Allowing a Defence to Those Who Commit Crime under Coercive Control

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**Introduction**

The recent enactment of the Domestic Abuse Act 2021 and the report published by the Centre for Women’s Justice[[2]](#endnote-2) has once again brought attention to the issue of whether the law adequately protects abused women[[3]](#endnote-3) by providing a defence to those who commit crime under coercion from their violent partners; a concern raised by Baroness Hale over 15 years ago in *R v Hasan.*[[4]](#endnote-4)This article considers that the repeal of marital coercion, and the lack of any suitable replacement or alternative, has created a gap in law where women driven to criminality by abuse are left without an appropriate defence.

In theory, those who commit crime under coercion can plead the general defence of duress. It is examined, however, that in practice this defence does not adequately protect abused women. This is due to the level of threat required, the reasonable person criterion and the exclusion to those who voluntarily associate. Furthermore, as will be discussed, the alternatives of loss of control, diminished responsibility, and self-defence also present significant problems in ensuring that abused women, who resist the coercion and instead react with violence against their coercer, are treated appropriately by the criminal justice system.

Parliament were presented with an opportunity to remedy this deficiency when passing the Domestic Abuse Act. It was proposed that a duress-based defence, on similar terms to the defence contained in section 45 of the Modern Slavery Act 2015, could be introduced to provide a specific defence to abused women. Parliament, however, voted to reject this amendment. The problem is, perhaps, that a duress type defence is not the correct defence to fill this gap and closer examination needs to be conducted of the basis on which a defence should be afforded to abused women who commit crime.

**Marital Coercion**

It is estimated that nearly 80% of women in prison in England have been victims of domestic violence.[[5]](#endnote-5) There is a recognised connection between relationship problems and women embarking on criminal activity[[6]](#endnote-6) and, moreover, a direct causal link between a woman being abused and committing crime.[[7]](#endnote-7) While, there may be many explanations for this phenomenon,[[8]](#endnote-8) this article focuses on the situation where a woman has been coerced to commit a crime by an abusive partner and the lack of an available defence.

Types of offending driven by domestic abuse vary widely. Government guidance, for example, identifies that coercive or controlling behaviour can include ‘forcing the victim to take part in criminal activity such as shoplifting and neglect or abuse of children.’[[9]](#endnote-9) Until 2014, in limited circumstances, these women could have escaped conviction due to the special defence available to wives who committed a crime in the presence of their husband, known as marital coercion.[[10]](#endnote-10) The basis of this defence was ‘that where a criminal act was committed by a wife in the presence of her husband it was presumed that she acted under his coercion’[[11]](#endnote-11) unless it could be proved otherwise by the prosecution.[[12]](#endnote-12) Recently, the defence was successfully used for the first time to avoid a conviction of drunken driving, by Ashley Fitton after she claimed that she was coerced to commit the crime by her husband.[[13]](#endnote-13) The defence, however, had restrictions. For example, the crime had to be committed in the husband’s presence, although there was some uncertainty as to the exact limits of this restriction.[[14]](#endnote-14) A wife could also not use the defence when they had committed murder, treason or kept a brothel[[15]](#endnote-15) as seen in 1616 when Lady Somerset was found guilty of murder and hanged after abetting a poisoning in her husband’s presence.[[16]](#endnote-16) Furthermore, the defence was framed so that it could not be used by sex same couples, those in civil partnerships or co-habiting, when a child felt coerced into committing a crime by their parents[[17]](#endnote-17) and was unavailable to a man’s mistress.[[18]](#endnote-18)

The inconsistencies in the application of the defence, arbitrary distinctions about the relationship that would qualify, and restrictions, has meant ongoing calls for defence to be abolished. The first of these as early as 1845[[19]](#endnote-19) before the quest for abolition was then adopted by the Law Commission in 1977[[20]](#endnote-20) and repeated in 1994.[[21]](#endnote-21) They argued that the defence was inappropriate to modern conditions and not needed as the general defence of duress could be used to avoid liability when the defendant had acted under coercion. It will be considered below that the assertation that duress could fill the gap was incorrect, however, the call for reform came once again with the case of, and media attention attracted to,[[22]](#endnote-22) *R v Pryce*.[[23]](#endnote-23)

Repeal was finally realised in 2014 when section 177 of the Anti-social Behaviour, Crime and Policing Act 2014 removed the defence with the reasoning that marital coercion was an anachronism that should be consigned to history.[[24]](#endnote-24) Whilst it is not disputed that the application of this defence was discriminatory and outdated when viewed in the context of modern day relationships and gender equality, its removal meant that women who are coerced to commit crime by their partners could no longer rely on the defence to avoid criminal liability with no new reformed defence proposed to fill this gap. A woman would be expected to exercise the same steadfastness as any other person when countering the coercive or controlling behaviour of her husband. The issue, however, arises where the abusive behaviour of a man, means that the woman cannot exercise the same autonomy in resisting the coercion and not committing crime anyone else would be able to. During the passage of the 2014 Act, it was identified by Lord Beecham, and echoed by Baroness Kennedy,[[25]](#endnote-25) that the alternative existing defence of duress, only operates in extreme circumstances.[[26]](#endnote-26) This means women in situations of domestic abuse are left without a defence. Lord Faulks, the Minister of Justice at the time, responded to Lord Beecham and Baroness Kennedy’s concerns by stating that the matter would remain under active consideration,[[27]](#endnote-27) but as will be examined, when the Government had the chance to address this deficit with the passing of the Domestic Abuse Act 2021, they choose not to take it.

At the same time the repeal of marital coercion was being enacted, Parliament were considering a new offence of coercive control as part of the Government strategy to address domestic violence.[[28]](#endnote-28) In March 2013, Damian Green, the Minister for Policing and Criminal Justice, explained the Government definition of domestic violence had been extended to include coercive control. This was followed by a consultation in August 2014 and the introduction the offence of Coercive Control, which came in force in 2015.

