



Support for Children (Impact of Parental Imprisonment) (Scotland) Bill

“A proposal for a Bill to require a court (at the time of sentencing) to have regard to the impact of parental custody upon the welfare and wellbeing of the offender’s children; and to ensure that children affected by parental imprisonment receive additional support as appropriate”

Consultation by

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FOREWORD

In the years since its foundation, the Scottish Parliament has taken important steps to increase protection for children and young people in Scotland. This includes Getting it Right for Every Child (GIRFEC), the Children's Hearings (Scotland) legislation, the Early Years framework, and the establishment of the office of Scotland's Commissioner for Children and Young People.

But I believe, as do others in the Scottish Parliament, that there is still a group of children who are being let down; I am referring to children experiencing parental imprisonment, of which there are an estimated up to 27,000 in Scotland.¹ These children are left behind to cope with the grief, confusion, and separation that result from parental incarceration. This is an issue of concern that has received cross party support in previous parliaments.

Throughout Scotland there is a lack of awareness about the impact parental imprisonment has on these children. They are often overlooked as victims of crime by politicians, the media and the court system. They are being neglected and we have a collective responsibility to act. We all agree that children are vulnerable, children are in need of protection, and children do not deserve to be punished for the mistakes of their parents. Then why is it that more often than not little attention is paid to the children left behind when their parents are sent to prison? These children are often suffering mental health problems, bullying and stigma, separation and grief, poor educational attainment, poverty, and depression at a time when their homes are being torn apart and it is difficult to comprehend why. But the services available to them are almost non-existent and they are more or less absent from policy and legislation.

The hole left behind by a parent who has been sentenced to custody can be a difficult one to fill. For the parent left behind it means having to adapt to being a lone parent, living off one wage instead of two, finding ways to cope with providing for the family independently. The added strain on the remaining parent means that they may not have the capacity to recognise the complex needs a child might have as a result.

¹ Scottish Government Justice Analytical Services (2012) '*Freedom of Information request*' from Dr Chris Holligan, 26 January 2012 found in Roberts, S (2012)

That is why the Scottish Parliament must legislate so that these children do not continue to suffer in silence, afraid of stigma, afraid of what might happen if they speak out about the problems they are having. This Bill has the potential to change the lives of thousands of children across Scotland.

There is undoubtedly support in Parliament to progress this issue and the time is right to revisit previous goodwill across all parties; to take a renewed look at how policy and legislation can affect change in this area and take forward these important issues to improve outcomes for children affected by parental imprisonment.

Mary Fee MSP
February 2015

HOW THE CONSULTATION PROCESS WORKS

This consultation is being launched in connection with a draft proposal which I have lodged as the first stage in the process of introducing a Member's Bill. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders and can be found on the Parliament's website.²

A minimum 12 week consultation period is required, following which responses will be analysed. Thereafter, a final proposal is lodged in the Parliament along with a summary of the consultation responses. Subject to securing the required level of support for the proposal from other MSPs and political parties, and the Scottish Government not indicating that it intends to legislate in the area in question, I will then have the right to introduce a Bill which will follow the legislative process: generally, scrutiny at Stages 1 and 2 by a Parliamentary Committee and at Stage 3 by the whole Parliament.

At this stage, therefore, there is as yet not a Bill, only a draft proposal for the legislation.

The role of this consultation in the development of my Bill is to provide a range of views on the subject matter of the Bill, highlighting potential problems with the proposals, identifying equalities issues, suggesting improvements, raising any financial implications which may not previously have been obvious and, in general, to assist in ensuring that the resulting legislation is fit for purpose.

Details on how to respond to this consultation are provided at the end of the document.

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² Available from:

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

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Alternative formats may also be requested by contacting me and I will try to ensure that the format requested is provided. An on-line copy is available on the Scottish Parliament's website and can be found under Parliamentary Business, Bills and then on the Proposals for Members' Bills page for Session 4. The following link will take you directly to the appropriate page

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/29731.aspx>

AIM OF THE PROPOSED BILL

*"Children have different needs to adults, they are more vulnerable, less developed and most of all in need of protection"*³

INTRODUCTION

1.1 The protection and upholding of the rights of vulnerable children are central to this proposal. The needs of children are generally not recognised in the criminal proceedings which result in the imprisonment of their parents. These children are often at risk of mental health problems, behavioural issues, involvement in the criminal justice system, substance misuse and decline in educational achievement. While children who are placed in care after a parental imprisonment will be known to children's services, those who are left with a relative may be overlooked and their needs left unaddressed. This has received comment in the international literature around the issue of children affected by parental imprisonment.

*"This is one of those shadowy corners of the criminal justice system seldom spotlighted. In our society, prisoners are marginalised; their spouses and adult friends isolated and hidden; while their children – to all intents and purposes – are invisible."*⁴

1.2 Significantly, 'collateral convicts', 'forgotten families', 'invisible victims', and 'invisible children' are just some of the terms used to describe children affected by parental imprisonment. These children are largely a hidden group in Scottish society:

*"The reason we don't know is we simply don't count them, and the reason we don't count them is because they are invisible."*⁵

1.3 A statistic often spoken about by Families Outside is one that more children in Scotland experience a parent going to prison than

³ Newburn, T. (1997) 'Youth, Crime and Justice' in Maguire, M. Morgan, R. And Reiner, R. (ed) 'The Oxford Handbook of Criminology' 2nd edition, Clarendon Press, Oxford. P.615

⁴ Hounslow, B. et al (1982) 'Children of Imprisoned Parents' New South Wales Department of Youth and Community Services, Sydney. P.1

⁵ TES Scotland (2009) 'Children of convicts receive rough justice, says new tsar' 17th July available at

<http://www.tes.co.uk/article.aspx?storycode=6018025>

their parents going through a divorce.⁶ In the 21st century mostly everybody knows a family that has gone through the experience of divorce. However not many people will know a child with a parent in prison. This further highlights some of the terms used to describe children affected by imprisonment above.

1.4 The Support for Children (Impact of Parental Imprisonment) Bill aims to change that. Through legislation we can make sure that the needs of these children are not forgotten, and that measures to promote their welfare and wellbeing are explicitly enshrined in law. This will firstly be done through the introduction of Child and Family Impact Assessments after the point of sentencing. This will be discussed in more detail in sections 6.1 to 6.9 of this proposal.

