

# Written Evidence

## Protection of Vulnerable Groups Bill

### Section 3 – Information Sharing



#### Introduction

Children in Scotland welcomes the Scottish Executive's focus on better information sharing for the protection of children and young people. However, **we are so concerned about the specific proposals about information sharing contained in the Protection of Vulnerable Groups Bill that we recommend the removal of Section 3 in its entirety from this Bill.**

This is not a recommendation that Children in Scotland makes lightly. We certainly do not oppose information sharing for child protection purposes. On the contrary, we know that getting information sharing right is profoundly important to the safety and well-being of children and young people – so important that it merits far more careful consideration, detailed analysis and widespread consultation (including with children and young people) than it has received thus far.

Children have a right to be safe. Children have the right to be protected from significant preventable harm by the government. Children have a right to privacy and to confidentiality in their communications with the adults holding positions of responsibility or authority in relation to children. And, children have the right to be heard and heeded in matters affecting their lives and well-being.

Accordingly, a children's rights perspective informs Children in Scotland's assessment of, and recommendation about, Section 3 of this Bill. By contrast, it should be noted that children's rights were not explicitly referenced in Section 3 of this Bill.

Originally, these information sharing provisions were not part of this Bill. Whilst there was consultation about the vetting and barring provisions (Sections 1 and 2 of this Bill), there was no systematic, meaningful consultation process around information sharing (Section 3). The provisions were belatedly added to this Bill. This has limited the ability of the Scottish Executive to pursue its usual consultation practices and constrained its opportunity to fully investigate these complex issues. The Executive has done its best in these circumstances, but we think that the result is not what's best for children.

Children in Scotland's view is that the information sharing provisions should be removed from this Bill and – after a proper consultation process – be reinstated within its original

home (the Getting It Right for Every Child documents). It then could be considered by the next Scottish Parliament as a part of the anticipated GIRFEC Bill.

### **Specific Concerns**

Children in Scotland has a number of concerns about the information sharing provisions within this Bill, including:

- ⇒ **The lack of emphasis on information use, following information sharing**
- ⇒ **The absence of children's rights on the face of the Bill – and the absence of processes for safeguarding children's rights within its provisions**
- ⇒ **The number of potential unintended consequences associated with making information sharing a duty and with giving Ministers unspecified powers in relation to the people and groups that are seen as not fulfilling this duty.**
- ⇒ **The Bill's inadequate definition and use of such basic terms as "harm" and "risk".**
- ⇒ **The potential for over-sharing of unhelpful or irrelevant information**
- ⇒ **The lack of attention given to the principles that will be applied in the holding, accessing and disposing of information**
- ⇒ **The ambiguity about whether removing all sanctions for sharing information also removes sanctions for malicious information sharing.**

### **Information use**

Section 3 is predicated on the assumption that the failure to share crucial information in a timely manner with the right people/agencies can jeopardise the health, safety and well-being of children. This is a genuine problem that could, and should, be addressed. However, as the Executive itself acknowledges, the failure to share information is not a huge or widespread problem across Scotland.

What Section 3 fails to address is the other side of the information sharing coin – namely, the use that is made and the actions that are taken as result of information that already has been shared appropriately. Information sharing, in and of itself, does not protect children and young people. Indeed, a variety of case reviews and follow-up investigations in recent years reveal that the necessary information was at hand, but was not used adequately to make decisions and take actions that would have better protected the children and young people involved.

One notable example can be found in the excellent SWIA report on a now-infamous case of child abuse involving three girls in the Western Isles. The amount of information shared was voluminous, but it was not used well enough or quickly enough to remedy the

girls' plight. As this SWIA report correctly notes: 'gathering together large amounts of information is not an assessment. Sharing it does not constitute a child protection plan.'<sup>1</sup>

A properly considered, comprehensive bill dealing with information sharing also must give equal attention to the use of shared information in making decisions and taking actions that will benefit vulnerable children and young people. The duty to share information must be accompanied by the duty to use that information in ways that do improve the protection of children and young people. Section 3 of this Bill neither addresses this pressing problem, nor proposes any duty to use shared information effectively.

