



**Domestic Abuse  
(Scotland) Bill Stage 1  
response to Justice  
Committee  
May 2017**

## Key Points

- As Scotland's National Children's Charity, Children 1st unequivocally recognise the need for the Domestic Abuse Bill and strongly support the Bill's intention to provide protections for victims of domestic abuse, including children and young people.
  - The Domestic Abuse Bill represents a vital step forward in protecting partners and their children from non-physical forms of domestic abuse by recognising the often devastating impact of coercive control and the trauma those who experience it can face. We hope this is the beginning of a wider cultural shift, which will be driven by widespread public awareness raising and broad ranging professional training about the dynamics and impact of domestic abuse.
  - Children 1st welcome the explicit recognition of children on the face of the Bill and the introduction of the aggravation in relation to a child.
  - There are a number of additional ways that protections for children can be strengthened: within this Bill; through other legislative vehicles and via better protections for child and adult witnesses who have experienced domestic abuse – before, during and after trial.
  - To ensure there is no gap in protection for adults and children experiencing domestic abuse we would welcome an amendment to the Bill to include a mandatory duty on the court to consider whether to impose a non-harassment order that includes a child in all cases where the statutory aggravation in relation to a child is applied.
  - Children 1st would also highlight to the Committee the urgent need to consider ways to enhance the inclusion of children in bail conditions; to develop a Scottish model of a Children's House, or Barnahus, and to improve connections between criminal, civil and child protection systems around the adult and child victim, with particular regard to contact orders.
1. **Do you agree with the proposal in the Bill to create a new offence of abusive behaviour towards a person's partner or ex-partner covering both physical violence and non-physical abuse?** Yes. Children 1st supports children, families and communities across Scotland through local and national services providing relationship-based, practical advice and support in difficult times. We help children and their families to build resilience and strengthen family and community relationships in order to overcome adversity and resolve trauma, so that they can move on with their lives. Last year our local services supported 496 children (from pre-birth to age 18) experiencing domestic abuse.<sup>1</sup>
  2. Through our work we see the far reaching and long term impacts of psychological as well as physical domestic abuse on children and their families. Children 1st therefore strongly supports the need for the Domestic Abuse Bill to better recognise the complex dynamics of domestic abuse by creating a new offence of abusive behaviour towards a person's partner or ex-partner which covers both physical violence and non-physical abuse. We believe that this Bill is a crucial step towards understanding and tackling all forms of violence against women and children and in recognising the psychological and emotional impact of coercive control. The Bill's recognition that abuse can be both physical and non-physical and that violence can be emotional and psychological is an important part of the culture change that is

<sup>1</sup> Children 1st local summary report 2015-16, research flags overview

required across the judicial, health and social care sectors. We are confident that this change in legislation will address the gap in current law which fails to protect people from coercive control, while also supporting the much needed cultural shift in public and professional understanding of the dynamics and impacts of domestic abuse.

3. The trauma of domestic abuse and the impact that it can have on those who experience it, including children and young people, cannot be overestimated. Domestic abuse has been a ground for referral to Children's Hearings since 2011 and the Guidance for Child Protection in Scotland, 2014 states that "domestic abuse can profoundly disrupt a child's environment, in undermining their stability and damaging their physical, mental and emotional health." This legislation will help to realise the right of children and young people to be safe from harm, as set out in article 19 of the United Nations Convention on the Rights of the Child (UNCRC). Ensuring that the introduction of the legislation is accompanied by broader public awareness raising and high-quality professional training and guidance will help improve understanding of an issue that can have far reaching consequences for victims, including children and young people.
4. **Do you consider that the proposed offence is needed to address a gap in the existing law which currently makes it difficult to prosecute some forms of domestic abuse?** Yes. Nearly one in three (30%) of the children, young people and parents or carers whom Children 1st's local services support are directly affected in some way by domestic abuse.<sup>2</sup>. As such, we are all too familiar with the considerable consequences of domestic abuse and the impact of coercive control. A strong legislative framework is needed to address the gap in current law which fails to protect those experiencing non- physical forms of domestic abuse – including children and young people. Legislative change will also drive the culture change that is urgently required to ensure the trauma of domestic abuse is more widely understood. The proposed legislation marks a crucial step in achieving the ambitions of the Scottish Government's Equally Safe strategy to eradicate violence against women, girls and children.
5. **Do you have any views on the definition of the offence, such as the requirement for a course of behaviour, the definition of abusive behaviour, or the defence that the behaviour was reasonable in all the circumstances?** We know from our work with people who have experienced domestic abuse that it is different to, and distinct from, other forms of abuse. 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. Children 1st believes that the definition of the offence, as set out in the Bill, will help those working in the criminal justice system to take into account the context of relationships and coercive and controlling behaviour whereby there is an established pattern of abuse. We also believe that this definition would encompass behaviours that are currently not able to be investigated, such as financial and emotional abuse. In addition to broader training, as highlighted above, Children 1st believe this legislation must be accompanied by specific training for the courts to support them to recognise and determine whether particular behaviours fall into the terms of the offence.
6. **The offence is restricted to abuse between partners and ex-partners. Do you agree with this approach? For example, during the Scottish Government's consultation on a draft offence, concerns were raised that it did not properly reflect the impact of domestic abuse on children. The Scottish Government has sought to address this concern in the Bill, primarily by providing that the offence will be aggravated where it involves a child. Do you have any views on this aspect of the Bill?** Scotland's Equally Safe strategy is underpinned by a gendered analysis of domestic approach – an approach which recognises that it is restricted to partners and ex-partners, which Children 1st support. Where children live in a family where there is domestic abuse, they will also be victims of that domestic abuse. Coercive control impacts on children from the earliest and most crucial

