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Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015

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The Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (VAW Act) is the first piece of legislation in the United Kingdom to explicitly and specifically address violence against women as opposed to ‘domestic violence’ generally. Following a unanimous vote of the National Assembly for Wales, it became law in Wales on 29 April 2015. Its key purpose is to improve the public sector response in relation to the prevention of acts of gender-based violence, domestic abuse, and sexual violence, the protection of victims, and support of those affected (section 1).

The VAW Act represents a devolved¹ response to a key social and legal problem: violence against women and girls. It is significant for women as it sets out practical steps which national and local government and public sector bodies ought to implement in order to work together to prevent violence against women. In so doing, it places Wales at the forefront of the UK’s continuing efforts to combat all forms of violence against women. Despite a plethora of legislation in England and Wales seeking to address and reduce violence against women in its many and varied forms, to date it has typically focused on specific forms of violence and/or remedies for victims, rather than on preventative measures per se. The VAW Act marks an important shift in this respect: it focuses on establishing strategic and coherent public sector mechanisms aimed at prevention of and protection from gender-based violence, domestic abuse, and sexual violence in Wales. The Act also aims to strengthen the support available to the victims of gender-based violence, domestic abuse, and sexual violence.

¹ Devolution is a process of delegation of legislative or executive functions (or both) relating to the issues within the region by the central government to a regional authority. In Wales, the Government of Wales Act 1998 established the National Assembly for Wales, a body with powers of making laws on devolved issues for Wales. Since May 2007 the National Assembly has had powers to legislate for Wales in specific areas without the need for approval from the UK Parliament. These areas include education, culture, health and social welfare (for a complete list of areas in which the National Assembly can legislate, see National Assembly for Wales website: <http://www.assembly.wales/en/abthome/role-of-assembly-how-it-works/Pages/Powers.aspx>.)

I. CONTEXT

The prevalence and perniciousness of violence against women and girls is a global problem.² It transcends international borders. A 2014 survey *Violence Against Women: an EU-wide survey* carried out by the EU Agency for Fundamental Rights found that around 13 million women in the European Union experienced physical violence in the previous year.³ However, of course, violence against women and girls is not limited to physical violence. It also includes psychological violence, sexual violence, honour-based violence, and economic harms. And, following the developments at an international level, it is now generally accepted that violence against women is a form of discrimination against women and a violation of human rights. Nor – despite the title of the Act and as recognised in its gender-neutral language – is gender-based and sexual violence and domestic abuse limited to women and girls, though they are disproportionately affected by it.

Violence against women continues to be a significant problem in England and Wales. In the time leading up to the VAW Act coming into force, an increase in reporting of crimes committed against women and girls was observed in England and Wales. In June 2015, the Crown Prosecution Service (CPS) reported the highest number ever of cases involving crimes of violence against women and girls in England and Wales. In 2014–15, the CPS prosecuted 6878 cases involving violence against women and girls in Wales, securing a conviction in 74.5 per cent of these cases.⁴ The cases in Wales constituted 6.42 per cent of the total number of cases involving violence against women and girls across England and Wales in 2014–15. Whilst women also are perpetrators of domestic abuse and VAW, the CPS data confirms that 93 per cent of defendants in cases involving violence against women and girls were men.⁵

Prior to the enactment of the VAW Act, a number of domestic laws in England and Wales provided protection for women from certain types of gender-related, domestic and sexual violence as well as remedies against such acts. Specific acts of

² The term ‘violence against women’ (VAW) is understood as inclusive of acts of violence affecting both women and girls.

³ EU Agency for Fundamental Rights (FRA), *Violence Against Women: an EU-wide survey* (Publications Office of the European Union, 2015).

⁴ Crown Prosecution Service, *Violence Against Women and Girls: Crime Report 2014–2015* (CPS, 2015) 98.

