

## Justice Committee

### Abusive Behaviour and Sexual harm (Scotland) Bill

#### Written submission from Child's Eye Line UK

I write on behalf of the Child's Eye Line (CEL) campaign and am contacting you regarding the sexualisation of children through 'sex sells' media across Scotland in the context of your consultation on the Abusive Behaviour and Sexual Harm (Scotland) Bill consultation.

Child's Eye Line UK is a campaign to protect children from sexualisation and commercialisation. There is a core team of volunteers who perform a variety of different roles from raising awareness on social media to committee meetings at government level. The Child's Eye Line UK campaign has garnered support from an increasing number of people across the UK who are frustrated at the presence of sexual and violent content in everyday life.

Further to CEL cross-party lobbying last year including the Minister for Children and Young People, we submitted evidence and suggested amendments to the Air Weapons and Licensing (Scotland) Bill. We were told this wasn't the right time or act and the amendments were ruled out before they could even be debated. Despite the clear support for debate of organisations such as Girl Guiding Scotland. I have attached these amendments in the annex to this letter.

However, it would appear to us that the current draft Bill might offer you the opportunity to consider whether further preventative legislation is necessary in this area for child protection and decency reasons as well as rightly strengthening the law on domestic abuse and enforcement.

*The Key Aim of our campaign is the prevention of harm to children caused by exposure to sexualised material, with specific reference to 5 key actions:*

1. Encourage government to legislate to make it illegal to display pornography and sexualised images in public places where children are permitted.
2. Encourage government to provide help and support for parents to protect their children from hard core internet porn and violent games.
3. Work with retailers and other key bodies to protect children.
4. Protect young girls and boys from damaging images that can affect their self-worth.
5. Help parents find ways to protect their children from pornography and sexualised imagery.

In 2010 the independent review called 'Letting Children Be Children' looked at the sexualisation and commercialisation of children in society. It was conducted by Reg Bailey, Chief Executive of Mothers' Union, and is also known as 'The Bailey Review'. The review addressed the concerns that children are exposed to a tide of sexual imagery in public places. As a result of the report recommendations were made, including:

- Clampdown on sexualised 'wallpaper' surrounding children.
- Sexual images on magazine and newspaper front pages should be covered up.
- Retailers should sign up to a family friendly code of practice

Reg Bailey's recommendations are based on parents' concerns and are intended to support both parents, by making sure their views are taken more seriously by businesses and broadcasters, and children, by helping them understand the potential dangers they face.

However, CEL can prove that these guidelines have not been followed consistently across the retail sector. CEL and their supporters have collected photographs where the retailer guidelines are clearly being ignored. We have also documented complaints from parents and the responses from retailers. Disappointingly, responses and subsequent actions taken vary hugely when retailers receive a complaint about an inappropriate image in view of children. Some retailers take on board the concerns and change their displays; many others treat customers/parents with hostility, offer excuses as to why they need not change the display, or show ignorance of any government or regulatory body's guidelines. Some make a change on the day but do not follow it up with any long term action.

This widely varying response is why CEL believes that legislation is the only effective way to control how sexualised and pornographic images are displayed in shops and public spaces, where children are likely to be and which can have a profound influence on their future behaviour.

CEL is calling for children to be protected from graphic material until they are old enough to make that informed decision for themselves. Hence we are asking for recommendations about the display of graphic, sexualised content to be enforced by retailers and other bodies and if not for Parliament to legislate to protect public safety and the achievement of a number of policy outcomes which we feel are vital for the prevention of sexualisation of children in Scotland.

Also, CEL feels these further preventative amendments would provide a legal framework for the control of shop window displays, which as an advertisement mechanism are currently a clear loophole out with the control of the ASA, local Trading Standards services or Police. Taste and decency or offence caused by a shop window display have to be taken up with the shop owner.

The basic premise being that if something is offensive or indecent it would not be legal and also it would provide a clear framework for consumers to challenge use of gender, sexuality and violence in any context from a t-shirt in a shop window to a billboard when it is clearly irrelevant to the product for sale/promotion.

Currently retailers receive payments from publishers for certain spaces in stores. This applies to all printed media and means that the retailer has no control over what is on open display in their stores. A number of publications consistently print sexual, sexist, violent and pornographic imagery and/or sensational rape and child abuse headlines on front covers. This is frequently alongside offers for children's items such as comics and sweets and at child height in the majority of stores in the UK on

a daily basis. When customers raise the issue, the retailer is unable to act due to the underlying contract between retailer and publisher which leads to exposure of children to adult material.