1.5 My overall approach is that the principles of the United Nations Convention on the Rights of the Child (1989) (UNCRC) should be enshrined and reflected in the proposed Support for Children (Impact of Parental Imprisonment) Bill. Articles 2 and 3 of the UNCRC are of particular relevance, Article 2 states "*No child should be discriminated against because of the situation or status of their parents*" while Article 3 provides that the best interests of the child must be a primary consideration:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"

1.6 The UK has ratified the UNCRC without it being incorporated into law. I believe that the proposals in this Bill are consistent with the UNCRC. They are also based on recommendations from SCCYP reports (Scotland's Commissioner for Children and Young People, 2008 & 2011). Significantly, these proposals are also based on recommendations in the UNCRC committee reports (2006 & 2012); the UN Rules for the treatment of Women Prisoners (the Bangkok Rules, 2010); and the UN Committee on Human Rights Universal Periodic Review of the UK (2012) – a recommendation that the UK Government signed and agreed.

1.7 This Bill also seeks to ensure that children affected by parental imprisonment are provided with appropriate support and protection

⁶ <http://www.familiesoutside.org.uk/>

by the education system. Given the negative impact parental imprisonment can have on children, I am proposing to include an express reference to this group in the Education (Additional Support for Learning) (Scotland Act) 2004. This will also raise awareness of these issues within local authority education departments and amongst teaching staff in schools. Teachers are sometimes unaware of the root causes of disruptive behaviour. They may not be aware that children suffering from the impacts of parental imprisonment are at risk of developing problems at school, whether academic or behavioural. Understanding the issues underlying the behaviour is central to developing appropriate mechanisms of support.

1.8 The proposed changes would be implemented through amendments to the Criminal Procedure (Scotland) Act 1995 and the Education (Additional Support for Learning) (Scotland Act) 2004. Scottish Ministers would also be required to provide an annual report detailing how the courts have met their duties under the 1995 Act as amended, and the number of children affected by parental imprisonment who received additional support under the 2004 Act.

BACKGROUND

- 2.1** There is a growing body of research internationally documenting the effects of imprisonment on children and families, due in part to rising levels of incarceration across the world.⁷ For example from New Zealand (Gordon, 2009); Sweden and the USA (Mulready-Jones, 2011); Australia (Howard, 2000); Sweden, Germany, Romania and the UK (COPING, 2013); as well as Scotland (Marshall, 2008), full references to these texts can be found in the bibliography of this proposal.
- 2.2** This empirical research highlights the harmful effects on children and young people caused by parental imprisonment. The short term impact may be that the child suffers separation anxiety or depression. If they are not able to deal with the loss due to uncertainty or stigma they may start to display anti-social behaviour in school, and their educational attainment may suffer as a consequence. In the long term, for some children, these problems may become more tangible manifesting in the form of drug and alcohol misuse, poor mental health and offending behaviour.
- 2.3** Evidence also shows that children can experience parental imprisonment in a similar way to a bereavement and express grief in similar ways. Even children less than two years old are able to express understanding that someone is not present anymore, and they can react strongly to loss at this age.⁸ Young children may not have the maturity or mental capacity to differentiate between the temporary separation of parental imprisonment and the permanent loss of death. Their reactions to grief such as anger, acting out, self-medication, isolation etc. parallel the two experiences.⁹ Additionally an important difference between loss through death and loss through imprisonment is that the former engenders sympathy and social support, whereas imprisonment fosters hostility and stigma.¹⁰

⁷ Murray, J. et al (2009) '*Effects of parental imprisonment on child antisocial behaviour and mental health: systematic review*' Campbell Systematic Reviews, 4.

⁸ A. Dyregrov (2008) '*Grief in Children*' London: JKP. P. 16

⁹ Loucks, N. (2012) '*Prisons: Where DOESN'T the community come in?*' Prison Service Journal 204, 42-50.

¹⁰ Ibid.

This has been referred to as 'disenfranchised grief', an experience of grief that is not socially supported.¹¹

2.4 There is a higher probability for expulsion, suspension, and future criminality for children with incarcerated parents.¹² In one study of children of school age, over half the children with parents in prison displayed aggression and low academic achievement.¹³ If these behaviours are approached in isolation and if they are not viewed in the context of parental incarceration it may be very difficult to tailor appropriate support services. If it is acknowledged that these behaviours may stem from having a parent in prison, it will become clearer as to how to approach the problem.

2.5 Research indicates that "having a family member with a history of involvement in the criminal justice system – parents and siblings alike – substantially increases the likelihood of a person committing delinquent acts".¹⁴ In 2002 the Social Exclusion Unit found that 65% of boys with a convicted parent go on to offend themselves.¹⁵ There are other risk factors related to offending behaviour such as poverty, lack of employment and poor social environment. When these factors get added together we can identify a problem of children facing multiple adversities and who are now facing further hardships through having a parent in prison.

2.6 One out of every three children with a parent in prison develops a significant mental health problem, compared with one in ten children in the general population. This statistic was highlighted by Aileen Campbell MSP when she spoke in support of her amendment at Stage 2 of the Children's Hearings (Scotland) Bill in the Education, Lifelong Learning and Culture

¹¹ Doka, K. J. (1998) *Living With Grief: Who We Are, How We Grieve*. Washington, DC: Hospice Foundation of America

¹² Phillips, S. et al (2002) 'Parental Incarceration Among Adolescents Receiving Mental Health Services' *Journal of Child and Family Studies*, 11 (4) 385-399.

¹³ Sack, W. et al (1976) 'The children of imprisoned parents: A psychosocial exploration' *American Journal Orthopsychiatry*, 46(4) 618-628.

¹⁴ Van de Raky, M. et al (2009) 'Association of criminal convictions between family members: Effects of siblings, fathers and mothers' *Criminal Behaviour and Mental Health*, 19, 94-108.

¹⁵ Social Exclusion Unit (2002) 'Reducing re-offending by ex-prisoners' Cabinet Office, London.

Committee in 2010.¹⁶ She noted that, although a Children's Hearing may take into account mental health issues, panel members may not recognise the cause. Although this amendment was unsuccessful, it highlights the same issue I am trying to address through the Support for Children (Impact of Parental Imprisonment) Bill. Attention must be drawn to parental imprisonment as a risk factor for young people.

