

VIOLENCE AGAINST WOMEN, DOMESTIC ABUSE AND SEXUAL VIOLENCE (WALES) ACT 2015

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 which was passed by the National Assembly for Wales on 10 March 2015 and received Royal Assent on 29 April 2015.
2. They have been prepared by the Welsh Government's Department for Local Government and Communities in order to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it. They are not meant to be a comprehensive description of the Act. Where an individual section of the Act does not seem to require any explanation or comment, none is given.

SUMMARY OF THE ACT

3. In summary, the Act makes provision to:
 - a) require the production of national and local strategies for tackling gender-based violence, domestic abuse and sexual violence;
 - b) provide the Welsh Ministers with the power to issue guidance to assist certain public bodies in contributing to the pursuit of the purpose of the Act;
 - c) amend the Education Act 1996 to give the Welsh Ministers a power to make regulations to require local authorities to publish information about whether, and if so how, local authority education functions are being exercised to promote the purpose of the Act; and
 - d) provide for the appointment by the Welsh Ministers of an adviser to give advice and other assistance to the Welsh Ministers in relation to achieving the purpose of the Act.

COMMENTARY ON SECTIONS

Section 1 – The purpose of this Act

4. The purpose of the Act is explained by this section, which is the improvement of:
 - arrangements for the prevention of gender-based violence, domestic abuse and sexual violence;
 - arrangements for protection of victims of gender-based violence, domestic abuse and sexual violence; and
 - the support for people affected by gender-based violence, domestic abuse and sexual violence.

5. The various functions of public bodies provided for in the Act are directed towards the achievement of this purpose. Any reference in the Act (and these notes) to the purpose of the Act is a reference to this purpose.

Section 2 – Violence against women and girls

6. This section provides a focus on violence against women and girls by requiring persons exercising functions under the Act (defined in section 2(2) as “relevant functions”), to have regard to the need to remove or minimise factors which increase the risk, or exacerbate the impact on victims, of violence against women and girls. However, a person exercising relevant functions must also have regard to all other relevant matters.

Section 3 – Duty to prepare, publish and review a national strategy

7. The Welsh Ministers are required by this section to prepare, publish and periodically review a strategy setting out how they will work towards achieving the purpose of the Act. The strategy must specify objectives which the Welsh Ministers, in exercising their functions, will have to take all reasonable steps to achieve (see section 4). The national strategy will set out the steps the Welsh Ministers propose to take to tackle gender-based violence, domestic abuse and sexual violence.
8. In line with the purpose of the Act, the objectives specified in the national strategy and the actions identified to achieve those objectives must focus on prevention, protection and support and will specify actions that will be taken by the Welsh Ministers. Objectives specified in respect of prevention could include awareness raising campaigns, educational initiatives or programmes aimed at the rehabilitation of perpetrators. In respect of protection and support, objectives may cover actions proposed by the Welsh Ministers to support the early identification of victims through the implementation of a national training programme for staff working within the public sector in Wales (such as local authorities and Local Health Boards) who work directly with the public.
9. The persons consulted by the Welsh Ministers before publication of the first national strategy and in revising the national strategy (see subsection (7)) are likely to include local authorities and Local Health Boards: these bodies are required to have regard to the national strategy in preparing and reviewing their local strategy (see section 7). Other likely consultees are organisations whose activities are capable of contributing to the pursuit of the purpose of the Act; for example, police and crime commissioners and providers of probation services.

Section 5 – Duty to prepare local strategies

10. This section requires a local authority and a Local Health Board any part of whose area lies within the area of the local authority to jointly prepare and publish a strategy (a “local strategy”) for contributing to the pursuit of the purpose of the Act. There are currently seven Local Health Boards in Wales and their role is to plan, secure and deliver healthcare services in their areas. “Local authority” is defined in section 24(1) and means the council of a county or county borough in Wales.

11. A local strategy may include provision relating to specific action the relevant local authority and Local Health Board expect to be undertaken within the authority's area by any public authority, any voluntary organisation or other person whose activities are capable of contributing to the pursuit of the purpose of the Act. For example, a third sector domestic abuse service provider in a local authority area may wish to undertake a joint awareness raising campaign with the local authority and relevant Local Health Board. If all parties were in agreement, details of this action could be included in the local strategy for that area.