CEL is aware of recent national reviews such as the Community Planning Review and prior to that the Christie Commission on Public Sector Reform have provided a focus and the building blocks for a stronger, more joined up and extensive approach to prevention, early intervention and a focus on local place. CEL would argue these amendments are within the spirit of that preventative agenda and also the Prevention pillar of the Scottish Government's Equally Safe strategy.

Kathy McGuinness  
Child's Eye Line Founder  
15 November 2015

After section 68, insert—

*<Regulation of indecent displays in public places*

**Regulation of indecent displays in public places**

- (1) The 1982 Act is amended as follows.
- (2) After section 51 insert—
  - “51A Indecent displays in public places**
  - (1) A person who displays, or knowingly causes or permits to be displayed, an indecent image in a public place commits an offence.
  - (2) For the purposes of this section, an image is “indecent” if—
    - (a) the image involves the display of sexual activity, nudity or partial nudity and—
      - (i) it is designed or intended to promote the sale, distribution or consumption of any thing, and
      - (ii) the display of sexual activity, nudity or partial nudity is unrelated to that thing, or
    - (b) a reasonable person would consider that it degrades, dishonours, disgraces or lowers the dignity of any person or persons in general.
  - (3) But an image is not “indecent” if—
    - (a) it relates to—
      - (i) the promotion of breastfeeding,
      - (ii) awareness of breast cancer, prostate cancer or testicular cancer, or such other health-related purposes as the Scottish Ministers may prescribe by regulations,
    - (b) it is displayed for the purpose of sex education in schools or by health or related bodies,
    - (c) it is an image of such type or displayed for such artistic or other purpose as the Scottish Ministers may prescribe by regulations.
  - (4) For the purposes of this section—
    - (a) any image which is displayed in or so as to be visible from any public place is deemed to be displayed in a public place,
    - (b) “public place” means any place where an image is likely to be viewed by the public at large, or any section of the public or individually selected members of the public, whether that place is open to the public on payment of a fee or not.
  - (5) A person accused of an offence under this section (“the accused”) who has the management or control of any premises is to be regarded as having knowingly caused or permitted a person to display an indecent image in a public place if the accused ought to have known that the person was making such a display.
  - (6) It is a defence for the accused to prove that—

- (a) the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence not to commit the offence, or
  - (b) there were no lawful and reasonably practicable means by which the accused could prevent the other person from displaying the image.
- (7) It is a defence for the accused to prove that the accused did not know, and could not reasonably be expected to have known, that the place in which an indecent image was displayed was a public place.
  - (8) A person guilty of an offence under this section is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
  - (9) Schedule 2B (which provides for fixed penalties for offences under this section) has effect.
  - (10) For the purposes of this section, the Scottish Ministers may by regulations modify—
    - (a) the definition of “indecent” for the time being provided in subsections (2) and (3),
    - (b) the definition of “public place” for the time being provided in subsection (4)(b).
  - (11) Before making regulations under this section, the Scottish Ministers must consult such persons as they consider appropriate.
  - (12) Regulations under this section which contain provisions that add to, replace or omit any part of the text of this section or any other Act are subject to the affirmative procedure.
  - (13) All other regulations under this section are subject to the negative procedure.
  - (14) The Scottish Ministers may publish guidance about the implementation and enforcement of this section.
  - (15) The Scottish Ministers must lay a copy of any guidance published under subsection (14) before the Scottish Parliament.
  - (16) A body for the time being listed in section 16(1) of the Local Government in Scotland Act 2003 or schedule 8 of the Public Services Reform (Scotland) Act 2010 must have regard to any guidance published under subsection (14).
- (3) After Schedule 2A insert—

“SCHEDULE 2B  
(introduced by section 51A(9))

*Power to give fixed penalty notice*

- 1 (1) An authorised officer of a local authority may, if having reason to believe that a person is committing or has committed an offence under section 51A within the area of the local authority, give that person a fixed penalty notice in relation to that offence.

- (2) A constable may, if having reason to believe that a person is committing or has committed an offence under section 51A, give that person a fixed penalty notice in relation to that offence.
- (3) In this schedule, “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for an offence under section 51A by payment of a fixed penalty.

*Timing of fixed penalty notice*

- 2 A fixed penalty notice for an offence under section 51A may not be given after such time relating to the offence as may be prescribed.

*Contents of fixed penalty notice*

- 3 (1) A fixed penalty notice must identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.
- (2) A fixed penalty notice must also state—
  - (a) the amount of the penalty and the period within which it may be paid,
  - (b) the discounted amount and the period within which it may be paid,
  - (c) the person to whom and the address at which payment may be made,
  - (d) the method or methods by which payment may be made,
  - (e) the person to whom and the address at which any representations relating to the notice may be made,
  - (f) the consequences of not making a payment within the period for payment.
- (3) The person specified under subparagraph (2)(c) must be the local authority in the area of which the offence was alleged to have been committed or a person acting on their behalf.

