

Written Evidence from Children in Scotland to the Scottish Parliament Justice 1 Committee on the General Principles of the Protection of Children and Prevention of Sexual Offences (Scotland) Bill

Children in Scotland

Children in Scotland is the united voice of over 350 voluntary, statutory and professional organisations and individuals working with children, young people and their families throughout Scotland. It exists to identify and promote the interests of children, young people and families and to ensure that relevant policies, services and other provisions are the highest possible quality and able to meet the needs of a diverse society. Children in Scotland believes that: all children are of equal worth, whatever their ability, colour, ethnicity, gender, health, religion, sexual orientation or social class; Children have the right to protection, provisions and participation in decisions affecting them, as outlined in the UN Convention on the Rights of the Child; Families are entitled to support and assistance to fulfil their responsibilities towards their children; and Children should be seen as the responsibility of society as a whole, as well as of their families.

Key Points

Children in Scotland welcomes the Bill in its intention to further protect children from sexual harm and abuse

Two key issues, identified by Children in Scotland members that need to be addressed during scrutiny of the Bill and these are:

- 1) The definition of age limits, in relation to the new offence of meeting a child following preliminary contact or 'grooming' and Risk of Sexual Harm Orders (RSHOs):**
 - **Children in Scotland believes that 16 and 17 year olds, and vulnerable young people up to the age of 18, need to be protected from sexual harm.**
 - **Clarity is required on the whether or not 16 and 17 year olds can be prosecuted in relation to the new offence or subject to a RSHO. This must be made explicit.**
- 2) Legislation alone cannot protect children and young people from sexual harm. Continued public awareness and education of adults and children and young is required.**

Introduction

- 1.1 Children in Scotland welcomes the opportunity to submit evidence to the Justice 1 Committee in relation to the Protection of Children and Prevention of Sexual Offences (Scotland) Bill. This evidence is informed by the views of Children in Scotland's member organisations, discussion with other professionals from the voluntary and statutory sector and previous work undertaken by Children in Scotland in relation to child protection.
- 1.2 The Bill is broadly welcomed as strengthening the measures available to protect children and young people from sexual harm and abuse. It sends a clear message that society and government find inappropriate sexual behaviour towards children and young people unacceptable. Children in Scotland particularly welcomes the proposals in their efforts to further protect children and young people at an early stage i.e. before actual harm occurs. It is also important that legislation and policy reflects the needs for protecting children in today's society and therefore the fact that modern forms of communication are acknowledged in the Bill is encouraging.

2. The definition of age limits in relation to the new offence (s.1) and RSHOs

- 2.1 An overriding concern amongst Children in Scotland members was the definition of age limits set out in the Bill. The Bill defines an adult as a person aged 18 or over and a child as a person under the age of 16, in relation to the new offence of meeting a child following preliminary contact set out in section 1 of the Bill and in relation to Risk of Sexual Harm Orders (RSHOs) (s.(2) & (3)). It is unclear what the implications are for 16 and 17 year olds. Children in Scotland believes that 16 and 17 year olds, and vulnerable young people up to the age of 18, need to be protected from sexual harm. In its current form the Bill does not do this. Children in Scotland recognises that this is a complex issue that raises a number of questions in relation to the age, maturity and vulnerability of a child under Scots law. The Explanatory Notes nor the Policy Memorandum that accompanied the publication of the Bill provided an explanation of why the Scottish Executive set the current age limits.
- 2.2 Children in Scotland acknowledges that it would be difficult to make it illegal for an adult to groom a 16 or 17 year old without changing the age limits in other legislation but believes that measures must be put in place to protect these young people. It is assumed that the age of a child has been defined in the Bill in relation to the age of sexual consent. The age of sexual consent for females in Scotland is 16¹. There is no age of sexual consent for males. Therefore it could be argued that young women are afforded more protection than young men under Scots law and in relation to the new offence set out in section 1 of the Bill. (The age of sexual consent to any form of sexual activity is 16 for both men and women in England and Wales.)
- 2.3 It is also true that the Bill does not take account of age limits defined in other sexual offence legislation that recognise the differing levels of sexual maturity and vulnerability of children as they get older. The Bill must be as consistent as possible with other Scottish legislation. It is an absolute offence for a man (over the age of 8 - the age of criminal responsibility in Scotland) to have unlawful sexual intercourse with a girl under 13 (whether or not it is consensual) under section 3 of the Sexual Offences (Scotland) Act 1976. Unlawful intercourse with a girl aged 13-16 is also an offence. A girl or woman could be charged with indecent assault if she had sexual intercourse with a boy under 14. This is because Scots common law regards anyone under the age of puberty (legally defined as 12 for a girl and 14 for a boy) as unable to give consent. In addition, it is a statutory offence for anyone to behave in a lewd, indecent and libidinous manner towards girls under 16 regardless of consent. It is recognised that the Scottish Law Commission is currently reviewing the law in this area and that this may have implications in relation to age limits and sexual offences.
- 2.4 In relation to a child or young person's maturity and vulnerability in terms of 'grooming' it is important to establish and take into account the young person's perception of any communication or relationship e.g. a 15 year old girl may be having a 'consensual' (in her eyes') relationship with an 18 year old male. It is commonly acknowledged that at this age i.e. late teens young people in relationships often have the same level of maturity. Whilst this could be an exploitative relationship, it may not be. It is therefore important to draw a distinction between what are legitimate boyfriend/ girlfriend meetings and what could be criminalised.
- 2.5 It is also true that young people aged 16 and 17, and vulnerable young people up to the age of 18, can still be vulnerable to abuse from older adults and therefore open to exploitation. A number of factors may affect this such as maturity, family pressures, level of understanding of behaviours, cultural issues, learning disabilities, disability in general or emotional and behavioural difficulties. Recent research by the Joseph Rowntree Foundation has called for greater recognition and more attention in policy to the fact that disabled and other vulnerable children are more likely to be abused than others².
- 2.6 The law in Scotland generally defines a child as a person under the age of 16³ however the Children (Scotland) Act 1995 defines a looked after child as a person under the age of 18

