

NSPCC Scotland response to The Creation of a Specific Offences of Domestic Abuse – Proposed Associated Reforms to Criminal Procedure

About the NSPCC

The NSPCC believes every childhood is worth fighting for. Over the next five years, our aim is to make five million children safer. We will do this by working towards five goals which we'll continually measure to ensure we're making real progress:

1. Prevent child abuse in families facing adversity
2. Prevent child sexual abuse
3. Help children speak out and adults take action about abuse
4. Help abused children get back on track
5. Make children safe from abuse online

By concentrating all our work on these five goals – goals focused directly on improving the lives of children at risk of abuse and neglect – we want to achieve greater impact and inspire others to join us in our fight for every childhood.

Response to the proposed reforms

NSPCC Scotland supports the proposed associated reforms to criminal procedure that relate to the creation of a specific offence of domestic abuse. We greatly welcome the proposed modernisation of criminal procedures, in order that the creation of a specific offence is accompanied by necessary safeguards to stop the potential further abuse of the complainer through the court process.

However, we are strongly of the view that many children in domestic abuse situations are themselves victims. We would therefore ask that urgent attention is given as to how associated criminal procedure reforms can also work to safeguard children against any further abuse through the court process.



Organisations including NSPCC have previously called for children to be recognised within a new specific offence or domestic abuse, primarily in order that the law reflects children's lived experiences of domestic abuse and does not render them invisible as victims.

Domestic abuse affects a significant number of children referred to NSPCC services in Glasgow. Professionals working in our services are particularly concerned about the impact of domestic abuse on children's attachment relationships with their primary care giver and the extent to which domestic abuse can undermine this protective relationship between mother and child and result in very poor outcomes for children.

Elsewhere, we note the sheer numbers of children affected by domestic abuse in Scotland as well as the significant research literature documenting the potential impact of domestic abuse on children and young people including: children living in an atmosphere of fear, uncertainty and tension that characterises coercive control situations; children being directly subject to coercive controlling behaviour by perpetrators including basic needs being denied; children in domestic abuse situations being at high risk of other forms of abuse; children being actively used by perpetrators in the control and manipulation of their partner and children's relationship with their safe carer being undermined by the perpetrator.

Subsequently, we would call for the Bill team to give very serious consideration as to how the proposed associated reforms to criminal procedure can be used in order to protect children of complainants. This is particularly important in relation to the proposals around the protection of victims prior to and after the trial.

In relation to the proposed new standard condition of bail, NSPCC would urge the Bill team to consider how a standard condition might operate in relation to any children of the complainer. We note that the intention behind the new standard condition is to prevent the accused from using the processes of the justice system to re-victimise the complainer. Given the extent to which children are the victims of domestic abuse, we would strongly urge that consideration be given to creating a mechanism that will prevent the accused from taking evidence directly from children and thus potentially use legal processes to continue to



control and manipulate children and / or manipulate the complainer through children. For example, could the standard condition of bail to prohibit an accused from taking statements from a complainer apply to both the complainer and any children of the complainer?

In relation to non-harassment orders, again, given the extent to which children involved in domestic abuse situations are themselves victims, including at a heightened risk of other forms of abuse, and regardless as to whether the law formally recognises children as victims, NSPCC consider it of fundamental importance that the Bill team considers what mechanisms can be put in place to allow the court to better protect children in domestic abuse cases, upon conviction. For example, in domestic abuse cases involving children, we would strongly support the court being required to always consider whether to impose a criminal non-harassment order relating to children, on conviction.

We understand that, at present, there may be significant barriers to courts imposing non-harassment orders in relation to children involved in domestic abuse cases and/or non-harassment orders being upheld. We would urge the Bill team to give every consideration to how existing barriers to protecting children in domestic abuse cases can be addressed in the current reform process. We understand that this may necessarily require children to be more formally recognised as victims of domestic abuse in law.

We also consider it of fundamental importance that the current process of reform to criminal law and procedure around domestic abuse is accompanied by a robust exploration of how the criminal system will link with the civil system in domestic abuse cases involving children, to ensure consistency in decision making in the best interest of the child.

We hope these comments will be useful.

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