2.7 There is a large evidence base linking strong family relationships to low levels of Re-offending. Re-offending rates are much lower in prisoners who have meaningful contact and maintain relationships with their children. Rehabilitation can be hindered by isolation and detachment from loved ones. 75% of offenders sentenced to youth custody re-offend within a year; almost half of all adult offenders re-offend within the year.¹⁷ When these statistics are considered together, it seems only logical that relationships between offenders and their families should be fostered in order to limit the likelihood of re-offending. This notion is backed up by the recently published Scottish Justice Committee report which calls for a new strategy to provide 'purposeful activities' for prisoners in order to decrease levels of re-offending. In this report, family contact is cited as one of the facets of 'purposeful activity' and the Committee stated it is a "fundamental element of the rehabilitation process".¹⁸

2.8 There is however no universal response to parental imprisonment; all children will react differently and respond in different ways. Some may experience all of the consequences listed above, but others may experience none; this is why responses need to be individually tailored and this is only possible when decision makers have all the facts.

¹⁶ Education, Lifelong Learning and Culture Committee debate, 15/09/2010 – Available at <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=5829&i=52300&c=1127474&s>

¹⁷ Ministry of Justice (2010) 'Breaking the Cycle' Green Paper, available at <http://www.justice.gov.uk/downloads/consultations/green-paper-evidence-a.pdf>

¹⁸ Justice Committee Report (2013) 'Inquiry into purposeful activity in prisons' available at http://www.scottish.parliament.uk/S4_JusticeCommittee/Reports/jur-13-05w.pdf

PREVIOUS ATTEMPTS TO LEGISLATE

- 3.1** Many of the issues raised in my proposed Bill were highlighted in debates around legislation in Session 3 of the Parliament. In the original Criminal Justice and Licensing (Scotland) Bill as introduced, the then Cabinet Secretary for Justice (Kenny MacAskill MSP) supported Aileen Campbell MSP's proposed amendment on children of prisoners which had been backed by Action for Children Scotland, Barnardo's Scotland, Children in Scotland, Families Outside and Scotland's Commissioner for Children and Young People. This amendment was designed to include "the responsibilities the offender has for the care of children or dependent adults" within the Bill with regards to sentencing decisions.
- 3.2** These provisions would have required the courts, in sentencing an offender in respect of an offence, to have regard to the purpose of sentencing, and to other matters including the "offender's family circumstances". The Scottish Parliament's Justice Committee, however, amended the Bill at Stage 2, and deleted Sections 1 and 2 of the Bill which related to the 'purposes and principles of sentencing'. This meant that the provisions requiring the courts, in sentencing an offender in respect of an offence, to take into account the offender's family circumstances were not taken forward.
- 3.3** A further amendment to the original Children's Hearings (Scotland) Bill was put forward by Aileen Campbell MSP with the support of the five organisations mentioned above during Stage 2. The amendment would have enabled Children's Hearings to take into account the impact of parental imprisonment on children referred to the system. This amendment was withdrawn at the request of Adam Ingram MSP, the then Minister for Children and Young People, with the assurance that the provisions of the Bill would provide for this without the need for an amendment. In addition, Aileen Campbell MSP also secured a Members' Business Debate on the subject in summer 2010 which further raised awareness of the issue and attracted wide cross-party support.¹⁹

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<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=5829&i=52300&c=1127474&s>

3.4 Whilst I welcome these previous efforts to legislate on this issue and recognise the important contribution that has been made in drawing attention to children of prisoners it must be noted that this proposal is not looking for the same outcomes. This proposal seeks to provide support to vulnerable children after the point of sentencing and after their parent has been placed in custody. I am not seeking to address the issue of sentencing decisions; the child or young person is the sole consideration regardless of the decision made about their parent or carer.

3.5 One of the arguments raised during the passage of the Criminal Justice and Licensing (Scotland) legislation was that information on “family background and circumstance” is already available through Social Enquiry Reports. One member stated that

“Any social enquiry report is bound to reflect the offender’s family circumstances, and if the social worker who prepared the report failed to draw the court’s attention to the family circumstances, I have no doubt that the defence solicitor would bring the matter firmly before the court”²⁰

3.6 Unfortunately the reality is often very different. Social Enquiry Reports (now Criminal Justice Social Work Reports) are not mandatory and are only used in a minority of cases. In its report to Ministers the Justice Review Committee recommended “that it should not be necessary for a court to obtain a social enquiry report if the court is satisfied that, having regard to the sentence likely to be imposed by it, the obtaining of such a report would serve no useful purpose”²¹ In the minority of cases where they are used, they focus primarily on the offender and only touch on issues relating to dependent children, for example simply stating “the offender has three dependent children”. The needs and more importantly the potential impact of sentencing on the child are often completely bypassed.

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<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=5488&mode=html>

²¹The Summary Justice Review Committee (2006) – Report to Ministers, available at <http://www.scotland.gov.uk/Publications/2004/03/19042/34206>

3.7 The revised 2010 guidance from the Scottish Government on Criminal Justice Social Work Reports does require slightly more detailed information. It states that a report '*must consider also the impact of a custodial sentence on the individual and his family*'²² However, the fundamental difference is that the focus of these reports is the offender, and considerations of family and children are only secondary. They are conducted by Criminal Justice Social Workers; key areas of investigation centre on the individual's offending behaviour and identifying potential risk factors relating to this behaviour. Child and Family Impact Assessments would put children at the centre of the process and ensure first and foremost that their needs are met.

3.8 During the debates on amendments within the Justice Committee at Stage 2 of the Criminal Justice and Licensing (Scotland) legislation, concerns were raised by members of the Justice Committee about the potential for inconsistency in sentencing and the possibility that courts may be swayed to leniency by discussion of dependent children. This is why I am proposing that Child and Family Impact Assessments be introduced after the point of sentencing. If the sentence has already been handed down to the offender there can be no question that the assessment is anything other than a tool for protecting and supporting the children who are left behind.

²² <http://www.scotland.gov.uk/Resource/Doc/925/0110144.pdf>

EXAMPLES OF UK AND INTERNATIONAL GOOD PRACTICE

4.1 In the absence of any mandatory assessments for children of prisoners, the Scottish charity Circle has been providing Sheriffs with short overviews for the clients Circle supports regarding the consequences for children should their parents be imprisoned. Marina Shaw, manager of Circle's 'FABI@ project (Families Affected by Imprisonment), noted in a recent Cross-Party Group that anecdotally this information has been largely welcomed by Sheriffs. This is a positive indicator for the introduction of the Child and Family Impact Assessments which would accompany the Bill and their potential uptake.