(s. (93)). The United Nations Convention on the Rights of the Child (UNCRC) defines a child as any person under the age of 18. The recently published *Children's Charter* states that children have a right to be protected and be safe from harm and refers to the UNCRC. It is also true that someone in a position of trust towards a person aged between 16 and 18, for instance a teacher, is not allowed to have a sexual relationship with the younger party. During oral evidence to the Committee the Bill team stated that past experience has shown that most grooming by adults is done by those much older than 18.⁴ One such study states that 86% of sexual offenders are 26 or over with 41% 40 or over⁵. For these reason Children in Scotland believes that vulnerable young people up to age 18 should be given added protection against older adults. Children in Scotland strongly believes that all children and young people have an automatic right to be protected. Therefore measures must be put in place to protect these young people from predatory adults.

- 2.7 It is commonly accepted that grooming happens over a long period of time. The very nature of the behaviour suggests manipulation and building up of a relationship over time. It is therefore possible that an adult could have communicated with the child over a long period time but only travels to meet or meets the child with the intent of sexually abusing that child after his or her 16th birthday. It is unclear from section 1 of the Bill whether or not an adult could be prosecuted for the example given. This is a potential loophole that an offender could exploit.
- 2.8 The analysis of responses to the initial consultation on the proposals stated that 69% of respondents thought that the age of an adult should be redefined as 16⁶. The most common argument for this was that it would be consistent with the age of consent, which as has been pointed out only applies to females. It was also pointed out that at age 16 people could be babysitting therefore targeting friends or younger siblings. Children younger than 16 could also be left in charge of other children and therefore a potential risk to them. Children in Scotland is very wary of any measure that could lead to the criminalisation of young adolescents. It is essential that clarity is provided on whether a 16 or 17 year old could be prosecuted for the new offence set out in section one or whether they could be placed on a RSHO. Children in Scotland strongly believes that the age of an adult should not be lowered below 18. A 16 year old boy could be having a consensual relationship with a 15 year old girl and this should not be criminalised. If it is Children in Scotland agrees with Barnardo's Scotland that there must be additional conditions attached for 16 and 17 year olds and vulnerable adults up to the age of 18 ie. treatment programmes for young offenders.
- 2.9 Around the world 'grooming' is a relatively new offence. The United States and Canada have robust laws in place specifically to deal with the issue of online 'grooming'. It would appear that laws that do exist in this area set the age of the child in line with the age of sexual consent. For example the Maine Criminal Code criminalises anyone 16 years or over if found guilty of 'soliciting a child by a computer to commit a prohibited act if the person is 16 years of age or older.'⁷ The age of sexual consent in Maine is 16. The Australian Government introduced a Bill in August 2004 that intends to outlaw use of the Internet to "groom" or procure children with the intent of engaging in sexual activity with them⁸. The Bill proposes to define the age of a child and adult in the same way that the Protection of Children and Prevention of Sexual Offences (Scotland) Bill does. The age of sexual consent differs between states but is generally 16 or 17. It will be interesting to follow the progress of this Bill and any changes to the definition of age as the Bill progresses through Parliament.
- 2.10 The arguments outlined above in relation to age are relevant to the new offence set out in section 1 of the Bill and the civil orders set out in sections 2 and 3.

