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Margaret Mitchell MSP
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c/o Justice Committee Clerks
Room T2.60
The Scottish Parliament
Edinburgh
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Dear Convener

DOMESTIC ABUSE (SCOTLAND) BILL – THE IMPACT OF DOMESTIC ABUSE ON CHILDREN AND YOUNG PEOPLE

In its call for evidence on the Domestic Abuse (Scotland) Bill the Justice Committee identified the impact of domestic abuse on children as one of its key issues for scrutiny of the Bill.

This joint letter aims to assist the Committee with its scrutiny, by placing the specific provisions in the Bill within the context of the wider work that we are taking forward within the Scottish Government, in dialogue with key stakeholders, to better reflect and improve our response to the experiences of children affected by domestic abuse.

Impact of domestic abuse on children

The Scottish Government is absolutely clear that being in an environment where domestic abuse is taking place is damaging to children. Children can suffer harm by, for example, witnessing or being aware of the abuse or indeed being used as part of the abuse, for example where an abuser threatens to harm a child or encourages a child to take part in the abuse.

Children also suffer from the consequences of abuse, for example where an abuser withholds money from a parent or restricts engagement with friends or relatives, as well as through the impact that the abuse can have on the non-abusing parent or carer's ability to look after the child.

It is also the case that within an abusive environment, children can themselves be direct victims of abuse, including threatening and abusive behaviour and psychological abuse.

Domestic abuse compromises children's rights under the UN Convention on the Rights of the Child (UNCRC). It impacts children of all ages and can have long lasting effects into adulthood. In 2015-16, around 2,500 children were referred to Children's Hearings on the grounds of '*having a close connection with a person who has carried out domestic abuse*', but we know this is an underestimate of the number of children affected by domestic abuse in Scotland each year.

The voices of children and young people themselves, for example through the *Power Up, Power Down* programme, organised by the Children and Young People's Commissioner and Scottish Women's Aid, and the *Voice Against Violence* project, speak eloquently about the negative experience and impact of living within an abusive environment, which some have likened to "*living in a war zone.*"

Equally Safe (2016), Scotland's Strategy for preventing and eradicating violence against women and girls, acknowledges explicitly the need to improve how we reflect and respond to the experiences of children and young people affected by domestic abuse. During the development of the Domestic Abuse (Scotland) Bill we have, therefore, been engaging with organisations representing children and adult victims of abuse, including through the Equally Safe Children and Young People Stakeholder Group, to inform a wider programme of work relevant to this agenda.

Domestic Abuse (Scotland) Bill

The Domestic Abuse (Scotland) Bill currently before Parliament focuses on creating a new offence of domestic abuse between partners and ex-partners. This is consistent with the Scottish Government's long-standing definition of domestic abuse. In addition, the overwhelming majority of responses to our public consultation favoured an offence which reflects the specific dynamics of relationships between partners and ex-partners.

However, the Bill includes provisions which aim to respond to the harm caused to children affected domestic abuse.

A statutory aggravation applies when someone is convicted of the offence, requiring that certain aggravating behaviour is recorded and can be taken into account by the court in sentencing. The aggravating behaviour relevant to the impact on children and young people listed in the Bill covers:

- where behaviour is directed at a child as part of the abuse of a partner or ex-partner;
- where the perpetrator makes use of a child as part of the abuse; or
- where a child "*sees, hears or is present*" during an incident of abuse.

A child is defined in the Bill as anyone under 18 years of age. Evidence from a single source is sufficient to prove that an offence is aggravated.

In the written evidence to the Committee, a number of respondents have questioned the specific wording of the aggravation and whether this should be amended or extended, for example to where a child is "*living in the household*" where the abuse takes place.

In framing the aggravation, our aim has been to reflect circumstances that link directly to the actions of the abuser, which a court could take into account in sentencing. Whilst we are clear that seeing, hearing or being present during a specific incident of abuse are not the only ways in which a child may be harmed by domestic abuse, we are also concerned that an aggravation that is drafted too broadly - i.e. acknowledging that living in any abusive

environment is harmful to children - might undermine the effectiveness of the aggravation as it would be difficult for the court to assess the particular culpability of the perpetrator where an aggravation is not tied to specific actions of the perpetrator. However, we recognise that this is an issue that is likely to be the subject of further debate during the progress of the Bill.

The Bill will make it mandatory, in all cases with a domestic abuse background, for the court to consider imposing a Non-Harassment Order as part of sentencing. We believe that this is an important measure in requiring the court to consider how to better protect partners or ex-partners and, therefore any children living with them, from further abuse. A number of organisations have called for the requirement for courts to consider an NHO to also apply specifically to any children where the aggravation has been proven. Again, we recognise that this is an issue that is likely to be the subject of further dialogue during the progress of the Bill.

