

## **Justice Committee**

### **Supplementary Legislative Consent Memorandum on the Anti-social Behaviour, Crime and Policing Bill**

#### **Written submission from Barnardo's Scotland**

Barnardo's Scotland welcomes the opportunity to respond to the Scottish Government's Legislative Consent Memorandum on the Anti-social Behaviour, Crime and Policing Bill. There are two aspects of the LCM that we as an organisation would like to comment on specifically and these are clauses 104 (Civil Preventative Orders) and 109 (Forced Marriage).

Barnardo's Scotland is a national voluntary organisation and works directly with more than 10,000 children, young people and their families. Barnardo's Scotland provides approximately 100 specialised services in local communities across Scotland, covering fostering, parenting, substance misuse, offending, homelessness, and abuse.

We currently provide a range of services throughout Scotland that work with and support children and young people who have been victims of various forms of abuse. Barnardo's Scotland has two services working on Child Sexual Exploitation issues, Safer Choices in Glasgow, and the FACE service (Fighting Against Child Exploitation) in Dundee. In addition, we have a sexually harmful behaviour service, Skylight/Lighthouse, in Edinburgh.

#### **Civil Preventative Orders**

We would agree with the provisions set out in clause 104 around civil preventative orders. The Sexual Harm Prevention Orders (SHPO's) and Sexual Risk Orders (SRO's) as set out in the Bill are broadly similar to the civil orders in Scotland around sexual offences. From our experience of the equivalent civil orders used in Scotland (Sexual Offences Prevention Orders, SOPO's and Risk of Sexual Harm Orders, RSHO's) we would support the need for criminal penalties for breaching conditions on both sides of the border.

Barnardo's Scotland was recently involved in bringing a petition to the Scottish Parliament's Public Petitions Committee in relation to the scale and nature of CSE in Scotland. One of our asks in relation to this inquiry was for post legislative scrutiny of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 and the Sexual Offences (Scotland) Act 2009. The reason for this is that in our experience legislation has not always been effective at bringing perpetrators of sexual offences to justice.

During the inquiry we have raised particular concerns about the very low number of charges and convictions under the 2005 Act which was explicitly introduced to address crimes relating to child sexual exploitation. In addition, the 2005 Act introduced new

legislation in relation to the grooming of children and Risk of Sexual Harm Orders (RSHO). The purpose of this order was to give courts the power to place restrictions on someone who is behaving in such a way which suggests that they pose a risk of sexual harm to a particular child or to children generally, much like the RSO's in England and Wales. However, the order appears to have been little used in practice, with a series of freedom of information requests in 2012 finding that Lothian and Borders, Strathclyde and Central Police forces had each only ever made two orders, and that the Northern Constabulary had made no orders at all.

With this in mind we would support the LCM in its move to allow the English and Welsh civil orders to be a criminal offence in Scotland. If we can bring more perpetrators of sexual offences to justice through the Scottish legal system this may raise awareness of the counterpart civil orders, which can be, but may not be used frequently enough by Police Scotland.

Barnardo's responded at the Report Stage of the Bill at Westminster on the 14 October and welcomed *'extending the ability to use these Orders [SHPO's and SRO's] to protect all children under 18, including 16 and 17 year olds. These older children are still vulnerable and can be subject to child sexual exploitation and abuse. In our experience, they are far too often seen as more resilient by professionals and as a result, not given a sufficient child protection response. The inclusion of vulnerable adults to the SHPO and SRO is also welcome. Young adults with learning difficulties or special educational needs are targeted by individuals looking to exploit them'*.<sup>1</sup>

We would echo these sentiments; at present RSHO's are only used in Scotland in cases where the child or young person is 16 or under. The Children and Young People (Scotland) Bill explicitly states that childhood extends to 18, but RSHO's only apply up until the age of 16, leaving older young people vulnerable and at risk of sexual harm.

We would call on the Scottish Government to take cognisance of the moves taken in England and Wales to extend the equivalent civil orders around sexual offences to include children and young people up to the age of 18, in line with the provisions in the Children and Young People (Scotland) Bill.

### **Forced Marriage**

As previously mentioned, Barnardo's Scotland has several services that work with children and young people who have been victims of various forms of abuse. Forced marriage is a very sensitive subject area but one that can be damaging to the lives of many children and young people and one that needs to be addressed. We believe that creating an offence under Scots law of forcing someone into marriage would be the right step to take in order to tackle this very serious issue.

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<sup>1</sup> [http://www.childrenssociety.org.uk/sites/default/files/tcs/Policy/briefing\\_on\\_anti-social\\_behaviour\\_bill\\_amendments\\_-\\_14\\_oct\\_2013.pdf](http://www.childrenssociety.org.uk/sites/default/files/tcs/Policy/briefing_on_anti-social_behaviour_bill_amendments_-_14_oct_2013.pdf)

At present, forced marriage is illegal, but it only becomes a criminal offence if a forced marriage protection order is put in place and then breached. We believe that much like the attitude towards domestic abuse, cultural and societal attitudes towards forced marriage need to change. Making it a criminal offence to force an individual into marriage will send a clear message that this behaviour is not acceptable. Alongside this drive for culture change we also need to put in place strong mechanisms of support, whilst raising education and awareness of the issue. There continues to be a sense of taboo in many Scottish communities about this issue meaning it may not be talked about or discussed. Criminalising the act itself should be one part of the culture change which runs alongside intensive work with communities to challenge what may be seen as cultural norms and highlight what is acceptable and what is unacceptable behaviour. Additionally, any education should be led and facilitated by organisations within those communities. We would therefore support the Scottish Government's commitment to facilitate any change in legislation alongside an awareness raising campaign.

Criminalising forced marriage may not have an immediate effect on the number of people being convicted of the offence. Comparisons here can be drawn with child sexual exploitation, in our experience it is not specific legislation relating to grooming or exploitation that is often used to prosecute. Rather, there are other offences such as rape, sexual assault, underage sexual activity etc. that are easier to prosecute and there is therefore a better likelihood of a successful conviction.

Additionally, as with other forms of abuse, victims may be unwilling to come forwards and may even feel as though they do not want the perpetrator punished by a criminal sanction. However, we do feel that by criminalising the act itself we will begin to shift perceptions and start the drive towards cultural change that is needed to stamp out forced marriage in Scotland.

Mark Ballard  
Head of Policy  
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