4.2 In New South Wales, a Legislative Council Standing Committee Inquiry into Children of Imprisoned Parents recommended that the prison reception interview should document details of prisoners' children including their ages, legal custody, and whether the prisoner was the primary carer prior to imprisonment (Parliament of New South Wales 1997). This recommendation was accepted.²³ The Scottish Prison Service currently uses a children's rights impact assessment tool to inform delivery in prisons which is based on the same principles. This is an encouraging move forward but I believe that this kind of assessment needs to be done much sooner, children should not have to wait until their parent has been incarcerated to receive care and support. This view is supported by a recent Barnardo's publication based on interviews with children and families affected by imprisonment which concluded that 'there is a need wherever possible for a prompt (that is, at the point of imprisonment) response to the family affected by imprisonment'²⁴

4.3 In India in October 2011, the High Court of Gujarat ordered State support of a prisoner's family because the imprisonment had caused them "untold misery and deprivation without any fault on their part".²⁵

²³ Cunningham, A. (2001) 'Forgotten Families – The impacts of imprisonment' Family Matters (59) 35.

²⁴ Barnardo's (2013) 'Working with children with a parent in prison: Messages for practice from two Barnardo's pilot services' available at <http://www.barnardos.org.uk/working-with-children-with-a-parent-in-prison.pdf>

²⁵ 'HC directs govt to take care of families of poor prisoners' in *The Times of India*, 31 October 2011, available at: http://articles.timesofindia.indiatimes.com/2011-10-31/ahmedabad/30341579_1_jail-inmates-prisoners-vadodara-central-jails

4.4 Scotland has made some steps in this regard, for example with a Sheriff last year allowing a woman to return home to make arrangements for the care of her children before serving her sentence in HMP Cornton Vale.²⁶ While welcome, this has not established a legal precedent and remains very much an exception to the norm. It must be noted here that the UK is signatory to the UN Bangkok Rules regarding women prisoners and the aforementioned is a requirement of these rules.

4.5 In 2010 Huddersfield University embarked upon a three-year research project titled COPING to gather evidence from children affected by parental imprisonment in the UK, Sweden, Romania and Germany. Although the findings from this project are yet to be published the preliminary findings were discussed in Brussels in November 2012. Members of the United Nations, the World Health Organisation, UNICEF, and the European Commission were in attendance, all of which agreed to place children of prisoners higher up on their agendas:-

"This research has made invisible children visible and I will add children of prisoners to the group of vulnerable children who should be considered and recognised. Verena Knaus, UNICEF Brussels²⁷

4.6 Sweden has an interview and referral process which serves to flag up if a child will be negatively impacted by their parent being arrested. At the time of arrest all offenders are interviewed by the police and must complete a questionnaire detailing their child caring duties and whether or not there are care arrangements in place. If it is found that no care arrangements for the child are in place a referral is made to Children's Services ensuring there is no lapse in care.²⁸ This is a very positive preventative mechanism to make sure that even before a charge or sentence has been handed down protective measures are put in place for the child should incarceration of their parent be the outcome. The focus on avoiding any lapse in care is something this Bill seeks to address, as

²⁶ Currie, G. (2011) 'Sent home to warn daughter she's off to jail' in The Scottish Sun, 4 March 2011. Available at <http://www.thescottishsun.co.uk/scotsol/homepage/news/3445527/Sent-home-to-warn-daughter-shes-off-to-jail.html>

²⁷ http://www.coping-project.eu/final_conference.php

²⁸ Mulready-Jones, A. (2011) 'Hidden children: a study into services for Children of Incarcerated Parents in Sweden and the United States' available at http://www.wcmt.org.uk/reports/814_1.pdf

research shows children of prisoners often fall through the cracks or come below the thresholds for children's social care services.

COMPONENTS OF THE BILL

- 5.1** Research completed in New Zealand highlights three levels of invisibility for children of prisoners. The first is institutional invisibility: statutory agencies are failing to recognise the needs of this vulnerable group. The second form of invisibility stems from a lack of contact with the incarcerated parent; and the third form is a failure to identify certain needs a child may have, whether they be social, educational, mental, behavioural or health related.²⁹
- 5.2** This proposal takes a twin-track approach to tackle two of these levels of invisibility. Firstly the Bill would amend the Criminal Procedure (Scotland) Act 1995 to place a statutory duty on the courts to order a Child and Family Impact Assessment after a sentencing decision has been handed down. The information gathered from these assessments would ensure that children are recognised by statutory agencies and receive wrap-around care that is tailored to their specific needs and vulnerabilities.
- 5.3** Secondly, the Bill would amend the Education (Additional Support for Learning) (Scotland Act) 2004 to ensure that schools are more involved in this wrap-around care by highlighting that children of prisoners are an at risk group who may be in need of additional support. The Bill would specifically recognise children affected by parental imprisonment on the face of the Educational (Additional Support for Learning) (Scotland) Act 2004 as one of the two groups of children (the other being looked after children) where it is presumed that a child will have additional support needs. Education authorities would be required to consider if such a child will require a co-ordinated support plan. The presumption that a child affected by parental imprisonment will have additional support needs would not apply where, after an assessment, the education authority concludes that the child will benefit from school education without the additional support

²⁹ Gordon, L. (2009) '*Invisible Children: First year research report 'A study of the children of prisoners'*' available at http://www.rethinking.org.nz/images/newsletter%20PDF/Issue%2070/05%20Invisible_children.pdf

being put in place. An expansion of this point will be discussed in sections 7.1 to 7.14 of this document.

5.4 The Bill will require Scottish Ministers to lay before the Scottish Parliament an annual report on the exercise of the courts' duties under new Section 199A of the Criminal Procedure (Scotland) Act 1995 and on the additional support provided through the Education (Additional Support for Learning) (Scotland) Act 2004 to children affected by parental imprisonment. Scottish Ministers will be required to publish the report.

