



Children 1st response to the Abusive Behaviour and Sexual Harm (Scotland) Bill call for written evidence

November 2015

Introduction

CHILDREN 1ST is Scotland's National Children's Charity. We help Scotland's families to put children first, with practical advice and support in difficult times. And when the worst happens, we support survivors of abuse, neglect, and other traumatic events in childhood, to recover. We help Scotland's communities to play their part in looking out for and protecting children. We listen to Scotland's children and families and when government or society fails to hear them or fails to respect their rights, we speak out.

We provide twelve 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 working directly are affected, in some way, by domestic abuse¹.

Children 1st warmly welcomes the general principles of the Abusive Behaviour and Sexual Harm (Scotland) Bill. This Bill will help to positively improve how the justice system responds to abusive behaviour including domestic abuse and sexual harm. We consider that it is essential the Bill's provisions are tested through Child's Rights and Wellbeing Impact Assessment to ensure the rights of children and young people are not adversely impacted by this new legislation.

Our response highlights the following key areas:

- We welcome the provision of aggravation of offence where there is abuse of partner or ex-partner and welcome additional domestic abuse offence next year.
- We welcome the Bill's introduction of an offence for the non-consensual sharing of private, intimate images however question if the definition of "image" could be extended to include non visual media
- We support the extension of extra-territorial effect of the law concerning sexual offences committed against children to include offences committed elsewhere in the UK.
- 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.

Section 1 – Aggravation of offence where abuse of partner or ex-partner

Children 1st support the provision for the introduction of a statutory aggravation for offences involving the abuse of a partner or ex-partner which will require the courts to take account of this fact in sentencing the offender. We agree with Victims Support Scotland and others that the law is currently framed too narrowly with a focus on individual offences, without taking into account the wider context in which offences take place. This includes coercive controlling behaviour of domestic abuse against a partner or ex partner, which can also impact on children and young people in the family. We are pleased that this statutory aggravation will enable domestic abuse to be explicitly named and acknowledged and for victims' experience to be formally recognised in Court.

We are also pleased the aggravation will apply where a person is convicted of an offence against a third party, such as their partners' child, and it is proven that their intent in committing the offence

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

was to cause their partner psychological harm. It must be recognised that children and young people themselves are greatly impacted by domestic abuse.

It is, however, essential that children are not subject to arduous and stressful measures in assessing how they were affected by the abuse taking place in their 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. We would therefore welcome further consideration about whether children who have experienced domestic abuse may be called on to give evidence to assist this new aggravation, and what measures should be in place to protect them during this process.

Children 1st also support the introduction of a specific domestic abuse offence as outlined in the original Equally Safe Consultation, which we understand will be introduced next year in different legislation. 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.

Section 2 – Offence for the non-consensual sharing of private, intimate images

Children 1st Domestic Abuse Services' have supported women who have experienced the threat of and use of revenge pornography – where perpetrators disclose or threaten to disclose intimate images. Experiencing this can cause victims extreme fear, distress and is a violation of their privacy and a threat to their feelings of safety. We therefore support provisions to make it a criminal offence for a person to share, publish or distribute private, intimate images relating to another person without that person's consent, or to threaten to do so. Creating a specific offence for this act will make it clear that sharing intimate images without consent is criminal and will help to ensure that victims' experiences will be acknowledged by the Court. It is vital that a strong and clear message is communicated that this practice is abusive and harmful and will be taken seriously.

We would like clarification to how we can ensure children and young people under 18 will not be unintentionally criminalised through this offence for actions they may not understand, and how this provision will work with the Children's Hearings System. We understand that COPFS have published "Guidance on cases involving Communications sent via Social Media" which outlines that only in serious cases prosecution will be appropriate for those under the age of 16, and that the age and maturity of accused persons should be given significant weight, particularly if they are under the age of 18. It is therefore important that this will be reflected in any guidance for the Abusive Behaviour and Sexual Harm (Scotland) Bill.

We would welcome consideration from the Committee if the Bill currently captures all relevant materials to which perpetrators could distribute private intimate material; information sent through non-visual media such as sound files or text messages could be considered as private or intimate as an image and cause the victim fear alarm and distress if disclosed.

Section 6 – Jury directions relating to sexual offences

Children 1st welcomes the introduction of jury directions relating to sexual offences. The provisions will require judges in sexual offences trials to provide juries with directions that there may be good reasons why an alleged sexual offence may not have been reported until some time after it was alleged to have been committed, or the fact that it is not alleged that the accused used physical force to overcome the victims, or that the alleged victim did not physically resist their assailant and that these situation may not necessarily indicate that an allegation is false.

Sexual assault is not always violent and victims may not respond by physically resisting their attacker for a number of reasons and the impact of trauma can sometimes mean victims do not disclose what has happened to them until years later. It is important that members of the Jury are equipped with this knowledge and understanding.

Section 7 and 8 – Child sexual offences committed elsewhere in the United Kingdom

Children 1st support the extension of extra-territorial effect of the law concerning sexual offences committed against children to include offences committed elsewhere in the UK. Sections 7 and 8 of the Bill would enable prosecution on a single indictment, which would avoid forcing the child to go through the trauma of two trials.

Equal protection from assault for all

As stated in our initial response to the consultation on these proposals, 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.

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

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/>