

# Policy Briefing and Feedback Form

## Protecting Children from Sexual Harm Consultation and Draft Bill Consultation ends 24 September 2004

### Introduction

This briefing outlines the key proposals contained in the Scottish Executive consultation document, *Protecting Children from Sexual Harm* and draft bill, *Protection of Children and Prevention of Sexual Offences (Scotland) Bill*. Children in Scotland would also like to draw attention to a number of key issues to be considered in response to the proposals. At the end of this briefing is a feedback form for you to tell us what you think about the proposed measures. Please return this form by **Friday 3 September 2004**.

### Context

The protection of children is one of the Scottish Executive's key priorities. At present the Executive is taking steps to improve the protection of children through a three year reform programme. The reform programme follows the findings of the Executive's Child Protection Audit and Review and a number of inquiries into child deaths.<sup>1</sup> This consultation and draft Bill aims to further protect children in one specific area, that is protection from sexual harm.

The proposed legislation would further align Scots law with equivalent legislation that applies to the rest of the UK under the Sexual Offences Act 2003.

### Issues to be considered

The Executive has invited comments on the proposals and have asked eight specific consultation questions (see page 11 of the consultation document). Children in Scotland would like to highlight the following issues:

1. Do the proposals fully address the need to protect children and young people from sexual harm?
2. Are the proposals for strengthening the law in relation to sexual harm consistently child centred?
3. The consultation document defines the age of an adult as over 18 and the age of a child as under 16. Do you agree with these age limits?
4. The proposed new offence of "grooming" can be prosecuted before any actual physical contact or other offence takes place. Do you agree an adult *intending* to commit a sexual offence against a child should be prosecuted?
5. A person does not need to be convicted of an offence to be placed on a proposed Risk of Sexual Harm Order. Do you agree that Risk of Sexual Harm Orders are necessary to protect children and what consideration should be given to the alleged offender who will be 'criminalised' without a trial?

<sup>1</sup> *It's everyone's job to make sure I'm okay*, Scottish Executive 2002.

## OUTLINE OF MAIN PROPOSALS

The consultation document (and draft Bill) proposes three measures to strengthen the law in protecting children from sexual harm:

### **1. To make it an offence to meet or travel to meet children for purposes of committing a sexual offence, following *grooming* behaviour (s.1 of draft bill)**

*“Grooming” is defined as contact with a child to facilitate the commission of a sexual offence against a child.*

Modern forms of communication eg. the internet and mobile phones, have extended the ways in which children can communicate. However it is recognised that sex offenders exploit these means of communication to take advantage of children.

The proposed offence will criminalise adults (hereafter referring to those persons over 18) who undertake a course of conduct with a child (hereafter referring to those persons under 16) leading to a meeting where the adult intends to sexually abuse that child either at that meeting or on a subsequent occasion.

All of the following elements have to be present to commit the new offence:

- An adult travels to meet, or actually meets, with a child
- The adult intends to commit a sexual offence against the child
- The adult has communicated with the child on at least two previous occasions
- The adult does not reasonably believe that the child is 16 or older

Grooming can already be prosecuted under existing Scots law (see page 6 of the consultation document). This proposal would make sexual grooming a specific offence.

This specific offence already exists in the rest of the UK, under the Sexual Offences Act 2003, s.15.

### **2. Risk of Sexual Harm Orders (RSHOs) (s. 2)**

An RSHO will be imposed on individuals who have *not been convicted of an offence*, due to lack of proof or corroboration, if a Chief Constable considers that this is necessary to protect children. The RSHO will apply for a minimum of two years and will set out specific activities that the person in question must not do eg. contacting a particular child.

The bill defines the acts (s.2 (3)) that would constitute such behaviour as:

- Engaging in sexual activity involving, or in the presence of, a child
- Causing a child to watch a person engaging in sexual activity
- Giving a child anything that relates to a sexual activity
- Communicating with a child where any part of the communication is sexual

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Examples of this would include an adult sending a child indecent text messages or explicit communication with a child via email, instant messenger or in chatrooms.

Breach of a RSHO, similar to Sexual Offence Prevention Orders, will be a criminal offence.

RSHOs are already operational in the rest of the UK, see Sexual Offences Act 2003 s.123 - 129.