CHILD AND FAMILY IMPACT ASSESSMENTS

- 6.1** An integral aspect of this proposal is the introduction of Child and Family Impact Assessments after a sentencing decision. I have repeatedly called for Child and Family Impact Assessments to be introduced from Parliament and received assurances of discussions from the Cabinet Secretary of Justice. The absence of this kind of assessment at present means that the impact on children is effectively excluded from criminal proceedings, where a parent has been arrested or charged with an offence. A holistic, in depth assessment of the needs of the child, their background and home environment is essential to ensure there is appropriate and individually tailored support for them should parental imprisonment be the outcome.
- 6.2** A small-scale study was run by Families Outside to consult on some of the issues surrounding this Bill.³⁰ One of the issues that arose was around responsibility and provision of primary care. If a child is living with their mother and has little or no contact with their father, the impact of paternal imprisonment will undoubtedly be less than a child whose father is their primary care giver. Similarly, a child does not have to be biologically related to their care-giver for imprisonment to have an impact on them. All relationships, not just biological must therefore be taken into account and this can only be done if all the relevant information is received.
- 6.3** This is why Child and Family Impact Assessments are such an integral and important part of this proposal, they will help to gather an in-depth portfolio of information regarding the home environment and background of the family prior to arrest. This kind of information is not readily available at present and without it relevant agencies are not being alerted to the needs of these families and how best to support them resulting in vulnerable children slipping through the net. Recent Barnardo's research indicates that support at the point of imprisonment is crucial for parents and children. The first hours and days after a parent goes to prison are extremely significant with regards to children's emotional wellbeing and a lack of appropriate support at this time can have a very damaging effect.

³⁰ Loureiro, T. (2009) '*Child and family impact assessments in court: implications for policy and practice*' Families Outside

6.4 Most importantly Child and Family Impact Assessments will allow children to express their views, emotions and feelings about what is happening. Children often feel excluded from court proceedings and their point of view is often bypassed. One boy interviewed for the Barnardo's report stated;

*"No-one has asked me what I want to do; no-one has asked me if I want to see my dad; no-one has asked me anything"*³¹

We need to support these children right from the start; we shouldn't be waiting for behaviours to manifest and situations to worsen for interventions to take place. If we can assess the needs of each child and implement the appropriate support there will be less need for crisis management further down the line.

6.5 As well as providing qualitative information about the children involved, Child and Family Impact Assessments would also serve as a quantitative tool for counting and recording the number of children affected by parental imprisonment. As recommended by the UNCRC (Day of General Discussion 2011) *"statistics about children of incarcerated parents should be routinely and consistently gathered, to help develop policy and practice"*.³² This does not happen in Scotland at present, and it is impossible for governmental and statutory agencies to make provisions for children if they do not know about them. If an assessment was mandatory for all children who have a parent or carer sent to prison then the Scottish Government would be able to quantify the number of assessments done and start to provide statistics about the number of children in Scotland affected by parental imprisonment.

6.6 One of the criticisms levelled at proposals of this kind is that having a child may become a 'get-out-of-jail free card' for offenders. This is not the case; the primary aim of these assessments would be to ensure that immediate protective strategies are available for the children of offenders which can be targeted at their individual needs. The issue of sentencing decisions is not being addressed through these proposed

³¹ Barnardo's (2013) *'Working with children with a parent in prison: Messages for practice from two Barnardo's pilot services'* Pg 9

³² Robertson, O. (2012) *'Collateral Convicts - Children of incarcerated parents'* Quaker United Nations Office, Human Rights and Refugees Publications. P. 5.

legislative changes. The priority is to assess and support the best interests of the child, not the offender.

6.7 An example of a similar assessment introduced by the Scottish Government would be that of 'Victim Impact Statements' intended to give victims a voice in the judicial process but not influence the sentence. Children of prisoners are the hidden victims in any court case, the outcome of which will arguably affect them more than it will the direct victim of the crime. Why then do we have a platform for victims to voice their concerns and verbalise how the crime has affected them but no such platform for the hidden victims? Victim Support services also offer comprehensive support to victims of crime yet no similar service exists for the hidden victims. The Victims and Witnesses (Scotland) Bill that is currently passing through Parliament seeks to put victims and witnesses at the heart of the criminal justice system. Reference is made not only to victims but also the families of victims, yet no reference is made to the families of the accused. Both have been affected by the crime committed, both are innocent, both need support at an extremely difficult time yet only one receives it. This is why we must introduce Child and Family Impact Assessments, to give the hidden victims their voice and ensure that their needs are not bypassed.

6.8 The Families Outside study referred to previously (Loureiro 2009) looked more specifically at the practicalities of introducing Child and Family Impact Assessments. Several key stakeholders were interviewed to gauge what key themes and issues there were surrounding the idea of Child and Family Impact Assessments. The general feeling from respondents was that little or no progress had been made in the name of children of prisoners through the use of Social Enquiry Reports over the last 20 years. The majority agreed that assessing the impact of parental imprisonment is essential³³ and that Child and Family Impact Assessments are the way to do this.

6.9 What was less unanimous was the question of who should be responsible for conducting the assessments. Questions were raised about whether Criminal Justice Social Workers, Family Social Workers or an independent organisation (e.g. a voluntary

³³ Loureiro, T. (2009) '*Child and family impact assessments in court: implications for policy and practice*' Families Outside, P53

sector service) were best placed to do this. At present, Criminal Justice Social Workers are responsible for conducting Criminal Justice Social Work Reports, but the argument remains that these are offender focused as could be argued are the social workers themselves. Children & Family Social Workers may be more qualified to deal with issues relating to family and home life but may be less familiar with criminal justice proceedings and the court setting.³⁴ There may be scope here to involve the third sector in this process, and consideration of this is something we would welcome in consultation responses.

³⁴ Ibid

ADDITIONAL SUPPORT FOR LEARNING

7.1 *"The main social cost incurred by the children of imprisoned mothers comes from an increased likelihood of their becoming NEET (Not in Education, Employment or Training) and therefore having poorer long term prospects."*³⁵

7.2 The Education (Additional Support for Learning) (Scotland) Act 2004 defines a child in need of additional support as:

*"A child or young person has additional support needs for the purposes of this Act where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person."*³⁶

7.3 Currently under this Act, assessments within schools identify the specific need of the individual child so that the correct level of support can be provided. In this respect the Support for Children (Impact of Parental Imprisonment) Bill would introduce a presumption within the Education (Additional Support for Learning) (Scotland Act) 2004 that children affected by parental imprisonment will have additional support needs. This however will be subject to an appropriate assessment being undertaken, and concluding that the child does have such needs. This amendment to the 2004 Act is necessary to ensure that parental imprisonment is explicitly highlighted as a risk factor that could indicate the need for assessment and subsequent additional support. Parental imprisonment should be one of the triggers for assessment as it can often be a pre-cursor to other issues requiring support such as truancy, falling educational attainment, behavioural problems and so on.