This is too important and public a matter to be treated as a technical issue that can be sorted out through the post-legislation development of a Code of Practice. Ultimately, dealing with information sharing in isolation from all the issues surrounding information use predictably will be of limited benefit.

### **Children's Rights**

Children and young people have rights that (in other circumstances) repeatedly have been recognized by the Scottish Parliament and the Scottish Executive. Children in Scotland is disappointed that Section 3 of this Bill does not recognise these rights, or deal adequately with the associated issues of consent and confidentiality. Invoking 'child protection' does not negate the rights of children. Getting the balance right between child protection and children's rights is a complex matter, but not an impossible one. Pretending that no such tensions or complexities exist – by failing even to recognise the rights relevant to the information sharing provisions of this Bill – is not an acceptable stance for the Scottish Parliament or the Scottish Executive to take.

Children's rights under the UN Convention on the Rights of the Child should be the framework upon which child-focused legislation is constructed. Experience from the Children's Hearing System has shown that children and young people often do not have any objection to the sharing of information about them among professionals. They do, however, object to this happening without their knowledge and consent -- and without a clear understanding of why (and with whom) the information is being shared. Executive research found that young people's comments on this matter included:

- *"I would feel like my private life had been invaded if they gave my information without my consent" ,*
- *"It would be good if they could ask you first and explain things"*
- *"It would be good if you were told who is getting the information about you"*
- *"I would want to know who is sharing the information and what is being said"*<sup>2</sup>

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<sup>1</sup> SWIA, *An inspection into the care and protection of children in Eilean Siar*, August 2005

<sup>2</sup> 'Getting it Right For Every Child – Proposals for Action. Consultation with Children and Young People.' The Scottish Executive 2006

There may be circumstances when it is necessary to overrule this ‘best practice’ and to accord certain kinds and instances of child protection precedence over certain rights. However, this should not be done automatically, lightly or without proper consideration and consultation. The omission of both a set of right-related principles to guide information sharing – and the lack of a transparent process and set of criteria upon which information sharing (and information use) decisions will be based -- are reason enough to remove Section 3 from this Bill.

The complexity and importance of getting the balance right between child protection and children’s rights at the level of national legislation argues powerfully for a further stage of analysis, consultation and consideration. Shifting information sharing back to the anticipated GIRFEC bill will allow the time and space to resolve these potentially contentious issues.

The best way to begin this reconsideration process is through meaningful engagement and consultation with children and young people themselves. Article 12 of the UNCRC recognizes the right of all children and young people to be heard and heeded in matters that significantly affect their lives and well-being. That has not happened in relation to information sharing. Children in Scotland recommends that this process can, and should, be started now in relation to both the legislation itself and the development of any subsequent Code of Practice about information sharing/use.

### **Unintended Consequences**

This Bill is purposefully ambiguous. Ambiguity can allow necessary flexibility for professionals, officials and agencies to react to individual circumstances. **In relation to Section 3 of this Bill, our concern is that the amount of ambiguity may result in a number of unintended negative consequences.**

The lack of consultation by the Executive has added to the lack of awareness of the possible unintended consequences of this Bill. As a membership organisation, we have found it impossible to fully consult with our more than 400 members on the potential impact of the information sharing section of this legislation.

We will cite two examples of unintended (and unwelcome) consequences that might result from the degree of ambiguity in Section 3. First, we are concerned that young people will refrain from seeking and/or refuse to accept needed services and assistance (e.g., around sexual health or family difficulties) because of their fears that this personal information will be shared with people/agencies, and in ways, that they find unacceptable. Ironically, the net effect could be **less** help and support actually received by vulnerable children and young people.

