

**MSP Briefing
Disclosure (Scotland) Bill
Stage 3 Debate: 10 June 2020**

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

The Protection of Vulnerable Groups (PVG) and Disclosure systems are an important means by which the State fulfils its obligation to take all appropriate measures to protect children from harm as required by Article 19 of the UNCRC. However, the operation of these systems also represents an interference with the privacy rights of individuals under Article 16 of the UNCRC and Article 8 of the ECHR, and children's rights to rehabilitation and reintegration into society in terms of Article 40 UNCRC. It is therefore necessary that any such system strikes the correct balance between protection and privacy. This is particularly important when disclosure relates to behaviour which occurs during childhood. Disclosure of information relating to children's behaviour before the age of 18 should be exceptional and rare, and in compliance with human rights standards.

In our written evidence to the Justice Committee at Stage 1, we welcomed the Bill and said we were pleased to see that the proposals sought to simplify what is an extremely complex system.

However, we continue to have concerns that the disclosure of information about the behaviour of children in conflict with the law is disproportionate and not in line with UNCRC and European Convention on Human Rights (ECHR)¹. We raised similar concerns with the Minister for Children and Young People when we responded to the Scottish Government Consultation on PVG and Disclosure in August 2018.²

In our Stage 1 evidence we expressed concerns about the inclusion of Other Relevant Information (ORI) relating to childhood behaviour in disclosures. This information is not subject to the same legal tests and safeguards as conviction information, and we remain unconvinced that its inclusion in disclosures is compatible with the UNCRC and ECHR.

¹ <https://cypcs.org.uk/wp-content/uploads/2020/02/Disclosure-Bill.pdf>

² <https://www.cypcs.org.uk/ufiles/PVG-consultation.pdf>

We were concerned that in the bill as introduced referrals on offence grounds at Children's Hearings would continue to be disclosable. Whilst we are pleased that the bill was amended to ensure that this will not be the case in the majority of instances, we remain concerned that offences on List A and some offences on List B will continue to be disclosable. The extent of List A and List B is such that we feel that this remains at odds with the principle that disclosure of childhood convictions should be exceptional and rare. In our evidence to committee, we recommended a separate list of offences be developed relating to childhood behaviour, as is already the case in relation to the retention of DNA and other forensic information in the Criminal Justice and Licensing (Scotland) Act 2010.

Finally, we made a number of recommendations to Scottish Government regarding the Independent Reviewer of disclosure information and the importance that this process be child friendly; that fees did not present a barrier to children and young people under age 18, particularly those who are care experienced; and that there be a single process for challenging both conviction information and ORI.

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