7.4 The more general point about this group of children needing reference in legislation was made explicitly clear by Kathleen Marshall, then Scottish Commissioner for Children and Young People, in the report 'Not Seen, Not Heard, Not Guilty'

³⁵ Action for Prisoners' Families, written submission, p2 in Roberts, O (2012) 'Collateral Convicts: Children of incarcerated parents' Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion, 2011.

³⁶ Education (Additional Support for Learning) (Scotland Act) 2004 available at - http://www.legislation.gov.uk/asp/2004/4/pdfs/asp_20040004_en.pdf

(2008) and again by her successor, Tam Baillie in the 2011 follow-up report:

*"There should be local and national guidance on children who may be 'in need' in terms of section 22 of the Children (Scotland) Act 1995. Guidance should refer explicitly to the children of prisoners as potentially falling into this category."*³⁷

7.5 It is important to reiterate here that under the current Education (Additional Support for Learning) (Scotland) Act 2004, provisions are made for children who are unlikely to benefit from school education without additional support. This is an extremely broad category and, without doubt many children experiencing parental imprisonment could fall into this category. The purpose of the proposed amendment to the 2004 Act is to include an explicit reference in this legislation highlighting that children affected by parental imprisonment are at risk of this. There is currently not an appropriate level of awareness amongst teaching staff about parental imprisonment as a risk factor; this lack of awareness combined with pre-conceptions and judgements often levelled at children with a parent in prison can end up amounting to stigmatization, isolation and a lack of support as a consequence. The proposed legislation will make steps towards tackling this.

7.6 Recent research done by the University of Huddersfield concluded that schools can provide help with schoolwork, emotional support and counselling to children of prisoners (COPING, 2013). Barnardo's research has also highlighted the importance of liaising closely with schools to support children affected by parental imprisonment.³⁸ A comprehensive study highlighting the important role of schools can be found in the case studies at Annex 2 of this consultation (Roberts, 2012). However the only way schools can play a part in this support is if staff are able to identify the children affected. They cannot help if they don't know who they are. Specifically including children of prisoners in the 2004 Act will make sure their needs are identified through the education system and support provided accordingly.

³⁷ Marshall, K. (2008) 'Not Seen, Not Heard, Not Guilty' available at http://www.sccyp.org.uk/uploaded_docs/adult%20reports/not%20seen%20not%20heard%20not%20guilty%20compress.pdf P.53

³⁸ Barnardo's (2013) 'Working with children with a parent in prison: Messages for practice from two Barnardo's pilot services'

7.7 Children experiencing parental imprisonment can have complex problems involving mental health, disruptive or offending behaviour, and educational attainment. Too often we tend to look at these problems individually; in isolation, we may not be able to draw clear conclusions as to the causes and the solutions. Below is an example of this drawn from recent Barnardo's research:

"I have a case with a 14-year-old and his mum is in custody and he has been going in and out and all that and he lives with his dad and adores him and respects him for the job he's done and the way he's coped but he desperately wants the nurturing and softness that he would get from his mum. He is acting up in class. They are totally missing it all – they just see a boy who is badly behaved"³⁹

7.8 Children of prisoners have common problems adjacent to their individual needs; they are united by a class of circumstances, members of a distinguishable group. If their individual needs have not been met through additional support for learning then we need to consider if it is possible for their needs to be flagged through their membership of this group and support provided accordingly.

7.9 The Education (Additional Support for Learning) (Scotland) Act 2009 amended the original 2004 Act to include:

"Without prejudice to the generality of subsection (1), a child or young person has additional support needs if the child or young person is looked after by a local authority (within the meaning of section 17(6) of the Children (Scotland) Act 1995 (c.36))." Section 8 (1A)⁴⁰

7.10 This amendment was successful, it was accepted that looked after children will be deemed to have additional support needs, unless the education authority assesses otherwise. Under this Act, local authorities are required to carry out an assessment of every looked after child's additional support needs, they can then decide whether or not a child needs additional support for learning and whether a co-ordinated

³⁹ Ibid pg 15

⁴⁰ http://www.legislation.gov.uk/asp/2009/7/pdfs/asp_20090007_en.pdf p.7

support plan (CSP) is required. During this legislative debate Margaret Smith MSP stated:

*"Some will say that, because of the Getting it Right for Every Child programme and the inclusive nature of the 2004 Act, it is wrong to pick out and give prominence to any group of children. However, I believe that these children and young people are different. Either they have no parents or their parents are unable or unwilling to care for them."*⁴¹

7.11 Many of the vulnerable children we are referring to will not be missing both their parents, however the same principle applies. Children of prisoners can experience the same emotional, mental, and behavioural issues as looked after children. Their remaining parent may lack the capacity to fully cope with the additional needs their child may have due to the additional strain of being a single parent. Financial issues, employment issues or simply a lack of time may mean the remaining parent does not have the capacity to draw attention to their child's additional needs and to lobby for additional support for learning in school.

7.12 The president of the Additional Support Needs Tribunals for Scotland supported the amendment to the 2004 Act and, with regards to looked after children, stated:

*"These children all have needs which already involve agencies other than education but there may be an absence of a person to advocate on behalf of the child to ensure that the support in relation to the child's educational development is appropriate or sufficient."*⁴²

7.13 The same can be said for children with incarcerated parents. They may not have a capable person to advocate on their behalf and, moreover, they are unlikely to be involved with other agencies if they are still living with a biological parent. Therefore they are more likely to fall through the net and pass under the radar of support agencies. This is why we need to talk about children of prisoners within the same context as looked after children within legislation.

⁴¹ <http://archive.scottish.parliament.uk/s3/committees/ellc/or-09/ed09-1202.htm#Col2226>

⁴² <http://archive.scottish.parliament.uk/s3/committees/ellc/or-09/ed09-1202.htm#Col2226>

7.14 Data collected as part of the assessment process would also act as a quantitative tool for counting and recording the number of children affected by parental imprisonment. This would complement the information gathered from Child and Family Impact Assessments and provide additional information about the support requirements identified for children affected by parental imprisonment.

FINANCIAL IMPLICATIONS OF THE BILL

8.1 The majority of the costs would be incurred paying the staff responsible for carrying out Child and Family Impact Assessments.