Therefore, it had been highlighted in Parliament in 2014 that removing marital coercion could leave a gap in the law by providing no defence for abused women who are driven to criminality, whilst at the same time it was recognised that coercive control was a form of domestic violence that needed to be criminalised. The problem remaining that whilst the offence of coercive control criminalises coercive behaviour it does not provide a defence to the multitude of women who commit crime after being subjected to it.[[29]](#endnote-29)

**Coercive Control**

One of the leading academic writers in the field of coercive control, Stark, describes coercive control as:

[A] malevolent course of conduct that subordinates women to an alien will by violating their physical integrity (domestic violence), denying them respect and autonomy (intimidation), depriving them of social connectedness (isolation), and appropriating or denying them access to the resources required for personhood and citizenship (control).[[30]](#endnote-30)

Such behaviour became an offence in England and Wales following the enactment of the Serious Crime Act 2015.[[31]](#endnote-31) Since its introduction, the number of offences recorded by the police has increased from 4,246 in 2016/17 to 24,856 in 2019/20.[[32]](#endnote-32) Thus, the occurrence of such criminal behaviour is not insignificant. Given this, plus the evidence that there is an established causal link between coercive behaviour and the coerced woman committing crime, it would seem logical that some defence or special consideration would be given to those who find themselves through no fault of their own in this situation. It will be shown, however, in the next section that the opposite is in fact so.

**Duress**

Duress provides a defence on the basis that it excuses criminal behaviour as a concession to ordinary human frailty.[[33]](#endnote-33) The defence can be raised in one of two ways. Firstly, when the defendant was compelled to act due to threats of death or serious injury and a reasonable person would have responded in the same way.[[34]](#endnote-34) Secondly, when this duress comes from circumstances that the defendant finds herself in.[[35]](#endnote-35)

The Law Commission justified their recommendation to remove the defence of marital coercion by stating that alternative defence of duress could be pled when a woman has been compelled to commit a crime. The reality, however, is far from satisfactory. As Loveless argues, there are ‘insurmountable legal challenges facing abused women who rely on duress’[[36]](#endnote-36) with the result that ‘the defence of duress is ill fitting and ineffective for victims/survivors of domestic abuse who are compelled to offend’.[[37]](#endnote-37) This section will set out three arguments as to why duress is not a viable alternative as a defence for abused women who commit crime: (i) the level of threat required could prevent the defence from being available, (ii) the reasonable person test does not consider the abuse a women may have suffered and, (iii) voluntary association between the abused woman and the abuser means that the defence is barred.

Threat of death or serious injury

To plead duress only a fear of death or serious injury will suffice.[[38]](#endnote-38) Loveless discusses that the need for this threat to be immediate creates a barrier to the defence for women who offend under the fear of future violence.[[39]](#endnote-39) The immediacy requirement, as stated *obiter* in *Hasan*,[[40]](#endnote-40) however, may not been stringently applied as long as the defendant’s will is overborne.[[41]](#endnote-41) Moreover, immediacy does not seem to be a requirement in duress of circumstances cases.[[42]](#endnote-42) The bigger issue is the type and level of threat required.

 In 1977[[43]](#endnote-43) and 1985[[44]](#endnote-44) the Law Commission recommended that the level of harm required should be a threat of death or serious harm that should include both physical and mental harm. The courts have established, however, that psychological harm is not enough for the defence of duress. [[45]](#endnote-45) The problem of restricting the threat to death or serious physical injury is that it does not consider other types of harm that could be serious or have long term effects. As Herring notes when considering coercive control, it is the level of control rather than the level of violence that is central.[[46]](#endnote-46) This would seem particularly pertinent to duress where the basis of the defence is that the defendant’s will has been overborne by another;[[47]](#endnote-47) however, this type of pressure is not sufficient.[[48]](#endnote-48) As Bettinson observes: ‘Unfortunately, criminal law frameworks struggle to capture the real nature of harm. Instead, the focus is on isolated physical injuries that can be seen where context is disregarded.’[[49]](#endnote-49) This differs from the abolished defence of marital coercion that did not require a threat of physical force.[[50]](#endnote-50) This means that a woman who has suffered coercive control[[51]](#endnote-51) and committed crime due to this, will potentially not have suffered a threat or circumstances serious enough to meet the threshold requirement to successfully plead duress.[[52]](#endnote-52) This is even though coercive control is described as a ‘serious offence’,[[53]](#endnote-53) with a maximum penalty of 5 years. Furthermore, when it is considered that this offence requires the defendant’s actions to have a serious effect on the victim, including serious alarm or distress which has a substantial adverse effect on the victim’s usual day-to-day activities,[[54]](#endnote-54) and duress only requires a *threat* of death or serious injury rather than any actual harm, it would seem illogical that controlling or coercive behaviour would not be sufficient.

Characteristics of the reasonable person

The second part of the duress defence judges the defendant objectively; asking whether a reasonable person would have responded in the same way. In 1993 the Law Commission found upon consultation there was strong support for the view that all characteristics should be relevant in assessing whether the defendant could have been reasonably expected to resist the threat. Smith also considers that if duress is an excusatory defence that provides a concession to human frailty ‘then taking account of the defendant’s temperament would be a proper expectation: the timid are cowed more easily than the stalwart’.

Whilst the law has developed to allow certain characteristics to be attributed to the reasonable person, these are limited.[[55]](#endnote-55) In a quick succession of cases the common law set the characteristics that can be considered. In *R v Emery*[[56]](#endnote-56) the defendant was convicted of cruelty to a child for failing to protect her child from abuse from the father. She claimed that her inaction was due to duress from her violent partner. Lord Taylor stated that the question was ‘whether a woman of reasonable firmness with the characteristics of Miss Emery, if abused in the manner which she said, would have had her will crushed so that she could not have protected her child’.[[57]](#endnote-57) It is hard to imagine a woman of reasonable firmness with a crushed will, as the two are mutually exclusive, and thus this is an impossible test to apply. A year later the Court of Appeal again considered the issue of relevant characteristics in *R v Hegarty.*[[58]](#endnote-58)The defendant’s appeal was dismissed on the grounds that medical evidence of characteristics such as the defendant’s emotional instability were properly excluded. In the same year in *R v Horne*[[59]](#endnote-59)the matter was considered once more. The Court of Appeal dismissed the defendant’s appeal stating characteristics that meant the defendant was not of reasonable firmness were irrelevant. In the subsequent year, the question was asked again in *R v Hurst* as to what characteristics were relevant.[[60]](#endnote-60) The Court of Appeal stated that evidence from a psychiatrist, that the defendant lacked reasonable firmness because of sexual abuse she had suffered as a child, was inadmissible. This was despite the doctor in this case stating that the defendant’s condition meant she had been trained to fear and comply with violent and deviant men. It is not difficult to see that this personality trait could have affected the defendants’ response to the threats and ability to respond as a reasonable person.

