Ahead of the Committee’s Stage 1 report on the Domestic Abuse (Scotland) Bill, I write to reiterate Scottish Women’s Aid’s (SWA) key concern about a gap in the Bill in relation to protecting children.

As SWA set out in our written and oral evidence for the Bill, we very much welcome this Bill and we applaud the vision of the Scottish Government in bringing this forward. It represents a positive move towards evidencing Scotland’s compliance with our domestic and international obligations in advancing women, children and young people’s human rights and putting in place protections and instruments to end domestic abuse and violence against women more generally.

However, we also expressed concerns about how the new law will protect children. We feel strongly, along with our colleagues in the children’s sector who we understand have also written separately to you to express their concerns, that to adequately take into account the persistent, ongoing nature of the impact of domestic abuse on a child, there needs to be more explicit reference to children as victims in their own right on the face of the Bill. Women’s and children’s experiences are inextricably linked in the context of domestic abuse. If a woman is harmed by a perpetrator, where there is a child involved, that child will inevitably be harmed too, whether ‘directly’ through having abuse targeted at them, or ‘indirectly’, for instance having no access to support networks due to restrictions on a mother’s movements outside the family home. This interwoven and inseparable relationship between women’s and children’s experiences of domestic abuse must be reflected in the offence within the Domestic Abuse Bill.

In this regard, we are concerned that introducing a parallel offence against children elsewhere (for instance, through section 12 of the Children and Young Person’s (Scotland) Act 1937) would make it more difficult to deal with the abuse perpetrated by a person without parental rights and responsibilities (eg; a new partner or stepfather). This approach would also inappropriately separate children’s and women’s lived experiences in ways that have harmful consequences; for instance women being convicted for ‘failing to protect’ their child from domestic abuse.

There is also still great risk within the current version of the Bill for child contact arrangements to enable the perpetrator to continue abuse of the mother and child, for instance where a mother with a non-harassment order against a perpetrator is still expected to facilitate contact arrangements, which we know currently happens. The gap between the civil and criminal justice spheres needs to be brought into greater alignment through the Bill; a parallel offence against children would work towards bridging this gap.

1 http://www.parliament.scot/S5_JusticeCommittee/Inquiries/DA-Scottish_Womens_Aid.pdf
Therefore for the purposes of the proposed offence, we believe that there absolutely must be a specific offence recognising domestic abuse occurring within the household and perpetrated by A against B; but, along with our colleagues in the children’s sector, what we also firmly believe must be recognised in a separate, but parallel offence, is the impact on a child of the abuse by A of B (which could include both abuse being ‘directed’ at a child as well as a child being impacted by abuse ‘directed’ at a parent or carer).

This parallel offence protecting children is separate from the aggravator already in the Bill, as that provision aggravates the offence perpetrated against the adult where a child “sees, hears or is present” during the abuse, as opposed to considering the impact of the abuse on the child.

We believe that increasing the recognition of children as victims in their own right within the Bill will help achieve its ambition and the realisation of children’s and women’s rights. We hope that you will find this of use, and would be delighted to discuss this further with you if that would be helpful.

Marsha Scott
CEO, Scottish Women’s Aid
5 September 2017