Section 7 – Matters to which regard must be had in preparing or reviewing a local strategy

12. Section 7(1) outlines a number of matters to which local authorities and Local Health Boards must have regard in preparing or reviewing a local strategy.
13. This includes the most recent needs assessment prepared under section 14 of the Social Services and Well-being (Wales) Act 2014. Section 14 of that Act requires a local authority and each Local Health Board any of whose area falls within the local authority's area to jointly assess the needs for care and support, support for carers and preventative services in the authority's area. This assessment could identify needs for care and support in consequence of gender-based violence, domestic abuse and sexual violence; such information would help inform the development of local strategies.
14. Paragraphs (c) to (e) of subsection (1) refer to strategic assessments prepared in accordance with regulations made under section 6 of the Crime and Disorder Act 1998. These assessments inform the content of strategies prepared for a local authority area by a number of public bodies (including local authorities and Local Health Boards and collectively referred to as community safety partnerships) under section 6(1) of that Act for the purpose of reducing crime and disorder, reoffending and substance abuse in the local authority area. Strategic assessments relating to reducing crime and disorder and re-offending are undertaken in accordance with regulations 5 to 7 of the Crime and Disorder (Formulation and Implementation of Strategy) (Wales) Regulations 2007 and strategic assessments relating to combating substance misuse are undertaken in accordance with regulations 5 to 7 of the Substance Misuse (Formulation and Implementation of Strategy) (Wales) Regulations 2007. Strategic assessments are undertaken annually for a local authority area by the strategy group established by the community safety partnership under the relevant regulations. The purpose of the strategic assessment is to assist the community safety partnership in revising their partnership plan. The partnership plan for each local authority area sets out the strategies prepared for that area under section 6(1) of the Crime and Disorder Act 1998 along with information relating to how they are to be implemented. The strategy group includes representatives from local authorities and Local Health Boards as well as other public bodies that make up the community safety partnership to which the requirements of section 6 of the 1998 Act apply. Strategic assessments include an analysis of the levels and patterns of re-offending, crime, disorder and substance misuse for local authority areas. These assessments may therefore identify levels and patterns of gender-based violence, domestic abuse and sexual violence, which could help inform the development of local strategies. The assessments also analyse any changes in the level and patterns of re-offending, crime, disorder and substance misuse and the reasons for such changes. This analysis

is likely to assist in the preparation and review of local strategies under section 6 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act.

15. In the event that Ministers consider these assessments were inadequate for the purpose of informing the development of local strategies, they will be able to exercise the regulation power in subsection (2) to require a local authority or Local Health Board to carry out further assessments.

Section 9 – Information about educational provision to promote the purpose of this Act

16. This section inserts subsection (6A) into section 29 of the Education Act 1996 (“the 1996 Act”). Section 29 of the 1996 Act provide the Welsh Ministers with powers to make regulations to require local authorities in Wales to provide the Welsh Ministers with information, or publish information relating to the provision of primary and secondary education in their area. Inserting subsection (6A) into section 29 of the 1996 Act will enable the Welsh Ministers, by regulations, to require local authorities to provide information to the public on action taken to promote the purpose of the Act by authorities in the exercise of their education functions. The power enables the Welsh Ministers to prescribe the information to be published, when it will be published and how it will be published.
17. This section also amends section 408 of the 1996 Act. Section 408 provides the Welsh Ministers with power to make regulations regarding the publication of information by local authorities and the governing body and head teacher of local authority maintained schools. The regulations may require the publication of information generally, or to a prescribed person, about a number of matters including the curriculum for maintained schools and educational provision made by schools. Section 9(3)(a) to (c) of the Act expands the list of matters in respect of which information can be required by regulations to include information relating to the provision of sex education and the statements of policy prepared by schools with regard to the provision of sex education. Section 9(3)(d) inserts subsection (8A) into section 408 of the 1996 Act which will require the Welsh Ministers, in making regulations under section 408(1) of that Act, to have regard to the desirability of information being available about whether, and if so how, any parts of the curriculum and any educational provision at maintained schools promote the purpose of the Act. The duty contained in the new subsection (8A) inserted into the 1996 Act would not apply to maintained nursery schools.