### **3. Sexual Offences Prevention Orders (SOPOs) (Sexual Offences Act 2003 Part 2, s.103 - 109)**

A SOPO is an order placed on a person who has been convicted of a sexual offence against an adult or a child. The orders apply for a minimum of five years and, like RSHOs, specify activities that the person concerned must not do. For example an offender could be prohibited from visiting public swimming pools. They were introduced UK wide under the Sexual Offences Act 2003.

At present, SOPOs can only be made by the courts, at the request of a Chief Constable if the offenders behaviour after conviction continues to present public risk. It is proposed that sentencing judges should be able to impose these orders when sentencing an offender. Offenders include persons convicted of violent offences who present a sexual risk, as well as those convicted of sexual offences.

### **Further Discussion of Issues**

**1. Do the proposals fully address the need to protect children and young people from sexual harm?** The document recognises the need to put further safeguards in place to protect children from sexual harm. However not all children and young people are covered by the new legislation. In relation to the new offence of grooming it is unclear what would happen if say a 17 year old communicated in a sexual way with a 15 year old or another 17 year old. Clarification is required on these points. Absent from the proposals is any mention of protecting child victims from other children and young people who may cause them sexual harm.

**2. Are the proposals for strengthening the law in relation to sexual harm consistently child centred?** The overall aim of introducing this new legislation is the protection of children from sexual harm. The proposals suggest a number of ways in which this can be achieved. Do you agree that the proposed legislation is sufficiently comprehensive to protect children from sexual harm or are there areas where the proposals could be strengthened? For example a situation could arise whereby a 16 or 17 year old has been grooming a child under 16 yet the child would be not be protected under the current proposals.

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**3. The consultation document defines the age of an adult as over 18 and the age of a child as under 16. Do you agree with these age limits?** The United Nations Convention on the Rights of the Child (UNCRC) defines a child as anyone under the age of 18. The age of sexual consent in Scotland is 16. The consultation document defines an adult as a person over 18 and a child as under 16. What are the implications for 16 and 17 year olds. A situation could arise where grooming has occurred over a long period of time but an offender is only arrested after the child turns 16. It is unclear what would happen in this situation and may be a loophole for an offender to exploit.

**4. The proposed new offence of “grooming” can be prosecuted before any actual physical contact or other offence takes place. Do you agree an adult *intending to commit a sexual offence against a child should be prosecuted?*** The new offence provides a significant additional mechanism to act against those seeking to exploit children. It would afford a much needed degree of protection for the increasing numbers of children and young people online. A situation could arise where a child has told their parents about a suspicious person contacting them online, the parents can then alert the police who could continue to communicate with the suspect to the point where they arrange a meeting. At this stage the police could then arrest the suspect.

**5. A person does not need to be convicted of an offence to be placed on a proposed Risk of Sexual Harm Order (RSHO). Do you agree that RSHOs are necessary to protect children and what consideration should be given to the alleged offender who will be ‘criminalised’ without a trial?** The UNCRC states that a child has a right to protection from sexual exploitation and abuse and that the government must put in place necessary safeguards. RSHOs are intended to protect children at an early stage ie. *before* actual harm is caused by adults behaving in an inappropriate way. Children should have an automatic right to be protected, this should be at as early a stage as possible. Concern has been raised by some Human Rights organisations that placing someone on an RSHO without convicting them of a crime would violate their human rights. Breach of a RSHO will be a criminal offence.

Copies of the consultation document and draft bill, issued by the Justice Department, Scottish Executive are available from The Stationery Office Bookshop, Edinburgh, 0870 606 55 66 or on the Scottish Executive website at:  
<http://www.scotland.gov.uk/consultations/justice/pcshc-00.asp>

The Sexual Offences Act 2003 is available on the Stationery Office website:  
[www.hms.o.gov.uk](http://www.hms.o.gov.uk)

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## FEEDBACK FORM – PROTECTING CHILDREN FROM SEXUAL HARM

Children in Scotland want to know what you think about the proposals. Please fill in this sheet and return to Children in Scotland (details below) by Friday 3 September 2004. Your comments will assist in informing our response.

Name:

Organisation:

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6. Any other comments?

Please continue overleaf if required.

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