8.2 There may be extra costs for the education department due to an increase in the number of co-ordinated support plans developed for children of prisoners in schools.

8.3 The proposed legislative changes may have a small financial impact upon the Scottish Government should Ministers choose to publicise the change in the law.

EQUALITIES ISSUES

9.1 The impact of age, gender, race, social inequality etc. will have to be considered when developing the Child and Family Impact Assessments. The questions may have the potential to invoke sensitive issues.

9.2 There are potentially stigmatising effects linked to singling out certain groups of children, this must be taken into consideration by teachers when putting children forward for ASL assessments. If the proposal was to be developed further a full equalities impact assessment would be carried out.

CONCLUSIONS

Children with parents in prison are often stigmatised and excluded; it is less acceptable for them to express their grief outwardly due to shame or embarrassment. All children suffering loss have the right to have their feelings acknowledged, to have their voices heard and most of all to be supported and cared for.

Support is the key principle of this proposal; not enough is being given to these children, and this Bill seeks to change that. We want to ensure immediate support is given to children if their parents are sentenced to custody. This will be done through Child and Family Impact Assessments, which will ensure there is a proper support system in place at the time of sentencing so no child slips through the net. Further down the line, we seek to provide Additional Support for Learning for these children. Children spend a large portion of their time at school; teachers and educational staff are often best placed to pick up on any changes in behaviour and have the resources available to them to provide ASL assessments and co-ordinated support plans.

There needs to be a wider acknowledgment of these children as a vulnerable group so they do not continue to suffer in silence. The way to achieve this is to enshrine these principles in legislation, to implement a statutory responsibility of care for these children who may otherwise remain unseen and unsupported.

In a recent debate on the Victims and Witnesses Bill in the Scottish Parliament, the then Cabinet Secretary for Justice, Kenny MacAskill MSP, said that the Bill "was to put the needs of victims and witnesses at the centre of the criminal justice system."⁴³ This Member's Bill ensures that all victims are placed at the centre of the criminal justice system.

We welcome consultation responses on this issue.

⁴³ SP OR 19 June 2013, col 21316-21321

QUESTIONS

Q1. Do you support the general aims of the proposed bill? Please indicate yes/no/undecided and explain the reasons for your response.

Q.2 Would you make any changes to the proposed Support for Children (Impact of Parental Imprisonment) Bill and if so, why?

Q3. Do you see any potential problems (including implementation) with the proposed Child and Family Impact Assessments? And who do you think is best placed to deliver them?

Q5. Do you think there are any alternatives to Child and Family Impact Assessments?

Q6. Do you think the proposed amendment to the Education (Additional Support for Learning) (Scotland) Act 2004 is sufficient to provide the necessary support for children experiencing parental imprisonment? If not, please explain why.

Q7. What are the likely financial implications of the proposed Bill? If possible please provide evidence to support your view. What (if any) other significant financial implications are likely to arise?

Q8. Is the proposed Bill likely to have any substantial implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?

ANNEX 1

Case Study A

Savannah is 15 years old and lives with her mother and younger brother. Her father is serving a 10-year sentence and has been in prison since Savannah was 11. She and her brother were at home when the police came to arrest their dad, and they watched as he was handcuffed and taken away. Ashamed and afraid of stigmatisation, Savannah's mother told her children not to talk to anyone about what had happened and, above all, they were not to mention it at school. Traumatized from witnessing the arrest, and full of anxiety about what would happen to her dad, Savannah changed from being a girl who performed well and was happy at school, to someone who was either withdrawn and quiet, or on occasion prone to angry outbursts. Over time her grades slipped, she rarely completed homework and her attendance became patchy. A concerned teacher tried to engage Savannah about this change in behaviour, but she was reluctant to open up. When she moved to high school the bullying started; whispers at first, followed by blatant comments: "Stay away from her, her dad's in jail." The day that one of her teachers announced across the classroom, "You're going to end up just like your father" was the last time Savannah attended school. She has a deep mistrust of authority and has disengaged from any formal system of support, putting her at high risk of harmful behaviour patterns, future unemployment and ultimately of entering the criminal justice system herself.

Case Study B

Kendon is 14 and, like Savannah, he also has a parent in prison: his mother is 3 years into an 8-year sentence. Kendon lives with his grandmother and 3 younger siblings and they too were at home when their mother was arrested. Unlike Savannah, however, Kendon's grandmother felt able to contact the school the next day, explaining what had happened and informing them that she was now caring for the children. Every member of staff at Kendon's school, teaching and non-teaching, has undergone specific training on supporting children affected by imprisonment, and there is information available for pupils and carers on how to access relevant agencies. Kendon's Guidance Counsellor meets regularly with him to check how he is doing, especially after visits to his mother (which if they fall on a school day are authorised absences), and he is monitored through

the school's support group. Kendon accesses the school counselling service and has recently been invited to take part in an in-school support group with 7 other children facing similar issues. The Guidance Counsellor sends copies of Kendon's school reports to his mother via the prison and is able to call her once a term to discuss his progress, which means that when Kendon visits his mother they can talk meaningfully about his schooling. Kendon has also experienced stigma and shame, but the school has actively tried to reduce this by ensuring that issues around crime and prison are addressed through the curriculum and by dealing with bullying incidents head-on. He enjoys school, is performing well and hopes to go to college next year.

Taken from Roberts, S. (2012) *'The Role of Schools in Supporting Families Affecting Imprisonment'* pg. 3 available at

<http://www.familiesoutside.org.uk/content/uploads/2012/09/The-Role-of-Schools-in-Supporting-Families-Affected-by-Imprisonment-FINAL.pdf>

ANNEX 2

FAQ's

Q1) Will the amendment to the Criminal Procedure (Scotland) Act 1995 promote leniency when sentencing offenders with children?

No, the proposal does not suggest that offenders with children should get off lightly. The amendment first and foremost is to make sure that the impact of imprisonment on the child (not the offender) is taken into account and their needs are catered for. The amendment seeks to ensure judges have all the relevant information in order to make a considered, informed decision where children are involved. There is no tool available at present which does this.