4. Public Awareness and Education

- 4.1 Another issue that Children in Scotland members consistently raised during the consultation on the draft Bill was that legislation alone cannot effectively address the problem of the sexual abuse of children. The Bill must be accompanied by continued public awareness and education informing people of the relevant issues and threats to children. Respondents to the consultation on the draft Bill also overwhelmingly called for this.⁹ As the Child Protection Audit and Review suggested it is everyone's job to protect children and young people. A joint effort from everyone, professionals, school's, social work department's, industry, the voluntary sector, parents and communities is required.
- 3.1 Along with any new measures introduced it is essential that work is undertaken with children and young people to raise awareness of what is appropriate or inappropriate behaviour towards them by adults and their peers. It is hoped that the Scottish Executive will publicise any new offence that is introduced so that adults and children alike know what behaviours are unacceptable. Children and young people must be taught to protect themselves from people they know as well as strangers. This education should be part of a wider child protection and sexual health awareness raising agenda. Adults and children and young people must know what the signs of sexual harm are, where to go for help and what will happen if risk or harm is discovered. Adults, particularly professionals working with children and young people, must be made aware of inappropriate behaviours so that they can further educate children and young people. This education could be done in schools through personal education or through developing systems and networks where children can talk about any concerns they have regarding such issues. The Executive must work with relevant agencies such as education, health and social work to ensure that this happens. This is imperative if society is serious about protecting all children and young people.
- 3.2 It is also important to educate adults and children and young people about the dangers of modern forms of communication, particularly the internet in terms of 'grooming'. While it is important to note that there are many more commonly used forms of communication that perpetrators use to groom children and it should be noted that new technology does make children and young people far more accessible to those wishing to abuse them. It is a more anonymous method of contact but the process is no different from other forms of grooming. One study has estimated that 20% of sex crimes against children are internet initiated¹⁰. The arrival of the internet has added to the difficulty in detecting and preventing sexual abuse against children and young people. The internet has opened up new means of distributing inappropriate images and chat rooms to children and young people and adults alike¹¹. Sex offenders exploit these means of communication to take advantage of children.
- 3.3 The education of parents and children and young people on the safe use of the internet becomes particularly important when considering that 75 per cent of all 5-16 year olds use the internet. A recent UK survey found that 42% of 5-7 year olds, 84% of 7-11 year olds, 94% of 11-14 year olds and 97% of 14-16 year olds were using the internet. While, 68% of 5-18 year olds have access to the internet at home. An NCH Report published this year also highlighted the dangers of the internet in facilitating a major increase in children and young people being exposed to age-inappropriate, illegal sexual and other kinds of material.¹²
- 4.2 In this context it is essential that children and young people, along with parents and teachers, other professionals and society as a whole are educated on the dangers the internet poses to children and young people. Parents, teachers and others with responsibility for children must educate their children about the internet and how to avoid or deal with problems they may encounter. Parents and teachers must be expected to take steps to supervise and protect their children. They should be aware of their role in controlling young people's internet access. Children in Scotland welcomes the Executive's

guidance, *Click Thinking*, and the work it does to support child protection online with campaigns such as Think U Know and Keeping Your Child Safe on the Internet. Further initiatives and education materials to educate parents and children could be produced to warn of the dangers and risks of sexual harm via the internet. A Barnardo's report, *Just One Click*, has recommended a comprehensive review of all resources used to raise awareness of the dangers of new technology.

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¹ Sexual Offences (Scotland) Act 1976

² *Progress on safeguards for children living away from home: A review of action since the People Like Us report and Safeguards for vulnerable children: Three studies on abusers, disabled children and children in prison* by Marian Stuart and Catherine Baines, Joseph Rowntree Foundation 2004.

³ Children (Scotland) Act 1995

⁴ Official Report Scottish Parliament Justice 1 Committee /12/04

⁵ *Internet sex crimes against minors: the response of law enforcement* (Crimes against Children Research Centre, University of New Hampshire) 2003

⁶ *Protecting Children from Sexual Harm: Analysis of Consultation Response* (Scottish Executive 2004)

⁷ *Protection of Children and Prevention of Sexual Offences (Scotland) Bill* (Spice Briefing 2 December 2004)

⁸ http://www.ag.gov.au/agd/www/Justiceministerhome.nsf/Page/Media_Releases_2004_3rd_Quarter_31_August_2004_-_Tough_new_laws_on_net_porn

⁹ *Protecting Children from Sexual Harm: Analysis of Consultation Response* (Scottish Executive 2004)

¹⁰ *Internet sex crimes against minors: the response of law enforcement* (Crimes against Children Research Centre, University of New Hampshire) 2003

¹¹ *Just One Click* (Barnardo's 2004)

¹² 2002 BECTa survey cited in *UK children go online – Listening to Young people's experiences* <http://www.lse.ac.uk/collections/pressAndInformationOffice/PDF/UK%20Children%20go%20online.pdf> and *Child abuse, child pornography and the internet*, NCH 2004