A less restrictive approach was then adopted in *R v Bowen* whenit was considered *obiter* that mental illness may be considered,[[61]](#endnote-61) although being more pliable, timid, vulnerable or susceptible to threats were not considered legitimate features of the objective limb.[[62]](#endnote-62) This lack of consideration of the impact caused by the psychological harm short of mental illness,[[63]](#endnote-63) often at the hands of the duressor, means that a woman’s ability to resist a threat will be judged against the standard of a reasonable person when this is a standard she may not be able to achieve. Thus, ultimately meaning her defence will fail and that she is left without adequate protection by the law.

Voluntary association

Availability of duress has become considerably restricted when the defendant has voluntarily associated with a violent criminal. The rationale behind this is that the defendant should not be able to rely on duress when she freely accepted the risk of being subjected to threats when associating with criminals. [[64]](#endnote-64) To allow a defence in such circumstances would adhere to the strict legal principle of allowing a defence to someone who has acted whilst coerced but would allow a result that many may argue is objectionable due to the circumstances that have led to the defendant being in such a position.[[65]](#endnote-65) Unfortunately, the subsequent result is that abused women who stay with their violent partners and then commit crimes under their coercion, will be unable to plead duress.

In *Hasan* the matter of voluntary association reached the House of Lords where it was stated that ‘the defence of duress is excluded when as a result of the accused’s voluntary association with others engaged in criminal activity if he foresaw, or ought reasonably to have foreseen, the risk of being subjected to any compulsion by threats of violence’.[[66]](#endnote-66) This dramatically restricted the law by including an objective criterion[[67]](#endnote-67) and by stating that foreseeing a risk of compulsion would be enough to be disqualified from the defence.[[68]](#endnote-68) This was based on the premise that law should be slow to excuse those who associate with criminals.[[69]](#endnote-69) Baroness Hale, dissenting, argued that the majority judgment meant that women who foresee that they could come under any form of compulsion by their violent husbands, for example to do the washing or cooking, could then not rely on the defence if unforeseen to them, or a reasonable person, the husband then forced the them to commit a criminal offence under duress of death or serious injury. [[70]](#endnote-70) Whilst this voluntary association restriction protects the duress defence from abuse by an ‘unworthy defendant’,[[71]](#endnote-71) it has been described as ‘unduly harsh’.[[72]](#endnote-72) The enactment of coercive control as an offence means that women who, for a multitude of reasons stay in relationships with controlling or coercive partners, are voluntarily associating with a criminal and the defence is automatically barred. As such, none of the defendant’s circumstances, such as living in an abusive relationship, are considered to see if the defence is warranted. This means that without the fall-back protection of marital coercion vulnerable women are left unprotected by the law.

It could be argued that these criticisms are unwarranted and that a case such as this is unlikely to arise; however, the facts of *Graham*[[73]](#endnote-73)and *Gotts*[[74]](#endnote-74) are similar to the hypothetical situation anticipated by Baroness Hale in that in each of these cases the defendants were living with people who they knew to be violent (and thus criminal). Following the judgment in *Hasan* they would be excluded from a defence (in fact both cases were unsuccessful on other grounds), as they knew they might be subjected to doing things that they did not want to. This seems illogical when their relationships with their duressor make it harder for them to resist the intensified threat. According to Baroness Hale the correct test should be that the defence is excluded when the defendant foresees or ought to have foreseen the risk of being subjected to compulsion to commit criminal offences. Should a case arise to determine whether the defence should be denied to abused women, who are widely divergent from the defendant who has who voluntarily joined gang or terrorist culture who the restrictions are aimed at, then it can only be hoped that the issue will be re-examined.

The result of these evidential hurdles and restrictions mean that the duress defence cannot operate as a concession to ordinary human frailty. Even when an abused woman’s will is overborne by coercive or controlling behaviour this may not be enough for the defence of duress, and even if she can prove that she feared death or serious injury and a reasonable person would have responded in the same way, the defence is still excluded because of her voluntary association with the duressor.

**Alternative Defences**

Whilst the focus of this paper is on duress, in considering whether the law provides adequate protection for abused women who commit crimes under coercion, it would be amiss not to give at least some consideration of what the outcome will be if a woman does resist the threat and instead commits a crime to protect herself from the threatened or inflicted abuse. Government has recently claimed that in this situation the defences of loss of control, diminished responsibility and self-defence will provide an abused women with a defence,[[75]](#endnote-75) however, the two recent cases of Emma-Jayne Magson and Farieissia Martin[[76]](#endnote-76) suggest otherwise. This section will examine the defences of loss of control, diminished responsibility and self-defence, and explain why these defence do not satisfactorily protect women from prosecution.

Loss of Control

Coercive control is not itself a defence to murder.[[77]](#endnote-77) Therefore, if an abused woman responds to coercive and controlling behaviour by killing, an alternative defence will have to be sort. One such potential defence is loss of control. Loss of control is defined within section 54 of the Coroners and Justice Act 2009 and provides a partial defence to those who commit murder under a loss of self-control, from a qualifying trigger and a reasonable person in the circumstances might have done the same. The definition of the defence creates four key problems for women who might respond to abuse by attacking their abuser, which will be considered below.

First, it is only available to the charge of murder,[[78]](#endnote-78) so if a woman responds to threatening or coercive behaviour with anything less than murder, she will not be able to plead this defence.

Second, although the loss of control no longer need be sudden,[[79]](#endnote-79) in a move to make the defence more readily available to abused women experiencing slow burn,[[80]](#endnote-80) there must still be a loss of self-control.[[81]](#endnote-81) This requirement presented a significant hurdle to the defence in the much-publicised case of Sally Challen.[[82]](#endnote-82) The defence of provocation (the predecessor to loss of control) was not raised by the defence and was rejected by the jury when laid before them by the trial judge. The key issue being that rather than acting from loss of control in response to years or controlling and coercive behaviour from her husband, the defendant appeared to act in a premediated attack. Actions that would still be excluded from the replacement defence of loss of control.[[83]](#endnote-83)