An example of a similar assessment would be 'victim impact statements' When discussing the introduction of these in 2009 Kenny MacAskill MSP stated *'We must not forget that the victim is always an innocent party, the ones who find themselves in the criminal justice system by no more than a chance encounter or cruel twist of fate ... By introducing a national Victim Statement Scheme for serious criminal cases the Scottish Government is giving victims a voice in court. They can choose to tell the court about the effects the crime had on them, after the accused has been found guilty, but before they are sentenced.'*

This is certainly the case for children and families of prisoners as well. There is undoubtedly scope here for Child and Family Impact Assessments to provide similar information to a 'victim impact statement' *'The statement will be made after finding of guilt but before sentencing. Statements are designed to give victims a voice, not influence the sentence'*

Q2) Criminal Justice Social Work Reports have already been revised to take into account 'family circumstances', is this not enough?

This may be the case and this is certainly a step in the right direction. However these reports are still offender focussed and compiled by a Criminal Justice Social Worker. Rhetoric does not always mirror reality, just having the words 'family circumstance' in there does not mean

social workers will pay any particular attention to it, especially if they are focused on the individual needs of the offender. A separate form of assessment is needed that doesn't just 'take into account family circumstance' but has children and families wellbeing as the sole focus.

Q3) Children of prisoners are already covered under the Education (Additional Support for Learning) (Scotland) Act, as they are 'unlikely to benefit from school education without additional support'

Evidence shows that children of prisoners are an incredibly vulnerable group, at risk of developing many of the same complex problems as looked after children. A presumption was added in legislation that looked after children will have additional support needs due to their circumstance. A same presumption is needed for children of prisoners. If a child is in need of ASL a parent is best placed to lobby for this support, without a strong parental figure these children may miss out on the additional support they require.

Q4) Isn't there a worry that by singling out children of prisoners as an explicit group you may further stigmatise them?

This is a concern; children of prisoners already face stigmatisation and prejudice and we certainly do not want to exacerbate this. This is a quote from a teacher with regards to the changes in legislation for looked after children in response to the same question' *I think they understood as soon as we said 'this isn't just about kids with learning disabilities. This is about kids where things have happened to them that mean they're quite anxious and sad, or they've not been able to go to school so they've missed out on loads I think they understood what we were saying'*

It needs to be handled in the right way by teachers and support staff so children don't start thinking they are 'stupid' but that external things, out of their control may mean they want help and support, it is about letting them know it's available to them if they want it.

Q5) The Scottish Prison Service already uses a 'children rights impact assessment tool' to inform service delivery in prisons.

This is also an encouraging move forward. Maintaining family contact in prisons is key; this is something we have stated in our proposal. However we want these kind of assessments used much earlier in the

process, children should not have to wait till they are visiting their parents in prison to have their needs and rights considered.

Q6) Why are only children included in the proposal? What about dependent adults e.g. an offender who cares for her disabled mother?

There is no denying that dependent adults are also at risk if their primary carer is sentenced to custody and this is certainly an issue that needs to be addressed. However the number of children experiencing parental imprisonment is a more pressing issue and one that needs to be specifically targeted. Children are at a more vulnerable stage in their life where traumatic events, upheaval and a lapse in good quality care may have a very real negative impact on their later life. Additionally, it is more likely that a dependent adult will already be known to local authorities and support services through claiming disability allowance etc. Therefore the chance of them falling completely through the net when it comes to care is less than that of children.

Q7) Co-ordinated support plans (CSP's) for looked after children are still not used enough despite a specific reference being made to them with regards to ASL legislation. Why would there be any difference with children of prisoners?

There is still a problem with the use of CSP's in schools. They are comprehensive, legal documents requiring action which obviously means extra work for teachers and educational staff should they be needed. The problem at present according to a Barnardo's report is that looked after children (despite having an explicit reference added in legislation) often remain ineligible for CSP's due to the stipulation that that a child must have 'enduring needs' for one year or longer. Looked after children often dip in and out of care meaning they may not qualify for a CSP.

With regard to children of prisoners, it may be easier for some of them to qualify for a CSP if their parent is sentenced to one year or more in prison, this should surely satisfy the aforementioned stipulation.

However CSP's are not necessarily the main form a support we are looking for. There are other support systems available for children who are deemed to have additional support needs such as Individualised Education Programmes (IEP's). The issue is that these children need to

be flagged through legislation so they can receive some kind of additional support even if it is not a CSP.

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HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Responses should be submitted by 7th of May 2015 and sent to:

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E-mail: mary.fee.msp@scottish.parliament.uk

Please make it clear whether you are responding as an individual or on behalf of an organisation.

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that the normal practice is to make responses public – by posting them on my website <http://maryfeemsp.com/> and in hard copy in the Scottish Parliament's Information Centre (SPICe).

Therefore, if you wish your response or any part of it, to be treated as anonymous, please explain the reasons for this. If I accept the reasons, I will publish it as "anonymous response". If I do not accept the reasons, I will offer the option of withdrawing it or submitting it on the normal attributable basis. If your response is accepted as anonymous, it is your responsibility to ensure that the content does not allow you to be identified.

If you wish your response or any part of it, to be treated as confidential, please state this clearly and give reasons. If I accept the reasons, I will not publish it (or publish only the non-confidential parts). However, I am obliged to provide a (full) copy of the response to the Scottish Parliament when lodging my final proposal. As the Parliament is subject to the Freedom of Information (Scotland) Act

(FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

The summary of the results of this consultation will normally aim to reflect the general content of any confidential response, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published in full.

There are a few situations where not all responses will be published. This may be for practical reasons: for example, where the number of submissions we receive does not make this possible or where a large number of submissions are in very similar terms. In the latter case, only a list of the names of people and one response who have submitted such responses would normally be published.

In addition, there may be a few situations where I may not choose to publish your evidence or have to edit it before publication for legal reasons. This will include any submission which contains defamatory statements or material. If I think your response potentially contains such material, usually, this will be returned to you with an invitation to substantiate the comments or remove them. In these circumstances, if the response is returned to me and it still contains material which I consider may be defamatory, it may not be considered and it may have to be destroyed.

Data Protection Act 1998

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. Normally I will publish all the information you provide (including your name) in line with Parliamentary practice unless you indicate otherwise. However, I will not publish your signature or personal contact information (including, for example, your home telephone number and home address details, or any other information which could identify you and be defined as personal data).

I may also edit any information which I think could identify any third parties unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

Further information about the Data Protection Act can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, once your response is received by NEBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (FOI(S)A). So if the information you send me is requested by third parties the Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, even if I have agreed to treat all or part of the information in confidence and to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

Further information about FOI can be found at: www.itspublicknowledge.info.