

Response to consultation on Equally Safe—Reforming the criminal law to address domestic abuse and sexual offences



Introduction

For 130 years, as the RSSPCC and now as CHILDREN 1ST, we have campaigned for every child in Scotland to enjoy a better start in life and for no child to grow up in fear of abuse and violence. We will continue to be a strong public voice for vulnerable children and young people in Scotland, listening to them, to influence public policy and attitudes. Then, now and for another 130 years, as long as Scotland's children need us.

CHILDREN 1ST has 63 local services and five national services across Scotland, and we work closely with many local authorities as well as in partnership with other organisations. All our services are child centred and the children, young people and families we support are key partners in all aspects of our work.

We run 12 services working with those who have experienced domestic abuse. Last year 559 children, young people and parents and carers were supported by our abuse and trauma recovery services. More than one in four (27%) of the people with whom our services are doing direct work are affected, in some way, by domestic abuse¹.

As our services primarily focus on the impact of domestic abuse on children, young people and their parents and carers, for the purposes of this response we have focused on the key areas within which our expertise lies and the effect any legislative changes may have on children. Our response highlights the following key areas:

- We support the creation of an offence of domestic abuse, but are clear that it must be accompanied by several other changes, including training and development for all those working in the criminal justice system;
- Any legislation on the issue must reflect the impact of domestic abuse on children;
- The implementation of this legislation leaves children as the only people in Scotland that do not have equal protection from violence in the home and this must be urgently addressed;
- Potential unintended consequences of introducing a new offence must be fully considered before a Bill is introduced and a Child Rights and Wellbeing Impact Assessment should be undertaken on the proposals;
- The possible impact of this legislation on children who may be called as witnesses should be fully explored, including any additional special measures to support them throughout the process;

¹ CHILDREN 1ST local summary report 2014-15, research flags overview

- Support for those who have been abused is not consistently available across Scotland and this Bill provides an opportunity to begin to address this.

1. Does the existing criminal law provide the police and prosecutors with sufficient powers to investigate and prosecute perpetrators of domestic abuse?

No. We know from our work with people who have experienced domestic abuse that it is different to, and distinct from, other forms of abuse. In order to understand domestic abuse it is necessary to recognise patterns of coercive and controlling behaviour, rather than focusing on individual, violent incidents which do not tell the whole story of an abusive relationship. The dynamics involved are hugely complex and often difficult to understand and the current legal system does not always recognise this.

2. One of the ways it has been proposed the law could be strengthened is through the creation of a specific criminal offence concerning domestic abuse. Do you agree that this would improve the way the justice system responds to domestic abuse?

Yes. CHILDREN 1ST would support the creation of a specific domestic abuse offence and the consideration of a statutory aggravation. This would help those working in the criminal justice system to continue to shift their view of domestic abuse away from a focus on individual incidents towards a perspective that takes the context of relationships and coercive and controlling behaviour into account. We know that not all domestic abuse is physical and believe that the introduction of this offence would help people to understand the complex dynamics and relationships involved in domestic abuse.

The point at which a victim of abuse leaves an abusive partner is often one of the most dangerous times. An offence of domestic abuse could help to raise awareness of the increased danger at this time and ultimately lead to increased support for those leaving their partners or preparing to do so, and their children.

An offence alone, however, will not stop domestic abuse from happening. The situations in which it occurs are simply too complex and too dependent on relationships for prosecution to be the only solution. For this reason if a new offence of domestic abuse is created it should be accompanied by a range of support and training measures that will help to ensure that those who experience domestic abuse—including children—are effectively identified, protected and helped to recover. In addition, it is crucial that the importance of preventing domestic abuse from happening in the first place is recognised; no child should have to experience domestic abuse. In order to make meaningful progress CHILDREN 1ST believes that the Bill must be accompanied by:

- Greater understanding among justice professionals and others of the impact of domestic abuse, particularly on children.
- High quality Relationships, Sexual Health and Parenthood Education for all children and young people that supports them to make safe, healthy and positive choices and focuses on healthy relationships, consent, respect and control.

- Acknowledgement and further consideration of the impact of prevention and early intervention.
- Training for those working in the criminal justice system about the dynamics of domestic abuse, including how in many cases the courts themselves are used by perpetrators as a form of coercive control.

We are extremely supportive of any measures to protect people from violence and take this opportunity to highlight that this legislation would leave one group of vulnerable people – children – less protected from violence than everyone else in Scotland.

Children have a right to protection from violence. Article 19 of the UNCRC sets out the state's obligation to *'take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse... while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.'*² This makes it clear that all children should be protected from all forms of violence, which they are currently not under Scots Law. The Scottish Government must address this issue as a matter of urgency—including by considering the most appropriate legislative vehicle for the removal of the justifiable assault defence which currently leaves children with less protection from assault than adults³.