⁵ *ibid* 21.

violence against women (as well as remedies) have been covered under various pieces of legislation such as the Matrimonial Causes Act 1878 (allowing women to separate from violent husbands), the **Housing (Homeless Persons) Act 1977** (giving increased legislative protections to women who were homeless or at risk of becoming homeless as a result of domestic violence), the Domestic Violence and Matrimonial Proceedings Act 1976 (allowing courts to exclude legal owners from their own property if violent to their wife or cohabitant),⁶ the **Sexual Offences Act 2003** (covering rape and sexual violence), the Female Genital Mutilation Act 2003,⁷ **Forced Marriage (Civil Protection) Act 2007**, and section 121 of the Anti-Social Behaviour Act 2014 (forced marriage). These were all the result of strenuous lobbying by feminist groups such as WAVAW (Women Against Violence Against Women). In cases concerning domestic violence, civil and criminal remedies such as occupation and non-molestation orders as well as restraining and non-harassment orders were legislated for in the Family Law Act 1996 (as amended by the Domestic Violence, Crime and Victims Act 2004) and by the Protection from Harassment Act 1997. Indeed, in the year leading up to the VAW Act's enactment, several domestic laws relating to domestic violence and some forms of violence against women were adopted which applied in both England and Wales. These included Domestic Violence Protection Orders and the Domestic Violence Disclosure Scheme (also known as Clare's Law), which gives persons in new relationships a right to make a request to the police to disclose whether their new partner has a history of committing domestic abuse. Other significant developments include provisions addressing harms that disproportionately affect women in the Criminal Justice and Courts Act 2015, relating to pornographic images of rape (section 37) and some forms of image-based sexual abuse (sections 33–35).

However, despite – and maybe even because of – this legislative output, victims of violence and abuse continued to be under-protected and/or unsure about the support and remedies available.

II. THE LANDMARK

⁶ *Davis v Johnson* (1978).

⁷ See further **Prohibition of Female Circumcision Act 1985**.

Efforts to enact specific legislation aimed at combatting violence against women in Wales go back to 2009 when the Wales Violence Against Women Action Group (a coalition of organisations working to end violence against women in Wales) campaigned for the Welsh Government to introduce the first Welsh strategy and appropriate legislation to tackle all forms of violence against women, not solely domestic abuse. In the same year, the Group published a report, *Violence Against Women: Why an Integrated Strategy in Wales?*, which made a case for such a strategy.⁸

In 2012, the Welsh Government proposed the Ending Violence against Women and Domestic Abuse (Wales) Bill. In introducing the Bill, the Government recognised violence against women and girls in Wales as an enduring social problem and a barrier to ‘Wales becoming a fair and prosperous society’.⁹ It considered ‘better education and awareness of gender-based violence from the “cradle to the grave”, which includes the public, frontline staff and professionals’ as one of the three priorities of the legislation.¹⁰

By the time the Bill was formally introduced to the National Assembly by Lesley Griffiths AM, Minister for Local Government and Government Business, in June 2014, it had already garnered support from a number of influential Assembly Members. Set against the backdrop of growing awareness of violence against women issues, the Bill was given much political support, particularly from the two Welsh Labour politicians Carl Sargeant AM and Joyce Watson AM, who openly supported the introduction of the Bill. Outside the Assembly, other initiatives aimed at combatting and raising awareness of violence against women – such as the One Billion Rising Campaign and Not in My Name Campaign – were also taking place.¹¹ Capitalising on this, and coinciding with the launch of the Bill the Welsh Government launched an advertising campaign calling for people ‘to take a stand’ against VAW and domestic abuse. Its purpose, Griffiths noted, was ‘to empower people with information to act in the right way if they suspect abuse may be taking place’.¹²

⁸ Wales Violence Against Women Action Group, *Violence Against Women: Why an Integrated Strategy in Wales?* (Wales Violence Against Women Action Group, 2009).

⁹ Welsh Government, *White Paper: Consultation on legislation to end violence against women, domestic abuse and sexual violence (Wales)* (WG17102, 26 November 2012) [2].

¹⁰ *ibid* [12].

¹¹ Carl Sargeant, ‘Wales Leads the Way in Tackling Violence against Women’ (14 February 2013); The Women’s Institute, ‘No More Violence Against Women’: <https://www.thewi.org.uk/wi-in-wales/current-campaigns/no-more-violence-against-women>.

¹² Daniel Davies, ‘Domestic violence bill ‘disappointment’ from campaigners’, *BBC News online*, 30 June 2014.