Section 10 – Guidance to further and higher education institutions

18. This section enables the Welsh Ministers to issue guidance to the governing bodies of institutions in Wales within the further education sector on how they may contribute to the purpose of the Act. An institution is within the further education sector if it is conducted by a further education corporation, is an institution designated under section 28 of the Further and Higher Education Act 1992 (“the 1992 Act”) or is a sixth form college.

19. The section also enables the Higher Education Funding Council for Wales (“HEFCW”) to issue guidance to the governing bodies of institutions in Wales within the higher education sector on how the bodies may contribute to the pursuit of the purpose of the Act. An institution is within the higher education sector if it is a university receiving financial support under section 65 of the 1992 Act, an institution conducted by a higher education corporation or is an institution in relation to which a designation made, or having effect as if made, under section 129 of the Education Reform Act 1988 has effect (as defined in section 72(3) of the 1992 Act).
20. The governing bodies of institutions in Wales within the further and higher education sector in Wales must have regard to guidance issued to them under this section. An institution is “in Wales” if its activities are carried on wholly or principally in Wales. The section would not be applicable, for example, to an institution delivering a particular course of education in Wales if the activities of the institution were principally carried out in England.
21. Subsection (3) imposes limits relevant to the content of the guidance that may be issued by the Welsh Ministers and HEFCW under this section. The guidance may not be directed at a particular institution or relate to the matters listed in (b) to (d).

Section 11 – National indicators

22. This section requires the Welsh Ministers to publish indicators which may be used to measure progress towards the achievement of the purpose of this Act. It requires the Welsh Ministers to consult with whoever they consider relevant before publishing the indicators. This would likely include local authorities, Local Health Boards and third sector organisations working in the sector.
23. An indicator could, for example, be the incidence of domestic abuse or sexual crime across Wales, the number of individuals in a particular part of Wales who have been referred to Multi Agency Risk Assessment Conferences (MARACs) or the number of public sector bodies in Wales who have domestic abuse work place policies.

Sections 14 to 17 – Meaning of “relevant authority”; power to issue statutory guidance; consultation and National Assembly for Wales procedures; duty to follow statutory guidance

24. Section 15(1) gives the Welsh Ministers the power to issue guidance to relevant authorities on how the authorities should exercise their functions with a view to contributing to the pursuit of the purpose of the Act. The meaning of ‘relevant authority’ is set in section 14 as a local authority, a Local Health Board (both are further defined in section 24), a fire and rescue authority in Wales and a National Health Service trust.

25. Section 15(2) provides examples of the types of matters the guidance might address. The guidance could be about ways in which authorities could raise awareness of issues relating to the purpose of this Act. For example, guidance could require local authorities to designate a member of staff for the purpose of championing, in schools and other settings, initiatives relevant to tackling gender-based violence, domestic abuse and sexual violence; such initiatives could include raising awareness about the purpose of the Act or developing ways of improving practice and standards in the methods adopted to contribute to achieving the purpose of the Act. Guidance could also be issued in relation to providing support to encourage professionals (such as accident and emergency medical staff) who come into regular contact with victims of gender-based violence, domestic abuse and sexual violence to ask potential victims about abuse or violence in certain circumstances, and where appropriate, to act to seek to reduce suffering and harm. Additionally, the training of staff within relevant authorities could be supported by guidance issued under this section. The Welsh Ministers consulted on a National Training Framework on gender-based violence, domestic abuse and sexual violence on 23 October 2014. Guidance could for example assist relevant authorities to use the National Training Framework as a basis of staff training in this subject area, including on how to support their staff to ask and act.
26. Section 17 places a duty on relevant authorities to follow any guidance issued under section 15 of the Act. The aim of such a duty is to ensure a consistent and effective approach is taken to tackling the issues of gender-based violence, domestic abuse and sexual violence across Wales. A relevant authority is not subject to the duty in so far as it decides, in accordance with section 17(2), on an alternative policy in respect of the subject matter of the guidance. In such circumstances the authority must decide on its alternative policy and issue a policy statement setting out its alternative approach (see section 18 for requirements applicable in respect of such statements). This flexibility allows a relevant authority to pursue an alternative solution, in full or in part, to that set out in the statutory guidance; this could occur, for example, if an alternative policy adopted by a local authority provided a more tailored solution to address local needs.
27. Where the Welsh Ministers consider that the alternative policy published by the relevant authority is not likely to contribute to the purpose of the Act, section 19 enables the Welsh Ministers to issue a direction to a relevant authority. The direction may require the relevant authority to take any action in order to comply with guidance issued to the authority under section 15. A relevant authority must comply with a direction issued by the Welsh Ministers under this section.

