

Response to the Justice Committee call for evidence on the Domestic Abuse (Scotland) Bill – May 2017

CEL CIS (Centre for excellence for looked after children in Scotland), based at the University of Strathclyde in Glasgow, is committed to making positive and lasting improvements in the wellbeing of Scotland's children living in and on the edges of care. As of July 2016, there were 15,317 looked after children in Scotland.¹ Based on aggregating the number of children who are looked after at home, on the child protection register, in informal kinship placements, and whose families are receiving voluntary support from social work, CEL CIS estimate that over 10,000 children are living on the edges of care.² This is a group of children which, while varied in their individual characteristics and histories, have all experienced major difficulties in their lives. Domestic abuse can have a significant impact on these children, and is amongst the most common concerns for children placed on the Child Protection Register.³ These children are acutely vulnerable, and failure to respond early, holistically and comprehensively to their needs leads to adverse experience compounding adverse experience, with the impact (personal and societal) felt across the individual's life course.

We welcome the opportunity to submit our views in relation to the Domestic Abuse (Scotland) Bill (the Bill). We fully support the Bill, its creation is a critical step in eradicating coercive and controlling behaviour, and it provides a much-needed mechanism through which psychological and emotional abuse can be prosecuted. Our particular contribution relates to matters that affect vulnerable children in or on the edges of care. Our response is therefore limited to a consideration of question 4. We are aware of the extensive work of colleagues in the children's sector and beyond who will address questions about the Bill more comprehensively in their submissions, and we encourage the Committee to take note of their contributions.

Question 4: 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?

It is essential that the full impact of domestic abuse on children is recognised, that those responsible for abuse are held accountable, and that children's rights are upheld. Article 19 of the [United Nations Convention on the Rights of the Child](#) (UNCRC, 1989), requires States to take all appropriate legislative and administrative measures to protect children from all forms of physical or mental violence, abuse, maltreatment and exploitation. The Bill relates to abusive behaviour directed at a person's partner or ex-partner, rather than abusive behaviour towards a child. Abuse of a child is a criminal offence which can currently be prosecuted under the section 12 offence in the Children and Young Persons

(Scotland) Act 1937. We welcome the recent announcement from the Minister for Childcare and Early Years, that, as part of the Scottish Government's Child Protection Improvement Plan, the terms of the offence at section 12 of the 1937 Act will be reviewed to ensure it accurately reflects a modern understanding of the different ways that abuse and neglect of a child can be committed. This is a necessary undertaking to uphold children's rights, and ensure their wellbeing is safeguarded.

The provision within the Bill of statutory aggravation when a child sees, hears or is present during (or is involved in) a course of abusive behaviour acknowledges that domestic abuse has an impact on children, and ensures that account is taken of this in sentencing. We welcome this acknowledgement. We agree to some extent that the aggravation reflects the harm caused to a child who grows up in an environment where domestic abuse is taking place, however we remain concerned that the full impact of domestic abuse on children is not reflected.

It is not necessary for a child to directly witness domestic abuse for it to have an impact on their wellbeing, less direct exposure to the effects of abuse also have a significant impact.⁴ The aggravation does not reflect this. We note within the [Policy Memorandum^a](#) accompanying the Bill that the Scottish Government acknowledge the impact of domestic abuse on children who grow up in an environment where their parent or carer is being abused, even if they do not directly witness this, but remain concerned that framing the aggravation more widely to take account of this will inhibit its effectiveness and utility. Ultimately, we are in support of the aggravation, and believe it should have the broadest possible scope whilst remaining effective for its intended purpose of taking account of the seriousness of the impact of domestic abuse on children when sentencing perpetrators.

As the aggravation stands, further clarity is needed regarding how a child 'being present' is defined. It is unclear whether this means the child must be present in the same room as the abuse, within sight or earshot, or within the general vicinity. For example, it should also be established whether the aggravation stands when a child is present but asleep, and also whether it stands in cases of abuse of pregnant women. Given that exposure to domestic abuse is associated with negative impact on the physical and neurological development of unborn babies⁵, and on children's wellbeing when they are exposed in the broadest sense, we would again support the broadest possible definition of 'being present', balanced with the effectiveness of the aggravation for its intended purpose.

Thank you for providing us with this opportunity to respond. We hope the feedback is helpful; we would be happy to discuss any aspect in further detail.

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¹ Scottish Government (2017). [Children's Social Work Statistics Scotland 2015/16](#). Edinburgh: Scottish Government.

² CELCIS (2017). Children on the 'Edges of Care': Transforming Pathways, Improving Lives. Glasgow: CELCIS.

^a <http://www.parliament.scot/Domestic%20Abuse%20Scotland%20Bill/SPBill08PMS052017.pdf> (27/04/17)

³ Scottish Government (2017) [Protecting Scotland's Children and Young People: It is Still Everyone's Job](#). Edinburgh: Scottish Government

⁴ Holt, S et al. (2008) The impact of exposure to domestic violence on children and young people: A review of the literature, *Child Abuse & Neglect* 32 pp 797–810.

⁵ Humphreys, C., Houghton, C. & Ellis, J (2008) [Literature Review: Better Outcomes for Children and Young People Experiencing Domestic Abuse – Directions for Good Practice](#), Edinburgh: Scottish Government