5. Are there any other comments you wish to make about the creation of a specific offence of domestic abuse?

The impact of domestic abuse on children

Children can experience both direct physical abuse by perpetrators of domestic abuse, and trauma as a result of witnessing domestic abuse at home. We are concerned that the experiences of children, and an acknowledgment the impact of domestic abuse on them, are largely absent from this consultation.

Recent figures suggest that each year domestic abuse takes place in more than 50,000 households containing children⁴. Some children and young people have likened it to living in a war zone⁵.

Children can be exposed to domestic abuse in different ways. For example, they can be caught in the middle of violence between their parents when trying to stop it; they may hear the abuse from another part of the home; they may see the injuries on their mother or father; and they themselves can be the victims of physical, sexual and emotional abuse. Research shows that the link between domestic violence and the physical abuse of children is high, with estimates ranging between 30% and 66%⁶.

Any Bill seeking to create a domestic abuse offence should explicitly acknowledge that children are affected by domestic abuse and take their needs into account. One way of doing this may be to include a statutory aggravation if children were affected by domestic abuse. It is, however, essential that children are not subject to arduous and stressful measures of how they were affected by the abuse taking place in their

² <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

³ <http://www.children1st.org.uk/campaigns/public-policy-and-influencing/physical-punishment-of-children/>

⁴ Based on the Scottish Crime and Justice Survey 2012/13 Partner Abuse report:

<http://www.scotland.gov.uk/Resource/0045/00455441.pdf>

⁵ <http://www.voiceagainstviolence.org.uk/category/resources/>

⁶ <http://www.womensaid.org.uk/domestic-violence-articles.asp?section=00010001002200020001&itemid=1262>

household. It is important to recognise that in sharing details of domestic abuse that they have been exposed to, children are often in an emotionally conflicted position, speaking about two parents who they love, wanting the behaviours and abuse to stop but also fearing the consequences for the family of any court action. Children and young people are sometimes encouraged to see one parent as being to blame for or deserving of abuse, and can find it difficult to know what to believe within their family, a confusion which can also make it difficult for them to know what should change for the best.

The terms 'child' and 'adult' also need to be clearly defined within the Bill. A child should be defined as anyone under the age of 18.

Peer-on-peer abuse

Because children are largely absent from this consultation document their direct experiences of domestic abuse are not recognised. We know that children and young people experience partner violence themselves, with some studies suggesting that a quarter of girls aged 13-17 experience physical partner violence, and three quarters of girls stating that this physical violence had negatively impacted on their welfare.⁷

Our services work with young people who are coerced into performing sexual acts against their will, within the context of an intimate relationship. Whilst many are later able to recognise this as having been abusive, there must be an understanding that the normalisation of certain sexual behaviour amongst young people can create pressure to conform. Consideration needs to be given to how the suggested offence of domestic abuse would apply to children, those aged 16 and 17 in particular, and how in these situations the law would interact with child protection procedures and other legislation such as the GIRFEC provisions in the Children and Young People (Scotland) Act 2014.

Support for people who have experienced domestic abuse

Abuse recovery services provide the skilled support that children need to help them recover from the trauma of abuse. Through therapeutic support, children can slowly begin to make sense of what has happened to them, so that the healing process can begin. Article 39 of the UNCRC states that *'children who have been neglected, abused or exploited should receive special help to physically and psychologically recover and reintegrate into society. Particular attention should be paid to restoring the health, self-respect and dignity of the child.'*

Despite this, there is a huge shortage of abuse recovery services for children and their families in Scotland. There are children and families in Scotland who have experienced abuse whose needs are not being met. Among our services abuse and trauma services have the longest waiting lists, and across Scotland children are often on waiting lists for months, if not years. More needs to be done to help children recover from abuse, and this Bill could be an opportunity to address this issue by recognising that those who have experienced domestic abuse need access to specialist services. Specific support programmes such as CEDAR (Children Experiencing Domestic Abuse Recovery) already exist, but are not consistently available to all who need them. These are evidenced to support children and young

⁷ <http://www.nspcc.org.uk/globalassets/documents/research-reports/partner-exploitation-violence-teenage-intimate-relationships-summary.pdf>

people in the process of recovery, whilst equipping them to understand and name the abuse they have experienced and develop increased knowledge of safety planning, for the future.

A new offence of domestic abuse may actually increase the support required by those who have experienced abuse, including children, as more of them may be expected to give evidence in court, which can be re-traumatising. In addition support is often required by children and their families when perpetrators are released from prison, and if the introduction of a new offence increases the number of perpetrators imprisoned, demand for this support may well increase. This Bill is an opportunity for the Scottish Government to map and develop a clear understanding of what services are available across Scotland, as a first step toward ensuring recovery services are consistently available across the country.

Potential unintended consequences

Although we are supportive of the introduction of an offence of domestic abuse, it is important to consider any unintended consequences that may occur, in order that provision to avoid them can be made at an early stage. We highlight two areas that are of specific concern to CHILDREN 1ST.

