

## **EAST AYRSHIRE COUNCIL**

**SOCIAL WORK COMMITTEE : 9 SEPTEMBER 2004**

### **PROTECTING CHILDREN FROM SEXUAL HARM CONSULTATION**

#### **Report by the Executive Director of Educational and Social Services**

#### **1. PURPOSE OF REPORT**

- 1.1 To advise Social Work Committee of the Scottish Executive Consultation : Protecting Children from Sexual Harm and the draft Bill "Protection of Children and Prevention of Sexual Offences (Scotland) Bill (Draft – 22 June 2004).

#### **2. BACKGROUND**

- 2.1 The Law, as it currently stands in Scotland, provides a number of ways to deal with and reduce the harm done to children in our communities through sexual abuse. The protection of children is a key priority for the Scottish Executive. The Scottish Executive is now in the second year of a three year programme to reform services to protect children. The Draft Bill and the associated consultation is part of this programme.

#### **3. THE DRAFT BILL INTRODUCED THREE NEW MEASURES TO REDUCE THE RISK TO CHILDREN**

- 3.1 The Draft Bill introduces a new offence of "Sexual Grooming". This offence will enable charges to be brought against adults (over 18 years) planning to commit sexual assaults following grooming behaviour. For charges to be brought, the adult will require to have communicated with the child (under 16 years of age) on at least two occasions and subsequently goes on to "intentionally meet the child" or "travels with the intention of meeting the child in any part of the world".

The penalty for the above offence on :

- (i) Summary conviction is up to 6 months imprisonment or a fine not exceeding the statutory maximum or both.
  - (ii) Indictment is up to 10 years in prison or a fine or both.
- 3.2 Risk of Sexual Harm Orders (RSHO). RSHOs will apply to those who have displayed inappropriate sexual behaviour towards children. RSHOs can be applied for by Chief Constables in respect of an adult 18 years or above who has displayed inappropriate sexual behaviour towards a child (under 16 years).

What constitutes sexual behaviour is listed in the Bill as: engaging in sexual behaviour towards or in the presence of a child, cause a child to watch a person engaging in sexual activity, including still or moving images; giving a child anything that relates to a sexual activity, communicating with a child where any part of the communication is sexual.

RSHOs can be made in relation to someone who has not been convicted of a sexual offence. RSHOs will specify what a person must not do.

Breach of an RSHO will be a criminal offence and carry a maximum penalty of five years imprisonment.

### 3.3 Extension of the use of the Sexual Offence Prevention Orders (SOPOs).

Currently SOPOs can only be requested by the Chief Constable in relation to a person already convicted of a sexual offence as specified in the Sexual Offences Act 2003.

The Draft Bill proposes that SOPOs should also be available for Courts to impose when it sentences an offender for specified sex offences or an offence that seems to the Court to have a sexual element involved.

Breach of a SOPO would be a criminal offence and punishable with up to 5 years imprisonment.

### 3.4 The Draft Bill provisions are similar to those adopted in England and Wales by the Sexual Offences Act 2003 and has the benefit of making the Law clear throughout the United Kingdom.

## 4. **PROPOSED RESPONSE FROM EAST AYRSHIRE COUNCIL**

4.1 The Scottish Executive consultation lists 8 questions in relation to the Draft Bill proposals and seeks responses by 24<sup>th</sup> September 2004. The draft response to each question is attached as Appendix 1.

4.2 The response supports the principles underpinning the proposed legislation and recommends some further additions to the proposals, most significantly, reducing the age at which the legislation would apply i.e. 16 years of age, which would further strengthen the Bill.

## 5. **FINANCIAL AND STAFFING IMPLICATIONS**

5.1 There will be training implications for Criminal Justice Social Work staff on RSHOs/SOPOs.

## 6. **LEGAL AND POLICY IMPLICATIONS**

6.1 There will be policy implications in relation to the multi-agency approach taken with sex offenders. Joint protocols with, in particular, the Police and Housing services, will require to be updated to take account of any changes brought in by the new Act.

## **7. RECOMMENDATION**

7.1 It is recommended that the Social Work Committee:

- (i) approve the proposed response in respect of the Consultation;
- (ii) request the Executive Director of Educational and Social Services to submit the response to the Scottish Executive; and
- (iii) otherwise note the content of the Report.

**John Mulgrew**  
**Executive Director of Educational & Social Services**  
**18 August 2004**  
**Enc (1)**

### **LIST OF BACKGROUND PAPERS**

1. Scottish Executive Consultation Document : Protecting Children from Sexual Harm
2. Protection of Children and Prevention of Sexual Offences (Scotland) Bill (Draft – 22.06.04)

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**EAST AYRSHIRE COUNCIL  
DEPARTMENT OF EDUCATIONAL AND SOCIAL SERVICES**

**RESPONSE TO THE SCOTTISH EXECUTIVE'S CONSULTATION ON PROTECTING  
CHILDREN FROM SEXUAL HARM**

<b>Question 1</b>	<b>Does the new offence set out in Section 1 of the attached draft Bill achieve the objective of ensuring that potential sex offenders meeting or travelling to meet a child following grooming behaviour can be prosecuted?</b>
<b>Response</b>	Yes, however Paragraph 18, should include "text messages". Paragraph 22, where a fine is imposed should also include, RSHO. This offence should also be subject to notification to the Police.
<b>Question 2</b>	<b>Does the new offence strike the right balance in criminalising activity which involves grooming and then meeting or travelling to meet a child? Or should other activities comprise the criminal offence?</b>
<b>Response</b>	Paragraph 16 – line 4 states "intends to engage in <u>sexual activity</u> with a child". We would recommend the term sexual harm rather than sexual activity which is broader and could include showing pornography to a child.
<b>Question 3</b>	<b>Is the proposed penalty set at the right level?</b>
<b>Response</b>	Yes, the heavy penalty reflects the serious nature of the offence. We would also recommend that the penalty should include the imposition of a Risk of Sexual Harm Order.
<b>Question 4</b>	<b>Is 18 the right minimum age for the offender or should it be, for example, 16?</b>
<b>Response</b>	The age should be lowered to 16 years to reflect the fact that some young people pose a significant risk sexually.
<b>Question 5</b>	<b>Would risk of Sexual Harm Orders be a useful measure in preventing sex offences against children?</b>
<b>Response</b>	Yes.

<b>Question 6</b>	<b>Does the proposed list of trigger behaviour cover all relevant activities that might prompt application for a RSHO?</b>
<b>Response</b>	No, we would recommend including “text messages” on the list.
<b>Question 7</b>	<b>Should the use of Sexual Offences Prevention Orders be extended to allow them to be imposed at time of sentencing?</b>
<b>Response</b>	Yes, Criminal Justice Social Workers should be encouraged to consider and propose a Sexual Offences Prevention Order when compiling Social Enquiry Reports for Courts on a Sex Offender.
<b>Question 8</b>	<b>Are there any other issues in relation to grooming a child for sexual exploitation that we should take into consideration in the proposed Bill?</b>
<b>Response</b>	No, other issues in addition to our response in questions 1 to 7.