Third, whilst the qualifying trigger can come from fear of serious violence[[84]](#endnote-84) this may present the same problems as discussed above for duress. Although recent research shows that 71% of women who kill have suffered violence or abuse from the deceased,[[85]](#endnote-85) anything less than serious harm will not meet the minimum threshold. Despite this trigger being introduced with the specific situation in mind of allowing abused women in violent relationships to have a defence of loss of control,[[86]](#endnote-86) it does not necessarily function in this way. As Bettinson argues, ‘the fear trigger excludes the defendant abused by psychological coercive control, where there the threats are not of physical harm, but directed at psychological injury’.[[87]](#endnote-87) The alternative route to fulfilling this requirement is to establish that loss of control was due to things done or said that constituted circumstances of an extremely grave character and caused the defendant to have a justifiable sense of being seriously wronged.[[88]](#endnote-88) This requirement is judged objectively,[[89]](#endnote-89) which raises the question of how easy it will be to establish, especially where there has been no physical violence.[[90]](#endnote-90)

Finally, in order to successfully plead loss of control the abused woman has to show that a person of her sex and age, with a normal degree of tolerance and self-restraint and in her circumstances, might have reacted in the same or in a similar way.[[91]](#endnote-91) Reference to ‘circumstances’ is a reference to all of the defendant’s circumstances other than those whose only relevance to the defendant’s conduct is that they bear on defendant’s general capacity for tolerance or self-restraint.[[92]](#endnote-92) Clough argues that consideration of all the circumstances, in addition to the other changes made by the Coroners and Justice Act, will make it easier for abused women to plead the defence.[[93]](#endnote-93) Similarly to the duress defence, however, mental illness, or psychological characteristics, are not attributable to the reasonable person.[[94]](#endnote-94) Furthermore, a history of abuse, will only be a relevant contextual circumstance when judging how a person of normal tolerance and self-restraint would have responded to the qualifying trigger. In other words, the question the jury will have to consider is, how a reasonable woman (ignoring the reduced capacity or mental illness of the defendant resultant of the abuse she has suffered), might respond to a qualifying trigger in the context of an abusive relationship. This is problematic, as there is no accepted standard or reasonable response by abused women to violence.[[95]](#endnote-95) Moreover, this, again, seems to be requiring that the woman be judged by a standard that she can not necessarily achieve due to years of living in an abusive relationship, and this is not to mention the difficulty the jury will face trying to apply this test.

Diminished Responsibility

The lack of consideration of mental illness within loss of control, suggests that there should be an alternative that could be pled instead when a women has committed crime due to the abuse she has suffered. This alternative defence is diminished responsibility. Defined in section 2 of the Homicide Act 1957, as amended by section 52 of the Coroners and Justice Act 2009, it requires that the defendant prove on a balance of probabilities that they were suffering from an abnormality of mental functioning, from a recognised medical condition, that substantially impairs the defendant’s ability to understand the nature of their conduct, form a rational judgment or exercise self-control and provides an explanation for the defendant’s acts or omissions. Akin to loss of control, this is only available to murder,[[96]](#endnote-96) and therefore raises the issue that it will not be available if an abused women commits a lesser offence. A further two issues that occur are that the defence is limited to those with a recognised medical condition and that the defence draws focus to the women’s mental state rather than the abuse she has suffered.

Firstly, as added by the Coroners and Justice Act 2009, the defendant must show that they are suffering from a recognised medical condition.[[97]](#endnote-97) That a woman is a victim of abuse, without this leading to a diagnosable medical condition, will be insufficient.[[98]](#endnote-98) Furthermore, even if a recognised medical condition can be established, this is still not sufficient in itself. [[99]](#endnote-99) It must still be shown that it substantially impaired the defendant’s ability to do one or more of the things set out in section 2(1A). Failure to meet these requirements means that a women who has acted to resist the coercion to commit crime, will not have a defence if she kills her coercive partner.

Secondly, using the defence of diminished responsibility to explain the woman’s actions in killing, means the focus is centred on the woman’s deficiency rather than the coercive behaviour.[[100]](#endnote-100) As Loveless expresses, ‘the legal debate shifts from the objective rationality of her actions to preserve her own life to those personal inadequacies which apparently explain her failure to flee from her abuser.’[[101]](#endnote-101) Thus, raising issues of fair labelling and unwarranted stigmatisation.

When a woman is committing an offence to preserve her own life, then definitionally it would seem that self-defence would be a more appropriate defence, [[102]](#endnote-102) however, as will be shown below this also does not provide an adequate defence.

Self Defence

As an alternative to the partial defences of loss of control and diminished responsibility, a woman could also try to plead the full defence of self-defence in the situation where she has committed an offence against her abuser in protecting herself. Self-defence requires that the defendant’s actions be subjectively necessary and objectively reasonable.[[103]](#endnote-103) Whilst a victim of abuse may find the first element relatively straightforward to fulfil, especially as the use of force can be pre-emptive,[[104]](#endnote-104) the second requirement causes more difficulty. This is because for the force used in self-defence to be reasonable it must be proportionate; it cannot be excessive.[[105]](#endnote-105) It is an all or nothing defence meaning that if, for example, a woman kills using excessive force, the undesirable consequence will be a conviction for murder with no reduction to manslaughter.[[106]](#endnote-106) This problem is intensified by the fact that victims of abuse are more likely to use excessive force as they more frequently resort to using a weapon or arson to defend themselves.[[107]](#endnote-107)

In 2004 the Law Commission considered whether the law of self-defence should be changed to allow a defence to an abused person who kills, recognising the issue that force may be deemed excessive where a weapon is used because of the gross discrepancy in strength of the protagonists. Despite this they did not recommend a change in the law stating that the proposed defence of loss of control would provide a defence in this situation.[[108]](#endnote-108) As has been discussed above, this is not necessarily so.

In 2013 an amendment was, however, made to self-defence to allow a more lenient test of reasonableness to be applied to householders.[[109]](#endnote-109) As Edwards discusses this means that a householder could receive more protection under the law than an abused woman.[[110]](#endnote-110) To address this, when the Domestic Abuse Act was recently debated in Parliament, it was proposed that a provision should be inserted to allow the amount of reasonable force used by an abused woman to mirror the existing provisions in householder cases.[[111]](#endnote-111) The Commons, however, voted against this amendment with the Government arguing wrongly that such an amendment was not necessary as there is no ‘significant evidence demonstrating that the current full and partial defences available are failing victims of domestic abuse accused of crimes against their abuser.’[[112]](#endnote-112) Despite no move to resist the motion there was considerable dissent in the Lords in response to the Government’s position,[[113]](#endnote-113) with assertions that much research has been done that showed that self-defence fails women.[[114]](#endnote-114) Moreover, as will be discussed below it appears this was not the only opportunity missed to perhaps provide an adequate defence to victims of domestic abuse who commit crime.