Contact arrangements between children and their family

If an offence of domestic abuse is created and more perpetrators are imprisoned as a result, it will be necessary to consider contact arrangements for children. Contact between children and their parents can be a complex area and, whilst we would absolutely support any legislation that encourages positive relationships between children and their families, it is clear that children should have a say in contact arrangements.

Not all children want or need contact with an imprisoned parent or wish to have contact with a parent they have experienced as abusive within their family, yet children of a younger age often do not currently have their views taken into account in relation to contact with a non resident parent . Article 12 of the UNCRC states that '*States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*' In our experience children of all ages are very often able to express their views if they are appropriately supported to do so, yet many children tell us that even when they are asked their views, they do not always feel listened to. We know of cases when children gave very clear indications that they did not wish to have any contact with an abusive parent, but still the court made an order for contact to happen. This put a huge strain on their families, as they were in direct contravention of a court order if they didn't uphold the contact, but risked further traumatising the child if they allowed contact to take place.

Situations like these have the potential to place the child back in a situation where they are at increased risk of experiencing continued domestic abuse and witnessing controlling and abusive behaviours at the point of handover for contact. Contact with an abusive parent can provide a means by which the control and abuse can continue, including pressure on the child to persuade the other parent to bring the family back together. It can also increase the likelihood that families who have

moved for safety reasons will have their whereabouts shared, leading to an increased risk of ongoing threats and abuse.

It should not be assumed that contact with a parent is always in the best interests of the child. For this reason it is essential that justice professionals are trauma informed, understanding the impact trauma can have and the risks of re-traumatisation. This, alongside a duty to uphold the child's right to be heard, will better enable decisions about contact to be made in the best interests of the child.

Children who may be called as witnesses

Provisions for child witnesses have improved greatly over recent years, most recently through the Victims and Witnesses (Scotland) Act 2014. Despite this the process of giving evidence, either in court or remotely, can be stressful and traumatic for children. We are concerned that should a new offence of domestic abuse be introduced, children, who are often the only witnesses to domestic abuse, would be expected to give evidence more often, and that the burden of proof would rest on them. Due to the complexities of situations in which domestic abuse occurs, this could be extremely stressful, with children expected to testify against a parent and feeling they have to prove that a coercive, controlling pattern of behaviour had been occurring.

We therefore urge the Scottish Government to carefully consider the potential impact of creating a specific offence on children who may be called as witnesses.

6. Do you think that there should be a statutory aggravation that a criminal offence was committed against a background of domestic abuse being perpetrated by the accused?

We are not able to comment specifically on the possible impact of a statutory aggravation, but would encourage the following questions to be considered before a Bill is introduced:

- Is there any evidence to show that with the introduction of a domestic abuse offence, there would be a higher incident of reporting of cases and less would fall under the radar?
- Is there any evidence from other countries where there is an offence of domestic abuse?
- Is there evidence that, in cases where there is no prosecution, there would have been a higher likelihood of prosecution if there was a separate offence of domestic abuse?
- Would the penalties be different for those convicted under existing laws than under an offence of domestic abuse?

8. Do you agree that it should be a specific criminal offence to share private, intimate images of another person without their consent?

CHILDREN 1ST support the consideration of a law against non-consensual sharing of private images and would welcome ongoing discussions relating to the potential impact of this on children.

It is not currently clear in the consultation document who the terms 'perpetrator' and 'victim' include. A clear definition is required here, particularly regarding age, as we would not want to see children being unintentionally criminalised. It is our understanding that children under 16 would, if there were concerns about their sharing of private images, usually be dealt with in the Children's Hearings System, but the potential impact of this proposed offence on those aged 16 and 17 needs to be fully explored. This should take place as part of a wider dialogue about the thresholds between child protection, criminal justice, and safe and unsafe behaviour for children of different ages.

22. Do you agree that the provisions concerning extra-territorial effect of Scots law on sexual offences against children should be amended to enable Scottish courts to prosecute offences committed in other jurisdictions within the United Kingdom?

Yes. The current law leaves some children without access to justice, which is unacceptable. This Bill could also provide an opportunity to explore how well existing legislation to protect children is being used, and how effective it is. Risk of Sexual Harm Orders (RSHOs) and Sexual Offence Prevention Orders (SOPOs)⁸, for example, are currently available for use but we understand that they are not routinely used. Legislation is only successful when used effectively and this Bill could provide an opportunity to explore the use of existing measures available to protect children.

24. Are there any other issues relating to equality which you wish to raise in relation to the reforms proposed in this paper?

We believe that a Child Rights and Wellbeing Impact Assessment should be carried out on any Bill that is introduced as a result of this consultation in order to ensure that the effect of any new offences on children is fully considered.

For more information about the issues raised in this submission, or about CHILDREN 1ST and any of our services, please contact the policy team at policy@children1st.org.uk or on 0131 446 2300.

⁸ <http://www.legislation.gov.uk/asp/2005/14/contents>