

Justice Committee
Domestic Abuse (Protection) (Scotland) Bill
Evidence of the Children and Young People's Commissioner Scotland.

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

Article 19 of the UNCRC provides children with the right to be protected from all forms of physical or mental violence, injury, abuse, or harm. Our evidence to the Justice Committee on the Domestic Abuse (Scotland) Act 2018 outlines the ways in which domestic abuse harms children. This bill aims to address a gap in protection identified during the passage of that Act, by allowing the police to put in place protective orders on an emergency basis. It also intends to ensure parents and children experiencing domestic abuse are not required to make themselves homeless to escape abuse, which has negative impacts on the realisation of a number of children's rights.

Article 52 of the *Council of Europe Convention on preventing and combating violence against women and domestic violence* ('the Istanbul Convention) requires state parties to ensure authorities can order, in situations of immediate danger, a perpetrator of domestic abuse to leave the residence of a victim or person at significant risk and to prohibit the perpetrator from entering the residence or contacting them.

Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs)

DAPNs provide the police with the power to provide urgent protection to those experiencing domestic abuse, including children and young people. DAPNs must be replaced by a DAPO no later than the first court day after the day the notice is given, and we welcome that the police must take account of the views and representations the views of all parties, including any affected child in line with Article 12 of the UNCRC.

By comparison to DAPNs, the process for application of a DAPO, via the Sheriff Court, includes additional safeguards and orders are able to be put in place for a longer period – up to 2 months, though again they are intended only to provide emergency protection in line with the requirements of the Istanbul Convention.

Interfering with an individual's human rights, for example by issuing a DAPN or DAPO, should only occur in circumstances where it is necessary (in this case for the protection of others), lawful, proportionate and time limited. It is important that parliament consider whether the provisions in the current bill appropriately balance the rights of all individuals involved, including the requirements of Article 19 of the UNCRC and Article 52 of the Istanbul Treaty.

In order to protect those experiencing domestic abuse, a DAPN or DAPO necessarily interferes with children's other rights, including the right to have both parents involved in their

lives (Article 9 UNCRC) and the right to respect for their private life (Article 16 UNCRC and Article 8 ECHR). Where a DAPN or DAPO interferes with children's right to maintain personal relations and direct contact with a parent, this should be taken into consideration when assessing sufficiency of evidence, proportionality, and the necessity of issuing the DAPN or making the DAPO.

We feel that compatibility with the UNCRC would be enhanced if references to the welfare of the child in s4(3)(c) and s8(6)(c) were replaced with best interests of the child. Consideration of best interests would increase the likelihood of a DAPN or DAPO being a proportionate interference with human rights.

We are pleased to see, in s8(6)(d), that the views of the child should be considered by any Sheriff consideration an application for a DAPO. We feel that compatibility with the UNCRC would be further enhanced by requiring the police to take into account the view of any relevant child, in accordance with Article 12 of the UNCRC, when issuing a DAPN if reasonably practicable. Whilst it might not always be possible, in an emergency, to seek the views of the child and take them into account, this should always be done before any Court hearing. The wording of s8(6)(d), relating to the participation of children in decision making, should be amended to bring it into line with section 1 of the Children (Scotland) Act 2020.

Definitions

The definition of domestic abuse in the Domestic Abuse (Scotland) Act 2018 was discussed at length during its consideration by the Parliament. We believe that the definitions in the current bill at section 1 ("Persons to whom domestic abuse protection notices and orders may relate") and sections 2 and 3 ("Meaning of abusive behaviour" and "What constitutes abusive behaviour") must be consistent with the 2018 Act.

Age of Persons to whom domestic abuse protection notice and orders may relate.

Where either the person who is the subject of an order (Person A) or for whom it is intended to protect (Person B) is under the age of 18, it is important to recognise the additional protections all children under 18 are entitled to under the UNCRC. We therefore believe it is proportionate that Person A must be at least 18 years of age. However, we would stress that this should not mean no action is taken to protect the rights of both child perpetrators and child victims of domestic abuse. In situations where an order would otherwise be considered, were Person A not under 18, alternative interventions should be undertaken both to protect Person B and to address the behaviour of Person B (for example referral to a Children's Hearing, once the proposed increase in referral age is in force).

December 2020

For further information, please contact Megan Farr, Policy Officer at megan.farr@cypcs.org.uk or 07803 874 774