

Disclosure (Scotland Bill)

Response from Scottish Women's Aid

August 2019

About

Scottish Women's Aid ("SWA") is the lead organisation in Scotland working to prevent and eradicate domestic abuse and plays a vital role in campaigning and lobbying for effective responses to domestic abuse. SWA is the umbrella organisation for 36 local Women's Aid organisations across Scotland; they provide practical and emotional support to women, children and young people who experience domestic abuse. The services offered by our network members include crisis intervention, advocacy, counselling, outreach and follow-on support and temporary refuge accommodation.

Introduction

We welcome the opportunity to comment on this Bill. Protecting and encouraging people with convictions into the job market and ensuring that they are not discriminated against is commendable. However, this can only be done within the confines of an unambiguous and robust framework preventing those who are unsuitable to work with vulnerable adults and children from gaining posts allowing them access to this group. Simplification and clarity of process is, of course, welcome but only where this allows the same, or improved, levels of disclosure, coverage and protection for vulnerable people and does not inadvertently create loopholes capable of exploitation. Ensuring the protection of women, children and young people experiencing domestic abuse in their engagement with services is our paramount consideration so we have a keen interest in ensuring that the reforms are both equitable and in no way diminish the existing protective and barring function of the PVG Scheme.

The main focus of our written submission relates to regulated work with adults and the definition of "*protected adult*."

Section 76- Meaning of Protected Adult and Schedule 4- Regulated Roles with Adults

The current PVG Scheme looks at activities and certain defined types of service received by an individual, as opposed to any particular disability or impairment making the adult vulnerable. The existing definition of "protected adult," under section 94 of the Protection of Vulnerable Groups (Scotland) Act 2007 ("POVG Act"), is expressed with reference to the nature of the services accessed by that adult, namely as "*... an individual aged 16 or over who is provided with—*

(a) a service by a person carrying on—

(i) a support service, (ii) an adult placement service, (iii) a care home service, or

(iv) a housing support service, which is registered under [F1 Part 5 of the 2010 Act],

(b) a prescribed service—... "(c) a community care service...

(d) a prescribed welfare service.... welfare service" includes any service which provides support, assistance, advice or counselling to individuals with particular needs."

We expressed concerns with the proposals in the 2018 consultation to redefine the meaning of “protected adult” by focussing exclusively on the particular personal characteristics of a person. This listed vulnerability through “disability or illness”, an approach the Scottish Government avoided in the existing PVG Scheme, instead identifying “protected adults” by their *particular needs* and by the service they receive. Our issue was that focussing heavily on disability or illness created a loophole, as this definition would not automatically cover women experiencing domestic abuse who do not otherwise have such conditions but are equally vulnerable, at risk and open to exploitation.

Unfortunately, section 76 of the Bill reflects the consultation proposals to narrow the definition of a protected adult in respect of whom workers would have to be PVG Scheme regulated, and therefore, diminishes the protective powers of the POVG legislation, as follows

“, **76- Meaning of “protected adult”**“

(1)Section 94 (meaning of “protected adult”) of the PVG Act is amended as follows.

(2)In subsection (1) for the words from “an individual” to the end of that subsection 5 substitute “(a) an individual aged 18 or over who, by reason of physical or mental disability, illness or old age—

(i) has significantly impaired ability to protect themselves from physical or psychological harm, or

, i) requires assistance with the activities of daily living, and

(b)in relation to a regulated role with adults that involves the carrying out of activities mentioned in one or more of paragraphs 6 to 12 of Part 2 of schedule 3 (health care), an individual aged 18 or over who is being provided with a prescribed health service.”.

(3)Subsections (3) to (5) are repealed. “

In respect of regulating work with adults, section 76 limits the protection of the legislation to adults regarded as being vulnerable due to a “personal” condition. This is defined as a mental or physical disability, illness or old age, and the fact that they need assistance solely due to these characteristics, removing the references to community care services and welfare services in the current legislation. This is neither a constructive nor helpful revision, since the definition will essentially revert to the approach rejected when the PVG legislation was originally created.

Significantly, it will have the unforeseen consequence of excluding significant numbers of adults, without mental or physical disabilities, who require protection when accessing services and who are currently protected under the existing POVG legislation. The personal circumstances that they find themselves in and the nature of the services they are accessing make them equally vulnerable, at risk and open to exploitation without the presence of a mental or physical disability or any vulnerability due to a “personal condition” or “capacity” issue.

For SWA, this is a specific issue for the safety and security of women experiencing domestic abuse who are accessing refuge accommodation and support services and/or other temporary accommodation services, for example homeless hostels, “bed and breakfast” accommodation, along with the accompanying housing support and other services.

