

Submission by the Northern Ireland Commissioner for Children and Young People to the Public Bill Committee on the Protection of Freedoms Bill, 13 May 2011

Introduction

The Northern Ireland Office of the Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Vetting and barring regimes play a key part in the arrangements to protect children and young people from abuse by seeking to ensure that adults who pose a risk to children are not placed in roles, paid or voluntary, which enable them to establish relationships of trust which may be exploited. We therefore welcome the opportunity to comment on the Protection of Freedoms Bill.

The provisions of the Bill relating to vetting and barring arrangements will come into effect in this jurisdiction while the Northern Ireland Minister for Justice has initiated a Review of the Criminal Records Regime which will consider the management and sharing of disclosure information and criminal records checks. This submission therefore relates to the provisions of part five chapter two of the Protection of Freedoms Bill.

The UK Government as a signatory to the United Nations Convention on the Rights of the Child should ensure that the general principles of the Convention, including the paramountcy of the child's best interests and right to life and fullest level of development, are reflected in the provisions of the legislation. We also draw attention to the obligation placed on Government under article 19 of the Convention to take all legislative, administrative, social and educational measures to protect children and young people from all forms of violence, abuse, maltreatment or exploitation. The Protection of Freedoms Bill offers an important opportunity to fulfil this commitment in relation to the vetting and barring scheme.

Restrictions on scope of regulated activities: children

Young people aged 16 and 17 years old

NICCY warmly welcomes recent commitments by the UK Government to place activities with young people aged 16 and 17 year olds in settings such as education within the scope of the vetting and barring arrangements. This is in line with the definition of a child as set out in the UNCRC and domestic legislation as being up to



18 years of age and recognises that all children and young people across this age grouping should be afforded the same level of protection.

We had raised our concerns about the exclusion of work with 16 and 17 year olds in certain settings from the definition of regulated activity with the Northern Ireland Minister for Health, Social Services and Public Safety and the relevant Assembly Committee in February 2011. We welcomed the commitment given by the Minister during the Assembly Legislative Consent Motion on 21 March 2011 to ensure that working with 16 and 17 year olds would remain within the scope of the arrangements in Northern Ireland.¹ It is positive that UK Ministers have revisited this issue and that this standard of protection will operate for 16 and 17 year olds across Northern Ireland, England and Wales.

Specified roles and settings

The Bill sets out a number of specified settings, including schools, children's homes and children's centres, as being within scope of the vetting and barring scheme and the proposals include the activities of the Children's Commissioner and inspectorate bodies in Wales. In recognition that roles in these areas offer the opportunity for contact with very vulnerable children and young people, the Northern Ireland Minister has committed to the work of the Guardian Ad Litem Agency and inspectorate bodies in this jurisdiction being placed within the scope of the scheme.² We are supportive of this move although we are disappointed this has not extended to the activities of the Children's Commissioner in Northern Ireland.

NICCY would draw attention to the importance of ensuring the Bill does not fragment the levels of protection offered to children based simply on the geographical area in which they live. The vetting and barring arrangements should operate to the highest, not the lowest, standard across the jurisdictions and should, for example, place the activities of inspectorate bodies in all relevant jurisdictions within scope of the scheme.

In considering the restricted definition of regulated activity, we note that this excludes the provision of legal advice to children, supervised teaching, training and instruction or the provision of any care and supervision of children by a person who is being supervised by another.³ It is important to recognise that a number of such excluded positions involve frequent and ongoing contact with children and young people or contact with children when they may be particularly vulnerable.

¹ <http://www.niassembly.gov.uk/records/reports2010/110321.htm#aa>

² <http://www.niassembly.gov.uk/records/reports2010/110321.htm#aa>

³ House of Commons Library (2011) Protection of Freedoms Bill Research Paper 11/20, (London: House of Commons Library).



Such roles which include, for instance volunteers in classrooms and schools and helpers in faith and sporting organisations, are often pivotal to how organisations work with and support children across a range of settings. The arrangements of the vetting and barring scheme should acknowledge that these are trusted positions which enable adults to build close relationships with children who they may seek to harm.