**The Domestic Abuse Act 2021: An opportunity missed?**

In addition to the rejected amendment to self-defence, in June 2020 it was presented to the House of Commons Public Bill Committee that the existing common law defence of duress does not work for individuals who are compelled to offend due to their experience of domestic abuse. To remedy this a new clause was proposed for the Domestic Abuse Bill, modelled on section 45 of the Modern Slavery Act 2015, to provide a defence to a victim of domestic abuse.[[115]](#endnote-115) As Laird discusses, the defence under section 45 is not without its problems, for example, its use is excluded from approximately 100 different offences.[[116]](#endnote-116) These same problems would exist if an equivalent defence was adopted for battered women. The defence, however, does not require threats of death or serious injury, thus removing one of the hurdles facing abused women under the current common law duress defence. Nevertheless, the Commons voted with a majority of 362 votes to 217 to reject this provision, with Government stating that several defences including duress, loss of control and diminished responsibility are available to those who commit offences in circumstances where they are in an abusive relationship.[[117]](#endnote-117) This means that whilst the proposed reform may not have been without restrictions, the reasoning given for rejecting this provision is flawed, because as shown, it seems to have been asserted without adequate consideration of how the other defences available are defined in such terms to mean that they are not available or appropriate.

In defending the Government’s position in the Lords, Lord Wolfson provided some more insight stating:

Although, again, the Government absolutely understand that victims of domestic abuse may also be compelled to resort to crime, we are not persuaded that the model on which this amendment is based… is either apt or effective with regard to domestic abuse.[[118]](#endnote-118)

This argument for rejecting the proposed provision appears more meritorious. In addition to the extensive restriction of the offences that the defence would be available to, it would also impose a reasonable person requirement.[[119]](#endnote-119) Thus, creating the same problems for abused women as discussed above with the current defences of duress and loss of control. The result of the Common’s rejection of the amendment was that a further amendment to the bill was proposed, which called for an independent review of the defences available to the victims of domestic abuse.[[120]](#endnote-120) Thus, calling for the review that had been promised nearly a decade earlier.[[121]](#endnote-121) This amendment was again rejected with the explanation that Government was already committed to review sentencing practice in domestic homicide cases.[[122]](#endnote-122) Whilst such a review is to be commended, it plainly does not address the issue of women who commit crime under coercive control rather than responding by killing their coercers.

**Providing a defence to those who commit crime under coercive control**

Further consideration of the theoretical basis of a defence for abused women is needed. It is, for example, generally accepted that self-defence is a justificatory defence. This suggests that extending self-defence to abuse cases as proposed in the Domestic Abuse Bill denotes that the defendant’s actions are justified and therefore morally correct.[[123]](#endnote-123) Alternatively, providing abused women a duress-based defence, as also proposed in the Domestic Abuse Bill, suggests that the defendant’s actions are not justified, but instead the context means that the defendant should be excused. One such context is that the defendant has acted without capacity.[[124]](#endnote-124) This could be applicable to the case of an abused woman, as Edwards states, ‘experiencing fear or living *in* or *with* fear may result in an impaired or total lack of capacity’.[[125]](#endnote-125) Duress, however, does not excuse the defendant’s actions on a lack of capacity basis, as exemplified by the inclusion of a reasonable person requirement. Therefore, it might be, as Lord Wolfson states that a duress-based defence is not the most apt defence for an abused woman who commit crime. Thus, not enacting the proposed provision has avoided introducing a defence that like the common law would not be fit for purpose.

As duress is not a capacity-based defence, more examination needs to be conducted or whether a capacity-based defence is most appropriate for abused women are forced to commit crime. As discussed above, using a capacity-based defence such as diminished responsibility, leads to problems when the lack of capacity is not due to a recognised medical condition and the label placed on abused women. As such, if it is agreed that an abused woman acting under coercive control does not have the capacity to control her actions, then perhaps an alternative option could be to consider a defence such as automatism, which relies on the lack of capacity coming from an external cause.[[126]](#endnote-126) In this situation, the abusive behaviour of her violent partner would be the external cause rather than looking to place responsibility on the woman’s mental state. Automatism requires that the actions are done by the muscles without control of the mind,[[127]](#endnote-127) without recourse to the actions of a reasonable person, and has been successfully used in cases such as when the defendant is suffering from PTSD following being raped.[[128]](#endnote-128) Whilst this defence currently requires a *complete* loss of control,[[129]](#endnote-129) reforms have been suggested that the defence could be based on an *effective* loss of control.[[130]](#endnote-130) Adopting such an approach could more easily open the door to abused women who commit crime, and this is perhaps an avenue that should be explored when reviewing the law. But first, closer examination is required of the basis on which abused women commit crime so an appropriate defence can be formulated for those acting under coercive control.

