



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Protection of Vulnerable Groups (Scotland) Bill

Submission to the Education Committee – 9th November 2006

SCRA welcomes the opportunity to provide a submission to the Education Committee on the provisions of the Protection of Vulnerable Groups (Scotland) Bill.

The call for evidence contained a number of specific questions which will be dealt with in the order in which they were presented.

How effective is the Bill likely to be in providing children and protected adults with additional protection from harm?
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SCRA feels that more detail and clarification is required on a number of points before any properly objective evaluation of the Bill can be made.

What are the likely impacts of the Bill on employers, employees and volunteers who work with children and protected adults?
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Vetting and barring

Timescales

SCRA would welcome further clarification on the anticipated lengths of time for disclosure checks as these are likely to impact on recruitment processes and any delays may have to be built in to existing recruitment practice if they are likely to be significantly different from the current system.

Scheme fees and retrospective application

SCRA believes that the fee structure should not be unnecessarily prohibitive. We consider £20 to be a reasonable amount, but in any case the cost should not exceed £25.

SCRA notes the proposals for the scheme to be retrospectively applied to the entire workforce. Currently, all SCRA staff undergo enhanced disclosure and there is clearly a cost implication attached for employers in cases where all employees need to join the scheme. Although the cost is nominally born by the employee, in practice most employers will end up paying for scheme membership. At £20-25 per employee, this is a not inconsiderable sum. We note that the anticipated timescale for covering the entire workforce is around 3 years. Producing a clear timetable for scheme entry as soon as possible would enable more effective planning in terms of budgets and training provision.

Information sharing

General

Currently, SCRA's ability to share information is regulated by express statutory powers to do so. There is no general statutory power available to SCRA to share information and so we welcome the new powers to share child protection information contained in the proposed legislation.

Children's rights

However, it should be noted that some of the information which might be shared is extremely sensitive and we are aware of concerns over the impact of the legislation on the child's right to privacy. SCRA's own Child Protection Policy clearly states:

- "The child is a person, not an object of concern"
- "Respect for a child's rights (including participation, protection and privacy) promotes the child's dignity and self worth."

There is clearly a balance to be struck between respecting the child's rights and ensuring that information can be shared in situations where it is necessary. In this context, we would welcome further comment and guidance on this issue, either in the Bill itself or as part of the forthcoming Code of Practice.

Definition

Related to this is the issue of how child protection information is defined. At present the definition is very broadly framed and it is largely left to the relevant authority to make a judgement. We recognise that framing the definition too tightly might result in situations where information which might contribute to child protection fell outside the scope of the legislation. However, we feel that more guidance on the subject would improve the efficiency and effectiveness of the legislation.

In addition, we note that the Bill does not explicitly consider assessment alongside information sharing and consider that this may represent a gap in provision.

Training

Many of SCRA's frontline staff will require training and clear guidance on the new information sharing provisions. This will have to be planned in advance and built into existing training schedules. Consequently it would be beneficial for outstanding issues to be resolved and timescales to be agreed as soon as possible.

Are there any other issues that are raised by the Bill's provisions?

Vetting and barring

Definition of civil orders etc.

According to the proposed legislation, information that will be used to "list" individuals under the Vetting and Barring scheme, will come from "vetting information". That information will include:

- criminal convictions (spent and unspent),
- non-conviction information considered to be relevant by the police,
- inclusion on the Sex Offenders Register,
- and an area of information which is still to be prescribed by regulation, covering relevant civil orders, relevant information held by local authorities and relevant information held by regulatory bodies.

The last area of civil orders gives rise to some questions. While orders such as Risk of Sexual Harm Orders and Sexual Offences Prevention Orders seem obvious and appropriate for inclusion, the Policy Memorandum gives little further guidance on any other “relevant civil orders”.

There are two particular issues which arise in terms of the Children’s Hearings System. Firstly, cases where there has been a civil finding that grounds for referral have been established during Children’s Hearing proceedings which are aimed at protecting a referred child. The case may relate to sexual offences by an adult against children (the referred child or others) and may be established on the civil standard of proof, but not be a situation where a criminal prosecution can proceed on the higher standard of proof.

Example:

A child is referred to a Children’s Hearing due to concerns that they are being abused by a parent. A Sheriff dealing with the contested grounds for referral to the Hearing finds the grounds established on the civil standard of proof, and the Children’s Hearing subsequently places the child under compulsory measures of supervision. However, the decision is taken that there is insufficient evidence to support a criminal prosecution against the parent due to the higher standard of proof necessary in the criminal courts.

While the original information may well be known to the police and also the relevant social work department and therefore be accessible for the scheme in that way, there appears to be a legal finding (the decision of the Children’s Hearing) that may not be accessible. We feel that it is important that this issue be addressed.

The second area that will require clarity is whether a Supervision Requirement, issued under Section 70 of the Children (Scotland) Act 1995, will be considered a relevant civil order? SCRA believes that it should **not** be so considered, as the actual Requirement itself does not provide the same level of information as an extract conviction, and indeed may be founded on a number of concerns about a child and young person, other than their behaviour.

Any relevant information may be obtained through the Local Authority, which will have had responsibility for implementing a Supervision Requirement. The whole relationship of the Vetting and Barring scheme with information on children and young people’s own behaviour, needs clarity and balance, mindful of the Scottish system’s philosophy of approaching children’s needs and behaviour under one umbrella (except for the very few young people under 16 who appear in criminal courts).

Information sharing

Child protection information

As stated above, SCRA would welcome a more detailed definition of what constitutes child protection information. Clearly the definition will impact on the workload of staff. The lower the threshold, the more information will potentially need to be shared.

Relationship with vetting and barring scheme

There may be circumstances where the Vetting and Barring process, although focused on contact with children through the individual’s work, may reveal circumstances where a child is living with or has contact with the individual concerned.

We note that the information sharing duties and powers may be invoked after vetting processes, where necessary, although we also note that the CBU is not named as a body which is expected to comply with this part of the legislation. We believe this is an area that will benefit from guidance and training along with other aspects of the Bill.

For further information, or clarification of any of the above points, please contact:

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CARE AND JUSTICE FOR CHILDREN

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