Despite the eventual unanimous vote, the passage of the VAW Bill through the National Assembly was not straightforward. Although the proposals for new legislation on tackling violence against women were generally welcomed by women's groups and campaigners, earlier versions of the Bill met with a strong response from women's groups, including Welsh Women's Aid, who called for improvements in the proposed legislation, especially in relation to its gender-neutral provisions.¹³ Shortly after the Bill was introduced, the Wales Violence Against Women Action Group launched a petition and an accompanying online campaign #WhereAreTheWomen.¹⁴ The aim of the campaign was to increase the focus on *women* victims of violence in recognition of the disproportionate levels of violence and abuse suffered by them. While the campaign secured a significant symbolic victory – a change in the Bill's title, replacing 'Gender-based violence' with 'Violence Against Women' – and had some success in relation to the education provisions, it was less successful in securing substantive change to the majority of provisions in the VAW Act.

The VAW Act does not introduce any new statutory offences. Rather, it imposes various obligations on local authorities as well as on the Welsh Government in order to support the delivery of the primary purposes of the Act. Under section 3, Welsh Ministers have a duty – established using the strong phraseology of 'must' – to prepare, publish, implement, and review a National Strategy for tackling violence against women and girls, domestic abuse, and sexual violence. This should take the form of an 'action plan' containing an outline of concrete goals contributing to the realisation of the objectives of the Act, specific actions taken towards fulfilment of these goals, and the time-scale in which these objectives are to be achieved. The Act places an equivalent duty on Welsh local authorities and health boards to prepare joint local strategies for the particular area in Wales that they govern (section 5). As with the National Strategy, the aim of the local strategies is to contribute to the fulfilment and realisation of the purposes of the Act. In addition, under section 15 of the Act, Welsh Ministers may issue guidance to a relevant authority (that is, local authorities, Local Health Boards, fire and rescue services, and the NHS) on how it should exercise its functions to contribute to the purposes of the Act.

¹³ *ibid.*

¹⁴ 'Campaigners launch #WhereAreTheWomen petition demanding Welsh Government tackle violence against women', *Wales Online*, 25 September 2014).

The Act also recognises that education plays a major role in the prevention of gender-based violence and domestic abuse. Accordingly, sections 9 and 10 of the Act allow Welsh Ministers to require local authorities to publish information about how their education functions are being exercised (including in schools, further education, and higher education institutions) to promote the purposes of the Act.

Finally, the Act includes measures for systematic monitoring of progress in relation to its implementation. Welsh Ministers as well as local authorities and Local Health Boards are under an obligation to submit annual reports on their progress in the implementation of measures which were identified in their respective strategies and subsequently undertaken in pursuit of the purposes of the Act (sections 12 and 13). In addition, the Act establishes an office of a National Adviser on Violence Against Women and other forms of Gender-based Violence, Domestic Abuse and Sexual Violence (section 21), whose primary role is to advise Welsh Ministers on matters concerning VAW, domestic abuse and sexual violence in Wales. The role also involves carrying out research into these matters, publishing reports on specific issues within the scope of the Act, and reporting annually on activities undertaken within the scope of the role.

III. WHAT HAPPENED NEXT

The final provisions of the VAW Act came into force in January 2016. In the same month, the National Training Framework on Violence Against Women, Domestic Abuse and Sexual Violence was issued by Public Services Minister, Leighton Andrews AM.¹⁵ This contains statutory guidance (in accordance with section 15) setting minimum standards of training and professional requirements for all those working with the victims of gender-based violence, sexual violence, and domestic abuse across Wales. The Framework is designed to bring a consistent, gender-sensitive, and specialist response to gender-based violence and domestic abuse through professional training of relevant authorities. The Framework refers to the principle of ‘Ask and Act’ – a system of early identification of victims of gender-based violence and domestic

¹⁵ Welsh Government, *The National Training Framework on Violence Against Women, Domestic Abuse and Sexual Violence: Statutory guidance under section 15 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 and section 6 of the Government of Wales Act 2006* (Welsh Government, January 2016).

abuse – which had arisen in recognition of the importance of the role played by public services in identifying and addressing violence against women, domestic abuse and sexual violence.¹⁶ In November 2016, the Government adopted the National Strategy on Violence Against Women, Domestic Abuse and Sexual Violence 2016–2020.