**Footnotes**

1. Senior Lecturer of Law at the University of Chichester. [↑](#endnote-ref-1)
2. Sophie Howes, ‘Women who kill: how the state criminalises women we might otherwise be burying’ (*Centre for Women’s Justice*, 17 February 2021) [www.static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/602a9a87e96acc025de5de67/1613404821139/CWJ\_WomenWhoKill\_Rpt\_WEB-3+small.pdf](http://www.static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/602a9a87e96acc025de5de67/1613404821139/CWJ_WomenWhoKill_Rpt_WEB-3%2Bsmall.pdf) accessed 27 July 2021. [↑](#endnote-ref-2)
3. The term ‘woman’ is used throughout as according to Home Office, ‘Review of the controlling or coercive behaviour offence’, (*Gov UK,* 1 March 2021) <https://www.gov.uk/government/publications/review-of-the-controlling-or-coercive-behaviour-offence> accessed 29 June 2021 at 14, data shows that year on year women constitute 93-4% of the victims in police recorded instances of coercive control and controlling behaviour. Furthermore, data from the Office for National Statistics, ‘Domestic abuse and the criminal justice system, England and Wales: November 2020’ (25 November 2020) https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseandthecriminaljusticesystemenglandandwales/november2020accessed 3 August 2021 shows that 97% of the defendants were male. [↑](#endnote-ref-3)
4. *R v Hasan* [2005] UKHL Crim 903 at [73] and [78]. [↑](#endnote-ref-4)
5. House of Commons Justice Committee ‘Women Offenders: after the Corston Report’ (15 July 2013) [https://www.parliament.uk/globalassets/documents/commons-committees/Justice/Women-offenders.pdf accessed 3 August 2021](https://www.parliament.uk/globalassets/documents/commons-committees/Justice/Women-offenders.pdf%20accessed%203%20August%202021), 78. [↑](#endnote-ref-5)
6. J Corston, ‘Review of Women with Particular Vulnerabilities in the Criminal Justice System (MoJ: London, 2007) [paras. 2.11](https://webarchive.nationalarchives.gov.uk/20130206102659/http%3A/www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf%20%20%20%20%20paras%202.11) - 2.12. [↑](#endnote-ref-6)
7. Prison Reform Trust, ‘”There’s a reason we’re in trouble.” Domestic abuse as a driver to women’s offending’ (4 December 2017) [http://www.prisonreformtrust.org.uk/Portals/0/Documents/Domestic\_abuse\_report\_final\_lo.pdf accessed 30 July 2021](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Domestic_abuse_report_final_lo.pdf%20%20accessed%2030%20July%202021), 12. [↑](#endnote-ref-7)
8. For example, Home Office, ‘Controlling or Coercive Behaviour in an Intimate or Family Relationship (December 2015) <<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf>> accessed 30 July 2021 identifies financial control as a type of abuse, also women who have experienced abuse are more likely to suffer from drink or drug dependency. [↑](#endnote-ref-8)
9. Ibid. [↑](#endnote-ref-9)
10. In*R v Shortland* [1996] 1 Cr App R 116 the Court of Appeal allowed the defendant’s appeal on the basis of marital coercion whereby she had suffered abuse from her husband that would today fulfill the requirements of coercive control. [↑](#endnote-ref-10)
11. J LI J Edwards, ‘Compulsion, Coercion and Criminal Responsibility’ (1951) 14 MLR 297, 310. [↑](#endnote-ref-11)
12. The presumption that an offence committed by a wife in the presence of her husband was committed under coercion was removed by section 47 of the Criminal Justice Act 1925, but the defence still existed until the repealed by section 177 of the Anti-social Behaviour, Crime and Policing Act 2014. [↑](#endnote-ref-12)
13. *The Times* (Dec 23, 2000). [↑](#endnote-ref-13)
14. For example, see the contrasting outcomes of *R v Hughes* (1813) 2 Lew 229 and *R v Connolly* (1929) 2 Lew 229. [↑](#endnote-ref-14)
15. W Blackstone, *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765 -1769* (The University of Chicago Press: Chicago 1979) vol IV, 29. [↑](#endnote-ref-15)
16. *Lady Somerset's case* (1616) 2 St Tr 951. [↑](#endnote-ref-16)
17. They would have had other legal protection such as the presumption of *doli incapax*. [↑](#endnote-ref-17)
18. *R v Court* (1912) 7 Cr App R 127 at 129. [↑](#endnote-ref-18)
19. Report of the Criminal Law Commissioners, Parliamentary Paper xxiv (1845). Proposals for abolition were also made in the Draft Criminal Code of 1879 section 23, and by the Avory Committee, *Report on the Responsibility of the Wife for Crimes Committed under the Coercion of the Husband*, Cmd. 1677 (1922). [↑](#endnote-ref-19)
20. Law Commission, *Report on Defences of General Application,* Law Com. Report No. 83, (1977) para. 3.9. [↑](#endnote-ref-20)
21. Law Commission, *Legislating the Criminal Code: Offences Against the Person and General Principles*, Law Com. Report No 218 (1993) para. 32.6. [↑](#endnote-ref-21)
22. For example, David Pannick, ‘Post Pryce, it’s time to abolish idiocy of marital coercion’ The Times (21 November 2013) and Joshua Rozenberg, ‘The Vicky Pryce case highlights why ‘marital coercion’ should be thrown out’ The Guardian (7 March 2013). [↑](#endnote-ref-22)
23. *R v Pryce* (Unreported) March 7, 2013 (Crown Ct (Southwark)). [↑](#endnote-ref-23)
24. HL Deb 22 January 2014, vol. 751, cols. 699 – 700. [↑](#endnote-ref-24)
25. Ibid at 700. [↑](#endnote-ref-25)
26. The problem this poses can be seen in *R v A* [2012] EWCA Crim 424 when the defence of duress failed as coercive and controlling behaviour was not considered extreme enough. [↑](#endnote-ref-26)
27. HL Deb, above n. 23 at 700-701. [↑](#endnote-ref-27)
28. Home Office, ‘A Call to End Violence Against Women and Girls: Action Plans (11 March 2014) <https://www.gov.uk/government/collections/ending-violence-against-women-and-girls-action-plans> accessed 3 August 2021. [↑](#endnote-ref-28)
