

Protection of Children and Prevention of Sexual Offences (Scotland) Bill

Bill Number: SP Bill 30
Introduced on: 29 October 2004
Introduced by: Cathy Jamieson (Executive Bill)
Passed: 2 June 2005
Royal Assent: 12 July 2005

[2005 asp 9](#)

Passage of the Bill

The [Protection of Children and Prevention of Sexual Offences \(Scotland\) Bill](#) [SP Bill 30] was introduced in the Parliament on 29 October 2004. The Justice 1 Committee, as lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on [8 December 2004](#). The Stage 1 (general principles) debate took place on [17 March 2005](#) and the [Bill was passed](#) following the Stage 3 parliamentary debate on [2 June 2005](#).

Objectives of the Bill

The [Policy Memorandum](#) stated that the “primary objective of this Bill is to better protect children from sex offenders” (para 2). Although the main provisions of the Bill reflect this primary objective, it also contains provisions with the objective of better protecting both children and adults from sex offenders.

Provisions of the Bill as introduced

Two elements of the Bill as introduced focused on the primary objective of better protecting children from sex offenders:

1. ‘Meeting a child following certain preliminary contact’ – a new criminal offence aimed at preventing an adult sexually abusing a child, following some earlier communication between the two (e.g. via the internet or through telephone conversations), during which the adult seeks to gain the child’s trust. The offence is concerned with the problem of sexual abuse following what is sometimes described as ‘grooming’. Although the offence is structured in a way which seeks to catch an offender before sexual abuse takes place, it does not criminalise communications amounting to grooming without some further action.
2. Risk of Sexual Harm Orders (‘RSHOs’) – a new type of civil preventative order which the police could seek from a court to restrict the activities of an

adult who is believed to present a risk of sexual harm to children. The RSHO, and the specific restrictions which it imposes, must be necessary to protect a specific child or children generally from harm. There does not have to be evidence of behaviour amounting to a criminal offence, although an RSHO might be used where there has been behaviour which might be criminal but where there is insufficient evidence for criminal proceedings.

A third element of the Bill as introduced sought to further protect both children and adults from convicted sex offenders by extending the availability of existing measures:

3. Sexual Offences Prevention Orders ('SOPOs') – a type of civil preventative order which the courts are already able to impose to restrict the movements of sex offenders. Currently, SOPOs may be imposed where there is evidence of threatening behaviour post conviction (e.g. after release from a custodial sentence) leading to an application by the police. The Bill extends the availability of SOPOs by allowing the courts to impose an order on conviction.

Parliamentary consideration

The Justice 1 Committee's [Stage 1 Report](#) stated that, overall, the Committee considered that the Bill "has the potential to be a useful addition to the current law to protect children and to prevent sexual offences" (para 213). It did, however, highlight a number of areas where the Committee had reservations.

A number of amendments agreed at Stage 2 reflected concerns or recommendations expressed in the Stage 1 Report. For example, in relation to the new criminal offence of 'meeting a child following certain preliminary contact', the Stage 1 Report recommended that, in order to ensure the widest possible application of the offence, no minimum age should be specified for the offender. Instead, it should be left to the Crown Office, social work and other agencies to determine the correct intervention in the case of a young person accused of committing an offence. As a result of amendments agreed at Stage 2, the need for the offender to be an adult (aged 18 or over) was removed. A similar change was made in relation to the application of RSHOs.

In addition to amending existing provisions of the Bill, a number of significant new provisions (contained in Executive amendments) were added at Stage 2 and further amended at Stage 3. In particular: (a) new offences aimed at people who buy sexual services from those under the age of 18, or who encourage, control and arrange such services; and (b) provisions extending existing laws relating to the making and distribution of indecent images of children and young people.

The new provisions, by extending protection to young people under the age of 18, are intended to bring Scots law into line with: (a) the Optional Protocol to the UN Convention on the Rights of the Child dealing with the sale of children, child prostitution and child pornography; and (b) the EU Council Framework Decision on combating the sexual exploitation of children and child pornography. The definition of a 'child' in both documents includes persons under the age of 18. Generally speaking, Scots law allows young people aged 16 or over to engage in consensual sexual activity without the threat of criminal sanctions. Thus, the fact that the new provisions apply to those under the age of 18 extends the scope of the criminal law.