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<sup>2</sup> Children 1st local summary report 2015-16, research flags overview

stages of infant development. A range of studies, including by the BMA, document how tactics of violence and abuse, from pregnancy onwards, can severely disrupt the relationship between mother and infant, undermine the mother child connection and compromise the strongest protective factor that can mitigate against children experiencing poor outcomes. In its 2016 Concluding Observations to the UK, the UN Committee on the Rights of the Child raised concern at the “high prevalence of domestic violence and gender-based violence” and the ‘negative impact that those forms of violence have on children.’ The Committee also recommended that the UK ‘...give due weight to the views of children concerned in the responses to violence, including in criminal and family law proceedings.’ As recognised in ‘Equally Safe’ young survivors of domestic abuse experience domestic abuse as ‘coercive control’ of the whole family environment, not just the mother. An increasing body of robust international evidence recognises domestic abuse as one of ten types of traumatic adverse childhood experiences (ACEs) which can increase the likelihood of people developing chronic diseases, mental ill-health and a range of negative social and emotional impacts, such as being a victim of violence throughout their lifetime.<sup>3</sup>

7. Children 1st were among the stakeholders that raised concerns that initial proposals did not fully reflect the impact of domestic abuse of children. We welcome the explicit recognition of children on the face of the Bill and the introduction of the aggravation in relation to a child as an important step forward, but believe there are additional ways that protections for children can be strengthened.
8. Further steps should be taken to ensure the aggravator recognises the specific nature of domestic abuse and its impact on children – whether or not they ‘see’ the abuse. In particular we would welcome further strengthening of clause 4 (2) b and recommend it should include A being ‘intent or reckless’ as to whether a child sees, hears or is present.
9. Children 1st would have preferred a parallel criminal offence of domestic abuse against children to be included on the face of the Bill. We remain concerned that failing to recognise children as victims of coercive and controlling behaviour within the proposed offence will make children less visible to services and place them at greater risk of continued abuse by the perpetrator. Domestic abuse is separate to the types of abuse currently set out in Scottish legislation, and we think it is important to ensure that children and young people who experience domestic abuse are protected.
10. We understand that these concerns will be taken forward in the context of wider child protection work and that there may be alternative legislative vehicles to progress this issue. However, we would seek assurances from the Scottish Government that introducing separate legislation would not increase the potential for non-abusing parents to be criminalised, if it sits outwith the domestic abuse legislation.
11. Children 1st would also urge the Committee to give greater consideration to how the offence would apply to partner violence between children and young people, particularly those aged 16 and 17. 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. Further consideration needs to be given to how the offence, when applied to children aged 16 and 17 would interact with child protection procedures and other legislation such as the GIRFEC provisions in the Children and Young People (Scotland) Act 2014.