29. V Bettinson, ‘Aligning partial defences to murder with the offence of coercive or controlling behaviour’ [2019] J Crim L 71 argues for the criminal law to be coherent, defences need to be available to achieve the policy aim of combatting domestic violence. [↑](#endnote-ref-29)
30. E Stark, Coercive Control: How Men Entrap Women in a Personal Life (Interpersonal Violence): The Entrapment of Women in Personal Life (Oxford University Press 2009) 15. [↑](#endnote-ref-30)
31. Section 76 Serious Crime Act 2015 as amended by section 68 of the Domestic Violence Act 2021 [↑](#endnote-ref-31)
32. See Home Office, above, n. 2. [↑](#endnote-ref-32)
33. *R v Howe* [1987] 1 All ER 771 at 779-780; *Hasan*, above n.3 at [23]. [↑](#endnote-ref-33)
34. *Howe*, ibid at 459. [↑](#endnote-ref-34)
35. *R v Martin* (1989) 88 Cr App R 343 at 346. [↑](#endnote-ref-35)
36. J Loveless, ‘R v GAC: battered woman “syndromization” [2014] Crim LR 655 at 656. [↑](#endnote-ref-36)
37. P Ahluwalia, ‘Defences available for women defendants who are victims/survivors of domestic abuse’ (*Prison Reform Trust,* 17 October 2017) <<http://www.prisonreformtrust.org.uk/portals/0/documents/cba%20domestic%20violence%20briefing.pdf>> accessed 28 July 2021. [↑](#endnote-ref-37)
38. *DPP for Northern Ireland v Lynch* [1975] AC 653 at 670. [↑](#endnote-ref-38)
39. J Loveless, ‘Domestic violence, coercion and duress’ [2010] Crim LR 93 at 97-8. [↑](#endnote-ref-39)
40. See *Hasan*, above n.3 at [28] [↑](#endnote-ref-40)
41. *R v N* [2007] EWCA Crim 3479. [↑](#endnote-ref-41)
42. *R v Abdul-Hussain* [1999] Crim LR 570. [↑](#endnote-ref-42)
43. See above n. 19 at para. 2.25. [↑](#endnote-ref-43)
44. Law Commission*, Codification of Criminal Law*, Law Com. Report No. 143 (1985) para 13.7. [↑](#endnote-ref-44)
45. *R v Baker and Wilkins* (1997) 2 Cr App R 335. [↑](#endnote-ref-45)
46. J Herring, ‘Serious Wrong of Domestic Abuse and Loss of Control Defence’ in A Reed and M Bohlander (eds) Loss of Control and Diminished Responsibility Manslaughter: Domestic Comparative and International Perspectives (Ashgate, Surrey, 2011), 73. [↑](#endnote-ref-46)
47. See *N,* above n. 40*.* [↑](#endnote-ref-47)
48. *R v A* [2012] EWCA Crim 424. [↑](#endnote-ref-48)
49. V Bettinson, ‘Criminalising coercive control in domestic violence cases: Should Scotland follow the path of England and Wales’ [2016] Crim LR 165, 169. [↑](#endnote-ref-49)
50. *R v Richman and Richman* [1982] Crim LR 507 and see *Shortland,* above n. 9 at 118. [↑](#endnote-ref-50)
51. As the Court of Appeal stated in *R v Conlon* [2017] EWCA Crim 2450 at [26] in discussing coercive control: The new offence targets psychological abuse in which one partner to a relationship coerces or controls the life of the other without necessarily or frequently using threats or violence. [↑](#endnote-ref-51)
52. The duress should, however, be considered in sentencing: *R v Rasul* [2005] EWCA Crim 959. [↑](#endnote-ref-52)
53. See Home Office, above n. 7 at 3. [↑](#endnote-ref-53)
54. Serious Crime Act 2015, section 45 (1)(b) and (4)(c). [↑](#endnote-ref-54)
55. It was argued *obiter* in *R v Bowen* (1996) 1 WLR 372, 379 that characteristics such as age, sex, pregnancy, serious physical disability or mental illness could all be taken into account as the jury may consider that these categories of people are less likely to be able to resist pressure. [↑](#endnote-ref-55)
56. *R v Emery* [1993] Cr App R 394. [↑](#endnote-ref-56)
57. Ibid at 398. [↑](#endnote-ref-57)
58. *R v Hegarty* [1994] Crim LR 353. [↑](#endnote-ref-58)
59. *R v Horne* [1994] Crim LR 584. [↑](#endnote-ref-59)
60. *R v Hurst* (1995) 1 Cr App R 82 at 91. [↑](#endnote-ref-60)
61. See Loveless, above n. 38, who considers the difficulties of Battered Women’s Syndrome being categorised and considered as a mental illness for the purposes of duress. [↑](#endnote-ref-61)
62. See *Bowen,* above n. 54 at 379. [↑](#endnote-ref-62)
63. *R v GAC* [2013] EWCA Crim 1472. [↑](#endnote-ref-63)
64. JA Stephen, History of the Criminal Law of England (Vol II Macmillan 1883), 107. [↑](#endnote-ref-64)
65. For example see *Lynch*, above n. 37 at 688 where Lord Simon states ‘in my respectful submission your Lordships should hesitate long lest you be inscribing a charter for terrorists, gang leaders and kidnappers’. [↑](#endnote-ref-65)
66. See *Hasan*, above n.3 at [39]. [↑](#endnote-ref-66)
67. Overruling *R v Shepherd* (1988) 86 Cr App R 47 when the defendant’s appeal was successful as he failed to appreciate the violent nature of the shop lifting gang he had joined. [↑](#endnote-ref-67)
68. Overruling *R v Baker and Ward* (1999) 2 Cr App R 335 where the Court of Appeal held that the pressure must be to coerce the accused into committing a criminal offence of the type he is being tried. [↑](#endnote-ref-68)
69. See *Hasan*, above n.3 at [19], [34], [37] and [39]. [↑](#endnote-ref-69)
70. Ibid at [73] and [78]. [↑](#endnote-ref-70)
71. R Ryan, ‘Resolving the Duress Dilemma: Guidance from House of Lords’ (2005) 56 N Ir Legal Q 421, 430. [↑](#endnote-ref-71)
72. DC Omerod, ‘Duress: Forseeability of Risk of being Subjected to Complusion by Threats of Violence’ [2006] Crim LR 142, 145. [↑](#endnote-ref-72)
73. *R v Graham* (1982) 1 WLR 294. [↑](#endnote-ref-73)
74. *R v Gotts* (1994)2 AC 412. [↑](#endnote-ref-74)
75. HC Deb 15 April 2021, vol. 692, col. 520. [↑](#endnote-ref-75)
76. Details of these cases and campaigns for justice for women can be found at <<https://www.justiceforwomen.org.uk/home>> accessed 29 July 2021. [↑](#endnote-ref-76)
77. *R v Challen* [2019] EWCA Crim 916. [↑](#endnote-ref-77)
78. Coroners and Justice Act 2009, section 54(7). [↑](#endnote-ref-78)
79. Ibid, section 54(2). [↑](#endnote-ref-79)
80. Law Commission, *Partial Defences to Murder 2004*, Law Com. Report No. 290 (2004) para 3.136. [↑](#endnote-ref-80)
