shared understanding and approach which will guide the work of all partners to tackle violence against women in Scotland.”</i>