It has been suggested that the problem with the “*protected adult*” definition is alleviated by provisions in other parts of the Bill but closer inspection of the wording proves otherwise. For instance, the references in paragraph 16, in Part 2, Schedule

4 to “*support services*” was proposed as being sufficient to include housing and other support services within the definition of regulated roles. However, while paragraph 16 does, indeed, state that a regulated role with adults will include “...*Providing counselling, therapy or support services to protected adults, other than where such services are provided in a prison by a prisoner to another prisoner...*”, the revised definition of “protected adult” will still restrict the scope of “*support services*” governed by this provision, so this is not appropriate. A further observation is that “*counselling*” may not cover workers in third sector organisations supporting women and children experiencing domestic abuse or victims of crime generally, nor organisations delivering advocacy services, both formal, court-ordered and third sector, as these are not “*counselling services*” either.

Similarly, a reference to “*independent living services*” at paragraph 15 of the same Schedule will not cover homelessness services and support. Firstly, again, due to the definition of “protected adult” and also because the term “*independent living services*” does not describe homelessness or temporary homelessness services and ancillary support work.

We were also directed to paragraph 5, Part 2 of Schedule 4 in the Bill, defining regulated roles with adults, which makes reference to “...*Providing advice or guidance to a protected adult in relation to education, training, career development, employability, health or wellbeing...*”, on the grounds that “*wellbeing*” would be sufficient for our purposes. “Wellbeing” is a very nebulous term and not appropriate to cover the services and support we are seeking to include, particularly when the legislation links “wellbeing” health services. While the policy intention may be to move away from lengthy and complex definition, the reality is that focussing on issues affecting a person’s “wellbeing, capabilities and capacity” excludes a vast swathe of people outside this very particular health-orientated characterisation.

To address this anomaly, section 76 of the Bill requires to be re-written to replicate the coverage of the existing section 94 and the full spectrum of services within which regulated roles in respect of “protected adults” would exist. This means adding back a reference to people accessing support services, community care services and prescribed welfare services, to both section 76 and the accompanying Explanatory Notes, where a non-exhaustive list of relevant and prescribed services and roles should be included, ensuring that housing support and accommodation services are covered.

Similarly paragraph 5, Part 2 of Schedule 4 in the Bill, defining regulated roles with adults, should be expanded to include providing support services, housing support services, temporary accommodation services, community care services and welfare services and services regulated by the Regulation of Care (Scotland) Act 2001/Care Inspectorate. The current guidance on these services, which makes specific reference to refuge services in the context of welfare services, is at <https://www2.gov.scot/resource/doc/316712/0100858.pdf>

These amendments accord with the Scottish Government’s intentions to ensure “well-regulated” temporary accommodation services, as expressed in their ongoing consultation on improving temporary accommodation standards - see <https://www.gov.scot/publications/consultation-improving-temporary-accommodation-standards/>

We have two further observations on the definition of “*protected adult*” and relevant regulated roles, as follows:-

- The reference to “*significant*” impairment in section 94 is also likely to exclude vulnerable people from protection. “*Significant*” is not defined, will likely fall foul of equality requirements and should be removed.
- The Explanatory Notes for paragraph 22 of Part 2, Schedule 4 should explicitly provide that, for the avoidance of doubt, “*holding a position of responsibility*”, as set out in that paragraph includes those in trustee, governance and managerial positions, similar to the provisions described on pages 79 and 80 of the Notes relating to regulated roles with children.

Regulated roles with children - Schedule 3, Part 2

In Schedule 3, Part 2, it is not clear from the wording describing the various regulated activities, particularly those in paragraphs 21 and 24, that children’s support services provided during the day at refuges are specifically included. A previous reference had been to services regulated by the, then, Care Commission and it would be helpful for the Bill’s Explanatory Notes to clarify that, generally for services provided to children, a regulated role could be “...*provision of a service for children regulated by the Regulation of Care (Scotland) Act 2001 or the Care Inspectorate...*”

Schedule 1- List A offences

In our response to the earlier consultation paper, we identified certain relevant offences missing from the “Schedule 8A Listing” and are pleased to see that these are now specifically included in the Bill’s List A. These are as follows: - offences relating to domestic abuse at paragraphs 20- 22, specifically section 1 of the 2018 Act; offences relating to forced marriage at paragraphs 26- 27; the offence of disclosing an intimate image under section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016; the domestic abuse aggravator, created by section one of the Abusive Behaviour and Sexual Offences (Scotland) Act 2016.

Also particularly positive is that certain offences in the current “Schedule 8B “ which we argued should be more appropriately included in “Schedule 8A,” have now been elevated to the “List A” category. These are: breach of Non-harassment orders under both the 1995 and 1997 Acts; breach of a domestic abuse interdict with power of arrest, under the 2011 Act; breach of a forced marriage protection order under the 2011 Act,

Section 23- Level 2 Disclosures- Application for review.

We would reiterate our response to the question in the earlier consultation paper seeking views on the reduction in the disclosure periods from 15 and 7.5 years, to 11 and 5.5 years, respectively. Our comment was that, given the nature of the offences listed in Schedule 8A and the need to protect the public, particularly vulnerable adults and children, from those who have carried out these offences, a reduction in these periods is not appropriate and the existing periods of 15 and 7.5 years should be maintained.

Code of Practice

Our final comment is that we support the intention to create a Code of Practice covering the implementation of the final proposals and would be interested in contributing to this in relation to the operation of the reformed PVG Scheme .