

Draft National Guidance: Under-Age Sexual Activity - Meeting the Needs of Children and Young People and Identifying Child Protection Concerns: Consultation

Children in Scotland appreciates this opportunity to respond to the Scottish Government's draft guidance on underage sexual activity developed to help explain how to properly put the relevant provisions of the Sexual Offences (Scotland) Act into practice. In general, we think this is an accurate and informative set of guidelines. Specifically, we welcome the Scottish Government's decision to place this guidance in the context of child protection, as well as its emphasis on child well-being and children's rights.

At the same time, there are a few issues that merit further consideration by the Scottish Government before the final guidance is issued:

First, while we strongly support 'Getting it right for every child' and look forward to its full implementation throughout Scotland, we are also aware that (according to the Scottish Government's own estimates) this will not occur for quite a few more years. Accordingly, does it make sense to have the official guidance on dealing with underage sexual activity place a heavy reliance on employing the 'Girfec' tools and processes -- when so many relevant practitioners are neither properly trained nor experienced in their use? This guidance may be a welcome impetus for more people to become competent in making best use of all the 'Getting it right for every child' initiative has to offer, but it remains an open question as to what could, should and will happen in the interim. There is also a question about how this Act and this guidance will be reflected within the Children's Hearings (Scotland) Bill under current consideration by the Scottish Parliament.

Second, we are concerned about the near exclusive emphasis on child protection, as it could lead to an underestimation of the importance of two other crucial matters of child well-being. One is the issue of criminalising children and young people -- and the long-term negative implications that has for their identities and future prospects. For instance, sexual activity occurring in the context of a non-coercive, non-exploitative relationship between a 15-year-old and a 16-year-old that results in criminal charges will not be seen by these young people as 'protection', but rather as unreasonable punishment for behaviour they do not view as 'criminal'. The other is the issue of young people seeking and receiving appropriate sexual health information, education, treatment and other related services that will help them not only stay healthy (and not get pregnant), but also to understand and respond well to the social/emotional side of sexual relationships. Even if completely unintentional,

should this guidance and the behaviour of adults following it serve to discourage young people from seeking or receiving sexual health services, then it may not be fully 'protecting' them.

Third, during the development of this Act within the Scottish Parliament, MSPs rightly discussed and debated the 'messages' that this law would send to children and young people. The attached written testimony from Children in Scotland to the Justice Committee (October 2008) -- echoed by similar concerns raised by Scotland's Commissioner for Children and Young People, other children's sector and health groups and some MSPs -- explains this point in greater detail. At the time, it was said that this concern could not be addressed in primary legislation, but would be handled through the subsequent official guidance. However, the draft guidance is all but silent on the crucial matter of how the 'messages' about underage sexual activity will be conveyed to, and received by, children and young people themselves. This, in turn, underscores the fact that despite widespread agreement (within the Parliament, the Scottish Government, SCCYP and other interested non-governmental parties) about the value of directly consulting in a meaningful way with a cross-section of young people across Scotland on underage sexual activity and the messages concerning it, such consultations have still not been carried out over the past two years. The Scottish Government could and should conduct or commission such a robust consultation to deepen understanding and to help ensure that increasingly scarce resources are not wasted on the development and dissemination of messages to young people that are misguided, ineffective or counterproductive.

Children in Scotland remains willing and able to assist the Scottish Government to make the final guidance on underage sexual activity, and implementation of this part of the Act, as good and helpful as possible to all concerned.

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Children in Scotland is Scotland's national agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies and services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society. Children in Scotland represents more than 400 members, including 90% of Scottish Local Authorities, all major voluntary, statutory and private children's agencies, professional organisations, as well as many other smaller community groups and children's services. It is linked with similar agencies in other parts of the UK and Europe.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Government, local authorities and practitioners. It also services groups such as the Cross Party Parliamentary Group on Children and Young People (with YouthLink Scotland). In addition, Children in Scotland hosts Enquire - the national advice service for additional support for learning, and Resolve: ASL, Scotland's largest independent education mediation service.