81. Coroners and Justice Act 2009, section 54(1)(a). [↑](#endnote-ref-81)
82. *Challen*, above n 76. [↑](#endnote-ref-82)
83. Coroners and Justice Act 2009, section 54(4). [↑](#endnote-ref-83)
84. Ibid, section 55(3). [↑](#endnote-ref-84)
85. See Howes, above n.1 at 25. [↑](#endnote-ref-85)
86. Law Commission, *Murder, Manslaughter and Infanticide*, Law Com. Report No. 304 (2006) paras 5.50 – 5.77. [↑](#endnote-ref-86)
87. See Bettinson, above n. 31 at 83. [↑](#endnote-ref-87)
88. Coroners and Justice Act 2009, section 55(4). [↑](#endnote-ref-88)
89. R v Clinton (Jon-Jacques) [2013] QB 1, 17 and R v Dawes [2013] 2 Cr App R 3, 40. [↑](#endnote-ref-89)
90. See Bettinson, above n. 28 at 84. See also, SSM Edwards, ‘Anger and fear as justifiable preludes for loss of control’ [2010] J Crim L for a review of the changes made by the introduction of loss of control in the Coroners and Justice Act and the impact this will have on abused women trying to use the defence. [↑](#endnote-ref-90)
91. Coroners and Justice Act 2009, section 54(1)(c). [↑](#endnote-ref-91)
92. Ibid, section 54(3). [↑](#endnote-ref-92)
93. A Clough, ‘Loss of self-control as a defence: the key to replacing provocation’ [2010] J Crim L 118. [↑](#endnote-ref-93)
94. *R v Rejmanski* [2017] EWCA Crim 2061. [↑](#endnote-ref-94)
95. See Loveless, above n.38 at 661 in the context of duress. [↑](#endnote-ref-95)
96. Homicide Act 1957, section 2(2). [↑](#endnote-ref-96)
97. Ibid, section 2(1)(a) and amended by section 52(1) of the Coroners and Justice Act 2009. [↑](#endnote-ref-97)
98. *Challen*, above n. 76. [↑](#endnote-ref-98)
99. S Dickson and E Stuart-Cole, ‘Mentally relevant? When is a loss of control attributable to a mental condition? R v Rejamski (Bartosz); R v Gassmann (Charise)’ [2018] J Crim L 117, 120. [↑](#endnote-ref-99)
100. SSM Edwards, ‘Coercion and compulsion – re-imaging crimes and defences’ [2016] Crim LR 876, 882. [↑](#endnote-ref-100)
101. See Loveless, above n.38 at 665. [↑](#endnote-ref-101)
102. For example see E Kenny, ‘Battered women who kill: the fight against patriarchy’ [2007] UCL Juris Rev 17; A McColgan, ‘In defence of battered women who kill’ [1993] Oxford Journal of Legal Studies 508 and; C Wells, ‘Battered women syndrome and defences to homicide’ [1994], who argue that self-defence is a more appropriate than the partial defences. [↑](#endnote-ref-102)
103. Criminal Justice and Immigration Act 2008, section 76. [↑](#endnote-ref-103)
104. *R v Beckford* [1988] AC 130. [↑](#endnote-ref-104)
105. *R v Clegg* (1996) 1 AC 482. [↑](#endnote-ref-105)
106. M Kaye, ‘Excessive Force in Self-Defence after *R v Clegg*’ (1997) JCL 448, 455. [↑](#endnote-ref-106)
107. Research by Howes, above n. 1 at 23, showed that in 71% of cases women stabbed their violent partner, in 9% of cases another type of weapon was used and in 7% of cases women had set fire to their partner or committed arson that resulted in his death. [↑](#endnote-ref-107)
108. See Law Commission, above n. 79, paras. 4.20- 4.26. [↑](#endnote-ref-108)
109. Section 43(2) of the Crimes and Courts Act 2013 inserted section 76(5A) into the Criminal Justice and Immigration Act 2008, which added ‘grossly disproportionate’. [↑](#endnote-ref-109)
110. SSM Edwards, ‘Recognising the role of the emotion of fear in offences and defences’ [2019] J Crim L 450, 465-468. [↑](#endnote-ref-110)
111. Domestic Abuse Bill Deb 17 June 2020, cols. 436-7. [↑](#endnote-ref-111)
112. HC Deb 15 April 2021, vol 692, col. 520. [↑](#endnote-ref-112)
113. HL Deb 21 April 2021, vol 811, cols. 1892-9. [↑](#endnote-ref-113)
114. Ibid, col. 1892. [↑](#endnote-ref-114)
115. See Domestic Abuse Bill, above n. 110 cols. 461-462. [↑](#endnote-ref-115)
116. K Laird, ‘Evaluating the relationship between section 45 of the Modern Slavery Act 2015 and the defence of duress: an opportunity missed?’ [2016] Crim LR 395. [↑](#endnote-ref-116)
117. See HC Deb, above n. 111, col. 520. [↑](#endnote-ref-117)
118. See HL Deb, above n. 112, col. 1891. [↑](#endnote-ref-118)
119. The proposed provision included that ‘a reasonable person in the same situation as the person and having the person’s relevant characteristics might do that act’. [↑](#endnote-ref-119)
120. See HL Deb, above n. 112, col. 1891-9. [↑](#endnote-ref-120)
121. See text to n.26. [↑](#endnote-ref-121)
122. See HL Deb, above n. 112, col. 1891-2. [↑](#endnote-ref-122)
123. E Colvin, 'Exculpatory Defences in Criminal Law' (1990) 10 Oxford Journal of Legal Studies 381, 382; K Greenawalt, ‘The Perplexing Border between Justification and Excuse’ (1984) 84Col LR 1897, 1898; M Moore, *Placing Blame: A Theory of Criminal Law* (Oxford University Press, 2010) 483. [↑](#endnote-ref-123)
124. For example, see H Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (2nd edn, Oxford University Press 2008), 152 who argues the defendant can be excused when he did not have the capacity to make the right choice when he made the decision to commit the offence, and thus cannot be held responsible for his actions. [↑](#endnote-ref-124)
125. See Edwards, above n. 109 at 454. [↑](#endnote-ref-125)
126. *R v Hennessy* [1989] 1 WLR 287. [↑](#endnote-ref-126)
127. *Bratty v Attorney General for Northern Ireland* [1963] AC 386 at 409. [↑](#endnote-ref-127)
128. *R v T* [1990] Crim LR 256. [↑](#endnote-ref-128)
129. *Attorney General’s Reference* *(No 2 of 1992)* [1994] QB 91. [↑](#endnote-ref-129)
130. In clause 33(1)(a) of the Law Commission, Draft Criminal Code, Law Com. Report No. 177 (1989) it was recommended that loss of effective control would meet the threshold for automatism; however, in Law Commission, Criminal Liability: Insanity and Automatism, Law Com. Discussion Paper (2013) at para. 5.118, the Law Commission reverted to requiring a total loss of capacity to control his or her physical actions. [↑](#endnote-ref-130)