



## **Abusive Behaviour and Sexual Harm (Scotland) Bill Stage 1 debate: joint briefing from Barnardo's Scotland, Children 1st and NSPCC Scotland**

*January 2016*

### **Key points:**

- The rights of children and young people should be taken into account within this Bill and related guidance.
- We support the introduction of an abusive behaviour aggravator but also welcome the Scottish Government consultation on coercive control/domestic abuse offence to complement a statutory aggravation.
- It is vital that children and young people who are witnesses during any court proceedings relating to domestic abuse have adequate support and protections.
- We call on the Scottish Government to develop guidance to address the risks posed to children and young people from 'sexting' and avoid the potential for exploitation and criminalisation.
- We strongly support the introduction of jury directions in sexual offence cases.
- We welcome measures that will allow the Scottish Courts to prosecute sexual offences that take place elsewhere in the UK.
- We welcome the introduction of new provisions of sexual harm prevention orders.
- This legislation still leaves children as the only people in Scotland that do not have equal protection from violence in the home and we urge the Scottish Parliament to consider how that can be addressed.

Children 1st, Barnardo's Scotland and NSPCC Scotland work to support children and young people and their families through the provision of a range of abuse and trauma recovery, family support, domestic abuse and community-based services across Scotland. Our respective organisations recognise the damaging impact that domestic abuse has on children and families. The Abusive Behaviour and Sexual Harm (Scotland) Bill, alongside the Scottish Government's Equally Safe Strategy, will drive forward work to address and acknowledge this important issue. We warmly welcome this Bill, but would draw attention to a number of points for members to consider during the course of the debate, specifically relating to children and young people:

### **Section 1 – Aggravation of offence where abuse is of a partner or ex-partner**

We welcome the introduction of an abusive behaviour aggravator as a useful tool to help courts take into account the full range of harmful behaviours that constitute domestic abuse. As the aggravation is not a substantive offence in itself, we are pleased that the Scottish Government has proceeded with its consultation on a coercive control offence. Children and young people are greatly impacted by domestic abuse and we are pleased this is recognised in the Bill, in so far as, the aggravation could apply where the offence is committed against a third party (e.g. partner/ex-partner's child). Children can experience both direct physical abuse by perpetrators of domestic abuse,

and trauma as a result of witnessing domestic abuse at home and it is vital this Bill and any further legislation takes children and young people's rights into account.

As this aggravation, and any subsequent coercive control offence, (if implemented) will be new, we expect it may be likely that more children and young people will be interviewed or asked to be witnesses in court proceedings relating to domestic abuse. The process of giving evidence, either in court or remotely, can be extremely stressful and traumatic for children so it is essential they are not subject to arduous and stressful measures of how they were affected by the abuse taking place in their household. Children must receive better support and protections if they have to interact with the justice process. We highlight the ongoing Evidence and Procedure Review<sup>1</sup> by the Scottish Court Service, which is looking at how Scotland can change to better protect and meet the support needs of child victims and witnesses in criminal trials.

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

We ask members to seek clarification that this Bill and its accompanying guidance will ensure that children and young people under 18 will not be unintentionally criminalised through this legislation, for actions they do not understand. We highlight the Crown Office and Procurator Fiscal Service "Guidance on cases involving Communications sent via Social Media"<sup>2</sup> policy, which outlines that prosecution will only be appropriate in very serious cases 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 also states that those under 18 "may not appreciate the seriousness of their communications and a prosecution is unlikely to be in the public interest other than in the most exceptional circumstances, particularly so where the communication is one re-sent or re-tweeted."

We would also draw to the attention of Members the findings from the HMICS and the Care Inspectorate's Joint Thematic Review of MAPPA, published in November 2015, which states: "There is widespread consensus that posting of self-generated indecent images on social media networks by young people, known as 'sexting', has become a common phenomenon across the country."(p.9)

Consequently, the Joint Review has recommended the following: "Scottish Government in partnership with Responsible Authorities should develop a strategy to address the risks posed to children and young people from 'sexting' in order to build healthy respect and avoid the potential for exploitation and criminalisation. (Recommendation 4; p.10)<sup>3</sup> Our organisations urge the Scottish Government to take this recommendation forward, and in respect of the Bill, provide guidance on the use of this new offence in relation to children and young people.

In addition, we note with interest the debate around Schedule One of the Act (internet platforms and the new offence). We welcome any measure that seeks to make internet and social network platform providers more accountable, in order to protect children and young people online. However, we agree with the Committee's conclusions that more clarity is required about this provision. Similarly, in light of concerns raised about the Scottish Government's limited powers in this regard, we would urge the Scottish Government to raise this issue with the UK Government to consider what more should be done to place greater responsibilities on internet service providers.

<sup>1</sup> <https://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/reports-data/evidence-and-procedure-full-report---publication-version-pdf.pdf?sfvrsn=2>

<sup>2</sup> [http://www.crownoffice.gov.uk/images/Documents/Prosecution\\_Policy\\_Guidance/Book\\_of\\_Regulations/Final%20version%2026%2011%2014.pdf](http://www.crownoffice.gov.uk/images/Documents/Prosecution_Policy_Guidance/Book_of_Regulations/Final%20version%2026%2011%2014.pdf)

<sup>3</sup> HMICS; Care Inspectorate (2015) *Joint Thematic Review of MAPPA in Scotland*, available at: <http://www.hub.careinspectorate.com/media/266828/joint-thematic-review-of-mappa-in-scotland-2015.pdf>

## **Section 6 – Jury directions relating to sexual offences**

We warmly welcome the introduction of jury directions relating to sexual offences. Additionally, we hope that jury directions in sexual offence cases involving child witnesses will inform understanding of the particular vulnerability of children and young people who are victims of sexual abuse and sexual exploitation, and the additional trauma that children can be exposed to as victims and witnesses.

## **Section 7 & 8 – Child sexual offences committed elsewhere in the UK**

We welcome legislation that will allow the Scottish Courts to prosecute sexual offences that take place elsewhere in the UK. These measures will enable prosecution on a single indictment, and will avoid forcing a child to go through the trauma of attending two trials.

## **Chapter 3 – Sexual Harm Prevention Orders**

We hope these will be effective tools in the prevention of child sexual abuse within communities and in public protection. We would strongly suggest that guidance should be developed around the use and application of the Orders so that:

- a) These Orders are used in Scotland to prevent and tackle child sexual exploitation and abuse;
- b) Orders, particularly Sexual Risk Orders, are not used inappropriately in cases where children and young people (under 18s) are perpetrators. We believe that there are other measures that could be put in place through, for example, the Children's Hearing System, which are more suitable for children and young people who present a risk to other children.

## **Equal Protection for Children**

Our organisations are extremely supportive of any measures to protect people from violence and take this opportunity to highlight that one group of vulnerable people – children – are still less protected from violence than everyone else in Scotland.. 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."<sup>4</sup> This makes it clear that all children should be protected from all forms of violence, highlighting the need for Scotland to repeal the justifiable assault defence that currently leaves children with less protection from assault than adults under Scots Law. If it is not possible for this bill to address this issue, we would welcome more information from the Scottish Government on what steps they plan to take going forward.

## **More information**

*Please do not hesitate to contact us should you wish to discuss any of our comments further:*

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<sup>4</sup> <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>