Sections 20-23 – National Adviser; functions of the Adviser; annual plan and annual report; publication of reports

28. Section 20 establishes the post of the National Adviser. The Adviser will be an individual appointed, via a public appointments process, by the Welsh Ministers and will hold office in accordance with terms specified by Ministers. The section also provides that the Welsh Ministers may pay expenses, remuneration, allowances and pensions in respect of the Adviser. Ministers will also be able to provide the Adviser with the support necessary for the Adviser to exercise his or her functions (by for example, allocating Welsh Government staff to assist the Adviser and providing office space and equipment).
29. Section 21 sets out the Adviser's functions, all of which are related to the pursuit of the purpose of the Act. This is not a civil service role; it is a statutory advisory role, and the Adviser will advise and assist the Welsh Ministers in tackling gender-based violence, domestic abuse and sexual violence. An element of the Adviser's role will involve working with public service providers across Wales to promote best practice across the public sector.
30. The Adviser will also have a key role in reviewing the actions being taken by local authorities, Local Health Boards, fire and rescue authorities and NHS Trusts under the duties imposed by the Act, and advising the Welsh Ministers of the findings. To that end, section 21 requires local authorities, Local Health Boards, fire and rescue authorities and NHS Trusts to comply with reasonable requests for information made by the Adviser. This power allows the Adviser to access the information he or she considers necessary to inform the exercise of the functions mentioned in section 21(1). Relevant information for these purposes could be details of procedures and processes in place to identify and respond to victims of the abuse and violence covered by the Act; or details of relevant training undertaken by staff for the purpose of tackling such abuse and violence.
31. This group of sections refers to both a "National Adviser" and "Ministerial Adviser". The Bill for this Act on introduction to the National Assembly for Wales referred to the office established under section 20 as the "Ministerial Adviser". At stage 3 of the Bill's scrutiny before the Assembly, the Welsh Government tabled amendments to the Bill to change the title of the Adviser to "National Adviser". Some of the amendments were not agreed by the Assembly, and therefore some references to "Ministerial Adviser" remain.
32. Under section 22, the Adviser is required to prepare an annual plan and annual report related to the exercise of the Adviser's functions. This section sets out what should be included in the plan and enables the Adviser to consult with anyone in its preparation. The plan requires the approval of the Welsh Ministers (which may be modified, with the Adviser's agreement).

33. The Adviser's annual reports must also be submitted to the Welsh Ministers. This will enable the Welsh Ministers to have full oversight of the work of the Ministerial Adviser and ensure the role is contributing to the achievement of the purpose of the Act.
34. The annual plans and reports required under section 22 of the Act must be published by the Welsh Ministers under section 23. This is to ensure that information about the exercise of functions by the Adviser is publicly available. This information will be of particular interest to those public and third sector organisations working in the gender-based violence, domestic abuse and sexual violence sector.
35. Section 23 also sets out which other reports are required to be published by the Welsh Ministers. Reports mentioned in the Adviser's annual plan must be published; while any other reports not mentioned in the annual plan may be published at the Welsh Ministers' discretion.
36. The Welsh Ministers' duty to publish information under section 23(1) is subject to a qualification. Subsection (3) allows the Welsh Ministers to remove information in the reports or plans sent to them by the Adviser prior to publishing those documents. For example, information contained in a report produced by the Adviser could enable a victim or perpetrator of domestic abuse to be identified; publication of this information could place the individual at risk of harm or prejudice a pending criminal case.