*The amount of the penalty and the period for payment*

- 4 (1) The fixed penalty for an offence under section 51A is (subject to paragraph 5) such amount as may be prescribed.
- (2) The period for payment of the fixed penalty is the period of 29 days beginning with the day on which the notice is given.
- (3) The local authority may extend the period for paying the fixed penalty in any particular case if they consider it appropriate to do so.

*The discounted amount*

- 5 (1) A discounted amount is payable instead of the amount prescribed under paragraph 4(1) if payment is made before the end of the period of 15 days beginning with the day on which the notice is given.

- (2) The discounted amount for a fixed penalty offence is such amount as may be prescribed.
- (3) If the last day of the period specified in sub-paragraph (1) does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day.

*Effect of notice and payment of penalty*

- 6 (1) This paragraph applies where a person is served with a fixed penalty notice in respect of a fixed penalty offence.
- (2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.
  - (3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted by the local authority after that time.
  - (4) Payment of the discounted amount counts for the purposes of sub-paragraph (3) only if it is made before the end of the period for payment of the discounted amount.
  - (5) In proceedings for the offence, a certificate which—
    - (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority, and
    - (b) states that payment of an amount specified in the certificate was or was not received by a date so specified,
 is sufficient evidence of the facts stated.

*Request for hearing*

- 7 (1) A person to whom a fixed penalty notice has been given may, before the expiry of the period for payment of the penalty, give notice requesting a hearing in respect of the offence to which the fixed penalty notice relates.
- (2) A notice requesting a hearing under sub-paragraph (1) must be in writing and must be sent by post or delivered to the person specified under paragraph 3(2)(c) in the fixed penalty notice at the address so specified.
  - (3) For the purposes of this paragraph and unless the contrary is proved, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.
  - (4) Where a person has requested a hearing in accordance with this paragraph—
    - (a) the local authority must hold the hearing,
    - (b) a person authorised for the purpose by the local authority of the area in which the offence was committed must notify the procurator fiscal of the request, and

- (c) the period for payment of the fixed penalty must be calculated so that the period beginning with the giving of the notice under this paragraph and ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account.

*Power to withdraw notices*

- 8 (1) If the local authority consider (whether after holding a hearing under paragraph 7 or not) that a fixed penalty notice which has been given ought not to have been given, they may give to the person to whom it was given a notice withdrawing the fixed penalty notice.
- (2) Where a notice under sub-paragraph (1) is given—
  - (a) the local authority must repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice, and
  - (b) no proceedings are to be commenced or continued against that person for the offence in question.
- (3) The local authority must consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

*Effect of prosecution on notice*

- 9 Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.

*Recovery of unpaid fixed penalties*

- 10 Subject to paragraphs 8 and 9, where a fixed penalty remains unpaid after the expiry of the period for payment of the penalty it is enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

*Judicial determination of enforcement of fixed penalty*

- 11 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 10 may apply to the sheriff by summary application for a declaration that the fixed penalty is not enforceable on the ground that—
  - (a) the fixed penalty was paid before the expiry of the period for paying, or
  - (b) the person has made a request for a hearing in accordance with paragraph 7 and no hearing has been held within a reasonable time after the request.
- (2) On an application under sub-paragraph (1), the sheriff may declare—
  - (a) that the person has or, as the case may be, has not paid the fixed penalty within the period for payment of the penalty,
  - (b) that the person has or, as the case may be, has not requested a hearing in accordance with paragraph 7,

(c) that, where such a request has been made, a hearing has or, as the case may be, has not been held within a reasonable time after the request, and

accordingly, that the fixed penalty is or, as the case may be, is not enforceable.

*General and supplementary*

- 12 The Scottish Ministers may by regulations make provision about—
- (a) the application by councils of fixed penalties paid under this schedule,
  - (b) the keeping of accounts, and
  - (c) the preparation and publication of statements of account, relating to fixed penalties under this schedule.
- 13 (1) Fixed penalty notices may not be given in such circumstances as may be prescribed.
- (2) The method or methods by which fixed penalties may be paid may be prescribed.
  - (3) The Scottish Ministers may by regulations modify paragraph 4(2) or 5(1) so as to substitute a different period for the period for the time being specified there.
- 14 (1) In this schedule, “prescribed” means prescribed by the Scottish Ministers by regulations.
- (2) Regulations under paragraph 4(1) or 5(2) are subject to the negative procedure.
- (3) All other regulations under this schedule are subject to the negative procedure.”>