Child Protection

One of the most consistent calls from children's and women's stakeholders is that, in addition to the domestic abuse offence between partners and ex-partners, there should be a separate parallel offence of physical and psychological abuse of a child, to reflect that children are victims of abuse in their own right.

Section 12 of the Children and Young Persons (Scotland) Act 1937 already allows prosecutors to bring charges where someone with parental responsibilities for a child, or who has charge or care of a child, ill-treats or neglects, etc. a child aged under 16. Prosecutions can be brought either alongside or separate from prosecutions for domestic abuse of a partner or ex-partner so where a parent is both abusing their partner and a child or children, that can be dealt with in one set of proceedings, using the different offences.

However, we acknowledge and share the concerns raised by children's organisations and others that the current definitions within Section 12 have not kept pace with modern understanding of the neglect and harm experienced by children, including emotional and psychological harm. The Child Protection Improvement Programme report, published in March 2017, examined the current provision in the 1937 Act and concluded that it would benefit from being amended.

As we announced to Parliament on 2 March, we will consult this year on reforms to Section 12, with the aim of seeking consensus on the terms of a new, modernised criminal offence of abuse and neglect of children to be introduced in this parliament. We have committed to working closely with children's organisations and other relevant stakeholders in considering and developing the terms of the proposed modernised offence. This will include specific consideration of the particular circumstances and experiences of children and adult victims within the context of domestic abuse settings.

Child Contact and Civil Law

Another consistent issue raised in the written evidence to the Committee which we have acknowledged, is the need to review the links between the criminal and civil justice system in the context of domestic abuse. Specific concerns have been raised about whether child contact arrangements take sufficient account of the views of children and young people and that they can expose adult victims to further risk of abuse.

A range of work is in progress to try and improve these arrangements, in particular through the Family Law Committee of the Scottish Civil Justice Council. However, we have

acknowledged the need to go further and have committed publicly to undertake a review of the Children (Scotland) Act 1995 with reference to parental responsibilities and rights, child contact and residence, alongside a wider Family Justice Modernisation Strategy. We recognise that these are sensitive and challenging issues. We plan, therefore, to start dialogue with key stakeholders, including organisations representing the interests of children, adult victims of abuse, parents and other family members during 2017, ahead of wider public consultation during 2018.

This work will also look at the protections available to adult victims of abuse and children within civil court settings. We also intend to consider whether any changes are needed to exclusion orders, which can exclude a perpetrator of domestic abuse from the family home.

Other Issues

A range of other work that the Scottish Government is taking forward is relevant to the interests of children affected by domestic abuse.

Where children are victims or witnesses of domestic abuse, a key consideration is to ensure that they are protected from further trauma through the criminal justice process. Where children are cited as witnesses in a criminal case, the Victims and Witnesses (Scotland) Act 2014, provides that they have automatic access to certain special measures when giving evidence, including a supporter, screen or giving evidence via video link. Following from the Scottish Courts and Tribunals Service's *Evidence and Procedure Review* reports (2015 and 2016), we have acknowledged the need to go further in protecting child witnesses from the trauma of attending court. This work is focused on both strengthening the current practical and legislative arrangements for taking pre-recorded evidence from child and other vulnerable witnesses and also exploring how to improve the immediate support available for child victims and witnesses of traumatic crimes.

For a number of years, the Scottish Government has supported the Caledonian System, which is an integrated approach to address men's domestic abuse and to improve the lives of women, children and men. Crucially, in addition to working with male perpetrators of domestic abuse to reduce re-offending, the programme offers integrated services to women and children to seek to reduce the risk of further harm. In November 2016, we announced additional funding to increase the capacity of the Caledonian services in existing locations and also to explore the potential to expand the programme to other geographic locations.

The Equally Safe strategy acknowledges that the most effective way to eradicate domestic abuse and other forms of violence is through prevention. Over recent years, the Scottish Government has expanded significantly funding provided through the Mentors in Violence Prevention programme. The Programme works in schools to equip male and female young people with the skills and knowledge to speak out against rape, dating violence, sexual harassment, bullying and all forms of violent and abusive behaviour, including domestic abuse.

Conclusion

In its Concluding Observations on the UK State Party, including Scotland, published in June 2016, the UN Committee on the Rights of the Child acknowledged the positive actions being taken to tackle domestic abuse, but also identified the need to go further in protecting the interests of children within domestic abuse settings.

The Scottish Government supports strongly the need to do more to reflect the experiences of children and young people affected by domestic abuse. Alongside the specific measures included within the Domestic Abuse (Scotland) Bill, as set out in this letter, we have committed publicly to progress a range of work during the current parliament relevant to this issue. We have also committed to work with children's and women's representative organisations, father's groups and other key stakeholders, as well as listening to the voices of children and young people themselves, in taking this activity forward through a co-ordinated, rights-based approach.

We hope this information is helpful to the Committee in its scrutiny of the Domestic Abuse (Scotland) Bill.

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