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<sup>3</sup> <https://www.cdc.gov/violenceprevention/acestudy/index.html>

12. **Do you have any views on factors which might impact on the reporting, investigation and prosecution of the offence?** Given the complex dynamics and far reaching impacts of domestic abuse, further public awareness raising and professional training is needed to encourage reporting of domestic abuse and ensure appropriate responses from services.
13. **The Bill makes a number of reforms to criminal procedure, evidence and sentencing. For example, it would prohibit the accused in a domestic abuse case from personally conducting the defence. Do you agree with this prohibition?** Better protections for child and adult victims of domestic abuse are required before, during and after trial – we therefore welcome the proposed reforms to criminal procedure, evidence and sentencing and believe that these could be further strengthened via changes to the law and broader reforms.
14. An outright ban on the accused conducting their own defence in domestic abuse cases will ensure perpetrators do not have an opportunity to perpetrate further abuse through the court system and will significantly lessen the level of trauma experienced by victims and witnesses in Scottish courts.
15. Children 1<sup>st</sup> also support the introduction of expert evidence relating to the behaviour of the complainer (Chapter 1), but are clear that it must be accompanied by several other changes, most importantly training and development for all those working in the criminal justice system; including the judiciary. Domestic abuse is extremely complex and nuanced and in order for cases to receive a fair hearing, it is essential that jurors, judges and court officials understand: the nature of coercive control, survivor strategies/ coping mechanisms and how in many cases the courts themselves are used by perpetrators to continue to perpetuate abuse. Expert evidence can help the courts view cases through a ‘gendered lens’ to understand the ways in which control can be exerted that would normally not be visible. In addition to the introduction of expert evidence, judges should be better equipped to be able to give the jury clear directions which address these issues.
16. The appointment of “expert” witnesses will require some discussion and development of criteria for appointment. It will be essential that expert witnesses are drawn from a range of disciplines in order than victim responses are not pathologised or medicalised.
17. More radical reform of the treatment of child witnesses is urgently needed to enable children to give their best evidence and ensure they are not re-traumatised by court processes. The forthcoming Equally Safe Delivery Plan provides an excellent opportunity to scope and pilot a Scottish approach to uniting the justice and care needs of a child witness based on the learning from the Evidence and Procedure Review and the experiences of developing Barnahus or Child’s House across Europe, encapsulated through the Promise Project which Children 1st and the Scottish Government have been involved in.
18. **The Bill would also require the court in a domestic abuse case to consider making a non-harassment order. What are your views on this approach?** Children 1<sup>st</sup> recognise and welcome the intent behind the requirement to consider making a non-harassment order, but believe this does not go far enough. We are concerned that if a non-harassment order were to be imposed on a perpetrator only in relation to the partner/ex-partner and a subsequent order for contact with the children were made via civil court, this could enable the abuse of both partner/ex-partner and children to continue. Through our work supporting children and families experiencing domestic abuse, we have often seen contact with an abusive parent result in continued coercion and control. This has included pressure on the child to persuade the other parent to bring the family back together which can be traumatising for the child. It has also increased the likelihood that families who have moved for safety reasons have their whereabouts shared, leading to an increased risk of ongoing threats and abuse. We would therefore welcome an amendment to the Bill to include a mandatory duty on the court to consider whether to impose a non-harassment that includes the children in all cases where the statutory aggravation in relation to a child is applied.

19. Similarly at present bail conditions to prevent the accused interfering with the witness in domestic abuse cases usually only extend to the mother and any children who are cited as witnesses. Where there are other children in the family, or a child is not cited as a witness, they may continue to have contact with the accused, which gives opportunities for the accused to continue to exert coercive control over the children and/or through the children towards the members of the family who are witnesses.
20. While contact orders are a matter of civil, rather than criminal law, we are concerned that a perpetrator's abuse is often invisible in decisions about contact. We note the Scottish Government's intention to review Part 1 of the 1995 Act on contact and residence, but in tandem with this strengthening of children's rights and protection under the civil law, believe there is a currently a strong opportunity to bring the criminal and civil law closer together in its response to domestic abuse by including an offence against a child within the criminal law.
21. If children remain invisible in criminal law, there is a danger that measures being put in place to protect women, before, during and after trial will not protect mothers or children who have experienced domestic abuse. A major issue is the need for better communication between the civil and criminal systems, a clearer understanding of the impact of domestic abuse on children and the risk that contact in the context of domestic abuse poses to both their own safety and that of their mother.
22. Through the Equally Safe Delivery Plan, Family Law Modernisation and the Child Protection Implementation programme we would urge the Scottish Government and partners to prioritise closer working and sharing of information to better join up the Scottish criminal courts, civil courts and the hearings system to avoid the sort of contradictory decision-making described above. In addition to domestic abuse training, justice professionals must also be trauma informed so that they understand the risks of re traumatisation and are able to make decisions that are first and foremost in the best interests of the child.

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