However, while the full impact of the VAW Act on prevention of and response to gender-based violence and domestic abuse in Wales is still unknown, its implementation has not been entirely smooth. In July 2016, Welsh Women’s Aid published a report – *Are you listening and am I being heard?* – which drew on consultations with 66 survivors of violence and abuse, aimed at informing the National Strategy.¹⁷ It made 10 key recommendations, including the introduction of dedicated specialist services, better responses by professionals involved in the family justice system, compulsory prevention education in all schools and colleges, accessible refuge support, and increased women’s support groups, with one survivor commenting

Government should hear from women, women who’ve been through it, on an ongoing basis; otherwise they’ll come up with these ideas that won’t work. Any of us could ... there’s enough of us who’ve gone through it so we can help.¹⁸

Similarly, further post-legislative scrutiny of the VAW Act delivered in December 2016 found that whilst the Act remains recognised as a ground-breaking piece of legislation, further practical improvements are necessary in order to improve the public sector response and effective implementation of the Act.¹⁹ Welsh Women’s Aid, again, called for a more integrated approach to delivery of the Act nationally and locally, and highlighted the resource implications of implementing the Act and the National Strategy in light of increasing demand for specialist services for survivors.

IV. SIGNIFICANCE

¹⁶ The Welsh Government completed a consultation on draft statutory guidance on ‘Ask and Act’ in January 2016 (Welsh Government, *A consultation on draft statutory guidance on ‘Ask and Act’ under section 15 of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 and section 60 of the Government of Wales Act 2006* (WG26746, November 2015). As of 19 March 2018, there has been no response from the Government.

¹⁷ Welsh Women’s Aid, *Are you listening and am I being heard? Survivor Consultation: A report of the recommendations made by survivors of violence against women, domestic abuse and sexual violence, to inform the National Strategy in Wales* (Welsh Women’s Aid, March 2016).

¹⁸ *ibid* 2.

¹⁹ National Assembly for Wales Equality, Local Government and Communities Committee, *Is the Violence Against Women, domestic Abuse and Sexual Violence (Wales) Act 2015 working? Post-legislative scrutiny* (December 2016).

The VAW Act is a significant piece of legislation and the first in the UK to explicitly refer to violence against women in its title. However, it is not only the name of the Act that sets it as a landmark – its significance goes much further than that.

The Act introduced specific mechanisms which place duties on the Welsh Ministers as well as relevant authorities in Wales with regard to prevention of and response to gender-based violence, domestic abuse and sexual violence. As such, it places these bodies under a positive obligation to take practical and transparent steps to fulfil the purposes of the Act. An obligation to publish national and local strategies, as well as regular reporting mechanisms established under the Act, ensure a much needed level of transparency and accountability of the public sector with regard to preventing and responding to gender-based violence and domestic abuse. In addition, the role of National Adviser contributes towards an effective implementation of the Act and ensures regular monitoring of the situation in Wales regarding gender-based violence, domestic abuse and sexual violence. Placing positive duties on the Welsh Government and public sector authorities ensures a proactive and practical approach to combatting violence against women and domestic abuse and represents a new line of attack.

Furthermore, the context and history of drafting of the VAW Act highlight the significant role of Welsh women's organisations in raising public awareness about violence against women in Wales and taking practical steps to combat it. The activism of women's organisations, in particular the Wales Violence Against Women Action Group, was instrumental in influencing the National Assembly to prioritise combatting violence against women and girls and gave the necessary impetus for the legislative change in this area. Since the VAW Act came into force, Welsh women's organisations continue to play an essential role in scrutinising the progress of implementation of the Act, making suggestions for the necessary improvements, and monitoring the Welsh Government's compliance with its obligations set out in the VAW Act.

At the very least, the VAW Act reshaped the way in which the public sector in Wales is responding to violence against women, domestic abuse, and sexual violence. The new legislation made those issues a priority, both for the local government and public sector in Wales. It is certainly hoped that, in the long-term, the measures introduced by the Act will also have a transformative effect on public attitudes towards violence against women – a crucial element in prevention of these acts.

Further reading

- Christine Chinkin, 'Addressing violence against women in the Commonwealth within states' obligations under international law' (2014) 40(3) *Commonwealth Law Bulletin* 471–501.
- Sylvia Walby, 'Official statistics mask the extent of domestic violence in the UK', *The Conversation*, 15 July 2015.
- Welsh Women's Aid: <http://www.welshwomensaid.org.uk/> (for up-to-date information regarding VAW in Wales).