Second, we are concerned about the lack of transparency -- as well as the lack of legislatively established criteria for, and limits upon, Ministers -- in the provision covering Ministerial powers when Ministers perceive inadequate compliance by those with an information-sharing duty. We think it likely that those with this duty will react by flooding the system with information – not because it will protect children, but rather because it will protect themselves and their organisation/agency from Ministerial sanctions. Ironically, the net effect could be that useful child protection information becomes less accessible as it is drowned under the flood of ‘self-protection’ information.

The other instance of a potentially counterproductive ambiguity – and unintended consequences in Section 3 concerns the lifting of all sanctions for sharing information around child protection. However, Section 3 is unclear as to whether sanctions also will be lifted in cases where the information shared is known to be inaccurate or misleading -- and is being sent with malicious (or other inappropriate, unprofessional intent) by the sharer. Children in Scotland would seek clarity on this point.

### **Definitions of ‘harm’ and ‘risk’**

The definition of ‘harm’ and ‘risk’ is key to decisions about if and when children’s and young people’s information is shared. The way in which these terms are used in Section 3 of this Bill is likely to create problems. Specifically, the Bill’s use of the terms ‘harm’ and ‘risk’ – unmodified by the word ‘significant’ – easily could result in a flood of unnecessary and largely useless information being shared (again, in the interest of self-protection, rather than child protection).

Using the term ‘significant harm’ and significant risk would place this Bill in harmony with prior child protection legislation, such the Children (Scotland) Act 1995. However, without a uniform definition of all these fundamental terms, interpretations, judgments and behaviours could vary in unhelpful ways across both local authority and professional boundaries. Section 3 of this Bill has not included such a definition – and the consultation process that would result in a consensual, national definition has not taken place yet.

Children in Scotland believes that the baseline definition of these terms should not be decided by professionals and policy makers alone. Professionals, parents, children and young people should all be involved in deciding their meaning and application in the information-sharing arena. The work done to date by the Scottish Commissioner for Children and Young People around the concept of ‘proportionate protection’ also is a valuable contribution toward creating sensible baseline definitions of key terms.

### **Information handling and the Code of Practice**

While these issues can be dealt with in detail through the anticipated Code of Practice, some broad principles need to be addressed on the face of the Bill. Given the lack of

public consultation to date about Section 3 -- not least the lack of meaningful consultation with children and young people -- Children in Scotland is particularly concerned by the extent to which overarching principles are intended to be thought about and sorted out in the post-legislation Code of Practice. The duty to consult about the Code of Practice is not a duty to heed and act upon the advice received. The democratic and transparent scrutiny that goes into the passing of a Bill will be missed.

To cite just one example, Section 3 of this Bill indicates that all information will be shared with each Council. Presumably, this information will have to be stored in a person-specific file. The Council will hold these files. However, Section 3 does not detail who can request access to this information; what the recipients can/cannot do with this information, for how long what types of information must/should be kept before being destroyed; and, who makes the decisions about all of these matters (based upon what criteria). These are far from trivial issues and it is not sufficient to simply ignore them in the Bill.

### **Key Recommendation**

**Children in Scotland's fundamental recommendation is that Section 3 of this Bill be removed in its entirety – and reconsidered in the context of the anticipated GIRFEC bill in the next session of Parliament.**

We believe that this will allow the Executive and other relevant organisations to properly consult on the best way to achieve appropriate information sharing and information use, as well as to identify the possible unintended consequences of the specific provisions currently in Section 3 of this Bill.

### **About Children in Scotland**

*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, 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 over 400 members, including all major voluntary, statutory and private children's agencies, professionals organisations, as well as many other smaller community groups and children's services.*

*The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Executive, local authorities and practitioners. It also services a number of groups such as: the Cross Party Group on Children and Young People; the National Children's Voluntary Forum; the National Early Years Forum and the Additional Support Needs Network. Children in Scotland also hosts Enquire, the advice service for additional support for learning.*

For further information please contact Paula Evans Policy and Parliamentary Officer  
Children in Scotland, 5 Shandwick Place, Edinburgh, EH2 4RG.  
Tel 01312222435, e-mail [pevans@childreninscotland.org.uk](mailto:pevans@childreninscotland.org.uk)