

Response to Scottish Government consultation: Protective orders for people at risk of domestic abuse

Children's right to respect for private and family life is enshrined in Article 8 of the European Convention on Human Rights (ECHR) and Article 9 of the UN Convention on the Rights of the Child (UNCRC). This includes the right not to be separated from either parent against their will except where separation is in their best interests, as determined by a competent authority. However, as our office established in our evidence to the Scottish Parliament during the passage of the Domestic Abuse (Scotland) Act 2018, Article 19 of the UNCRC also places an obligation on States to *"take all appropriate legislative, administrative ... measures to protect the child from all forms of physical or mental violence, injury or abuse..."*.

In addition, as outlined in the Scottish Government's consultation paper, Article 52 of the Council of Europe Convention on Action Against Violence Against Women and Domestic Abuse (the Istanbul Convention) requires the State party to the convention to have in place: *"...measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk."*

During the passage of the Domestic Abuse (Scotland) Act 2018, our office highlighted the impact domestic abuse has on children. This submission built on research by Dr Kirsteen Mackay, commissioned by this office in 2013, and the Power Up Power Down project, jointly undertaken with Scottish Women's Aid. Both explored children and young people's experiences of domestic abuse and highlighted the importance of ensuring they are protected, and their rights realised, when they lived in a family where domestic abuse occurred.

In written and oral evidence to the Parliament's Justice Committee we argued therefore for the inclusion of children in Non-Harassment Orders. We were pleased that the legislation was amended to ensure that there is a presumption that a Non-Harassment Order be made and that, where a child is impacted by the abuse, a presumption that that child is included in the order.

As Scottish Women's Aid outline in their response to this consultation, the proposed protective orders will provide temporary, short term protection for victims of domestic abuse. It is essential that children are given equal protection by these orders, to reflect children's experience of domestic abuse.

We therefore support the use of temporary, short term protective orders as an appropriate and proportionate way of ensuring children are protected from the impact of domestic abuse. These orders will also serve to reduce the necessity for victims of domestic abuse and their children to flee the family home to ensure their safety, which in itself results in a disruption to children's right to a private and family life, as well as impacting on a range of their other rights, in particular their education (Articles 28 and 29), an adequate standard of living (Article 27), and health (Article 24).

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