Roles can be placed outside the scope of regulated activity if they are “subject to the day to day supervision of another person who is engaging in regulated activity”. We are concerned that the provisions of the Bill must recognise the complex nature of supervision in the context of working with children which is often not fixed or guaranteed. The arrangements for those roles which the legislation understands as being supervised should be strengthened and supervision in the provisions must be robustly defined. We are supportive of the recent submissions to the Committee from the Sport and Recreation Alliance and Child Protection in Sport Unit and from the NSPCC which state that supervision should be outlined as close and constant and regular and direct rather than “day to day”.⁴

Indeed, the understanding of supervision in the provisions may in practice distinguish between paid and unpaid work with those in paid employment being more subject to vetting and barring arrangements. It is also of concern that the proposals in principle may lead to an adult that has been barred from taking up a regulated post, such as a teacher, being eligible to volunteer as a teaching assistant.⁵ We are not aware of evidence which indicates that children and young people are less likely to be at risk from volunteers than paid staff. Decisions on placing roles within the scope of vetting and barring arrangements must be based on an assessed risk of the role allowing individuals to develop relationships of trust with children which may then be abused. We are of the view that this assessment should apply equally to individuals in positions of trust whether they are employees or volunteers.

Controlled activity

NICCY welcomes the removal of the category of controlled activity which created an additional layer of complexity within the scheme. However, we must reiterate our position that where roles place adults who may pose a risk to children and young people in positions of trust, these should be subject to adequate vetting and barring controls.

⁴ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/protection/memo/pf60.htm>

<http://www.publications.parliament.uk/pa/cm201011/cmpublic/protection/memo/pf61.htm>

⁵ NSPCC (2011) Protection of Freedoms Bill Parliamentary Briefing, (London: NSPCC).



Main amendments relating to new arrangements

Barring arrangements and decisions

It is of great concern, as noted by the NSPCC, that checks for posts outside of regulated activity will provide only limited information leaving employers unable to make robustly informed recruitment decisions.⁶ For example, in applying for a volunteer assistant coaching role information provided may not disclose if the Independent Safeguarding Authority (ISA) has barred an individual from a regulated activity post or provide information that ISA, but not the police, is aware of. In seeking to ensure that vetting and barring arrangements operate effectively, it is important that the provisions consider how all relevant information can be shared by all agencies, including ISA, and how this will be made available to employers.

NICCY is also concerned that under the proposals individuals will only be placed on barred lists if they have been, will be, or are likely to be engaged in regulated activity. We have reservations that this high threshold is not appropriate and are unclear how assessments that individuals are not likely to seek to be engaged in regulated activity will be conducted. The provisions may also, in effect mean that concerns about those not in regulated activity, who therefore cannot be barred, will not be shared with ISA. This would not only weaken arrangements to enable early identification of those who pose potential risks to children but also lead to such concerns not being documented or made available to employers if individuals seek future work in regulated activity.

In considering the nature of information contained in checks NICCY recognises that the disclosure of non conviction information is a complex and sensitive area. In our contribution to the Northern Ireland Review of Criminal Records we will address the importance of ensuring that non conviction information and police intelligence is available as part of the disclosure process. In our recent meeting with Sunita Mason who is leading the Review in Northern Ireland, we highlighted the importance of considering how the sharing of information across national borders can be progressed. As the only jurisdiction in the UK which has a land border with another EU Member State we are acutely aware of the need to ensure that all relevant information is shared, for example, police intelligence is currently not shared between Northern Ireland and the Republic of Ireland.

Conclusion

⁶ NSPCC (2011) Protection of Freedoms Bill Parliamentary Briefing, (London: NSPCC).



As the Protection of Freedoms Bill continues its legislative passage, debates in relation to the vetting and barring provisions of the proposals must ensure a clear focus is maintained on the protection of children and young people. The legislation must not dilute or fragment the levels of protection afforded to children and must operate to a consistently high standard across England, Wales and Northern Ireland. Government must also ensure that the legislation is supported by the development of statutory guidance to facilitate the implementation of changes across jurisdictions and sectors.

While the vetting and barring scheme must be viewed as only one element in the arrangements to protect children and young people, this should remain a priority in the Government's safeguarding agenda.

