

Interest Link Borders

Response to Call for evidence on the Disclosure (Scotland) Bill

To: The Scottish Parliament's Education and Skills Committee

As Project Co-ordinator of Interest Link Borders's volunteer befriending service for children, young people and adults with learning disabilities, I am writing regarding the draft provisions re under-16s in regulated roles.

1. Context

We have around 60 volunteers of school age, all of whom support children and young people with learning disabilities.

Although they are supervised, their work is classed as regulated under the existing Protection of Vulnerable Groups (Scotland) Act 2007 because (Sch2. Para 4.) they are teaching/instructing children and/or (Sch2. Para 7.) providing advice or guidance to children.

Schedule 3 Part 2 of the Bill arguably increases the range of roles in which supervision is not a factor in assessing whether the role is regulated:

Para 8. Teaching, instructing or delivering training to children.

Para 10. Holding power or influence over a child for the purpose of an activity in which the child is taking part.

Para 26. Being engaged in the provision of cultural, leisure, social or recreational activities for children.

So all our young volunteers require PVG membership under both Act and Bill

2. The effect of the Bill on Volunteers aged 12-15

Most of our volunteers are aged 16 and over, but some fall into the 12-15 age range. Under the Bill those aged 12-15 will not be able to apply for PVG membership (Para 71: 45 (1)), but Para 74: 45C(3)(b) provides they will not be committing an offence if they carry out a regulated role. Para 74: 45D(3)(b) provides Interest Link Borders will not be committing an offence by offering them regulated roles.

So the Bill appears to allow volunteers aged 12-15 to undertake regulated roles without a PVG check even though they might have a criminal record.

However volunteering organisations like ourselves will not involve anyone who might have a criminal record in regulated roles unless they have PVG membership.

So the actual result of the Bill will be to prevent those under 16 being in regulated roles.

3. Why did the Bill take this approach?

Looking at the **Policy Memorandum** accompanying the Bill, the only reasoning put forward for the minimum age for PVG membership appears to be that those under 16 should not have an unsupervised role with children. (Para 60.) However, as noted above, there are many supervised roles which are still regulated, so this is not a sound reason for a blanket ban.

In the **Consultation** preceding the Bill:

- Q81 asked if there should be a minimum age for checks. 73% of respondents said yes, but they were not asked for their reasons for doing so.
- Q82 asked “In what circumstances should a criminal record check for a child under 16 be permitted? The Consultation Report noted that “those responding to question 82 generally supported exceptions to permit people under 16 to undertake roles working with vulnerable people, particularly around the voluntary sector”.

The response from Volunteer Centre Borders to the consultation Q82 sums this up well: “We have volunteers under the age of 16 working with vulnerable adults and children. As above, people do not only start to commit crimes when they are 16 and it is essential to know if an under-16 year old is barred from working with vulnerable adults/children.”

- Q94 asked “Please tell us about any potential impacts, either positive or negative; you feel the proposals in this consultation document may have on children?” Respondents commented that “Removing the ability of children to take on protected roles/regulated work was viewed as damaging to opportunities and development for children and young people.”

So Q82 & Q94 are the only places where there has been discussion of the minimum age, and in both cases the weight of responses appears to raise significant concerns over a minimum age.

The discussion of these responses in Part 2 of the Consultation Report (pp56-57) gives no coherent line of argument to justify a ban on under-16s. It seems to be as much concerned with wanting to protect under-16s’ by preventing their convictions being revealed by a check as with the suitability of them performing regulated roles.

It seems to be this combination of reasoning that has led to the Bill effectively providing that under-16s can perform regulated roles without needing a PVG check. This puts the safety of children in second place to the rehabilitation of young offenders, which seems an inappropriate compromise.

4. Conclusion:

The entirely well-intentioned attempt to reconcile the conflicting interests of volunteers and children has led to an unsupportable and self-defeating result in the Bill. I would suggest that the current system with no minimum age does manage to strike the right balance and should be retained.

However, the consultation responses and evidence from other UK jurisdictions indicate a general view that under-16s should be supervised in their regulated work/roles with children and protected adults. I think the vast majority of organisations involving under-16s (including Interest Link) would agree with this, and it could still be provided for in the Bill without compromising supervised roles.

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16/08/2019