Section 24 – Interpretation

37. This section sets out the meanings of the defined terms used in the Act.
38. This section defines the terms “abuse” “domestic abuse”, “gender-based violence” and “sexual violence”, and does so by describing the behaviours which are to be considered abusive or violent for the purpose of the Act.
39. The Act provides that domestic abuse requires the abuser to be “associated” to the victim. An “associated person” is defined in subsections (2) to (4).
40. This includes in subsection (2)(h) those who are in or have had an “intimate personal relationship”. This Act differs from the approach taken in the definition of “associated persons” in section 58(2)(h) of the Housing (Wales) Act 2014 and section 62(3)(a) of the Family Law Act 1996 (as inserted by section 4 of the Domestic Violence, Crime and Victims Act 2004). In those Acts, the intimate personal relationship must be of a “significant duration”. This is not the case under this Act. Section 24(2)(h) captures intimate personal relationships of any duration, to reflect that abuse may be present at the very early stages of an intimate personal relationship. An intimate personal relationship may exist whether the persons are the same or the opposite sex.

41. "Abuse" is defined to mean physical, sexual, emotional, psychological and financial abuse. Victims of domestic abuse often feel threatened, coerced or controlled. This may for example be as a result of threats of, or actual, physical violence. In either case, the definition of abuse would extend to such conduct by constituting physical abuse in the case of actual physical violence, or psychological abuse in the case of threats of violence. A perpetrator may also unreasonably withhold a victim's access to their bank account for the purpose of controlling them. Such behaviour would constitute financial abuse, and therefore captured by the definition of domestic abuse. However, reasonable intervention in the financial affairs of another person would not constitute abuse. Therefore, "financial abuse" would not extend to a parent who reasonably manages the financial affairs of their child. Abuse may not always include acts perpetrated directly against the victim.
42. Psychological and emotional abuse could follow from acts done to, or in respect of, things that are important to victims. This could include deliberate damage to a victim's home or belongings, or violence perpetrated against a victim's pets. Forced pregnancy could amount to, and arises from, psychological or emotional abuse, where a woman or girl is coerced or deceived into having sex without contraception for the purpose of making her pregnant. And forced abortion could also amount to, and arise from, such abuse, where a woman or girl is coerced or deceived into terminating her pregnancy, whether or not the termination procedure itself is lawful.
43. An example of gender-based violence falling within paragraph (a) of the definition is a type of so-called "honour-based violence", where people suffer violence, threats of violence or harassment as a result of the perception that they have caused disgrace or dishonour to the family or community where the perceived disgrace or dishonour arises from values, beliefs or customs relating to gender or sexual orientation (such as beliefs about relationships outside marriage with persons of the opposite sex or beliefs about homosexuality).
44. The definition of gender-based violence for the purposes of the Act includes harassment and female genital mutilation; both of which are defined in subsection (5).
45. The definition of sexual violence for the purposes of the Act includes sexual exploitation and sexual harassment, both of which are defined in subsection (5). Sexual exploitation includes rape, sexual assault and a number of child sex offences. "Harassment" is also defined in subsection (5) and includes speech amounting to harassment.

46. A summary table of the behaviours is attached below:

Behaviours		Victim	Perpetrator
Gender-based violence	a. Arising from values, beliefs or customs relating to gender or sexual orientation	Anyone	Anyone
	b. Female Genital Mutilation	Women and girls	Anyone
	c. Forced Marriage	Anyone	Anyone
Domestic Abuse		Person associated with the perpetrator (see section 24(2)).	Person associated with the victim (see section 24(2))
Sexual Violence		Anyone	Anyone

RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES

47. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=10028>

Stage	Date
Introduced	30 June 2014
Stage 1 - Debate	25 November 2014
Stage 2 Scrutiny Committee - consideration of amendments	22 January 2015
Stage 3 Plenary - consideration of amendments	3 March 2015
Stage 4 Approved by the Assembly	10 March 2015
Royal Assent	29 April 2015