

The NSPCC's response to the Home Office consultation on the Belgian proposal for a framework decision on the recognition and enforcement in the EU of prohibitions arising from sexual offences committed against children

NSPCC
42 Curtain Road
London
EC2A 3NH
Telephone: 020 7825 7426
Fax: 020 7825 2763

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Website: www.nspcc.org.uk/publicaffairs

Introduction

The NSPCC is the UK's leading charity specialising in child protection and the prevention of cruelty to children.

The NSPCC exists to end cruelty to children through a range of activities designed:

- To help children who have suffered abuse overcome the effects of such harm;
- To prevent children from suffering abuse;
- To prevent children from suffering significant harm as a result of ill-treatment;
- To help children who are at risk of such harm;
- To work to protect children from further harm.

We have more than 180 teams and projects throughout England, Wales and Northern Ireland and the Channel Islands. Their work includes:

- Family support, assessment, counselling and therapy to children and families experiencing abuse;
- Investigations into allegations of child abuse;
- Work within schools and other youth organisations to provide a voice for children and advocate their rights.

The aim of our FULLSTOP Campaign is to end cruelty to children. We believe that, given the will, most abuse can be prevented. In order to achieve this, it is vital that all children, whatever their needs, have a range of services that are flexible and offer them support and protection.

The NSPCC welcomes the opportunity to comment on this consultation document and the commitment shown by the Home Office and Government to supporting the essence of this framework decision.

Background

The NSPCC has long recognised the need to share information on convicted child sex offenders across the European Union (EU). We have particularly emphasised the need to create a mechanism for using this shared information to ensure disqualifications from working with children are recognised and enforced in all member states.

The NSPCC's CUPISCO report (2000) on the collection and use of personal information on child sex offenders examined how personal information was being used in different member states. The report made several recommendations on how to establish more effective methods to protect children from sex offenders at Union level. Since 2000 the NSPCC has continued to campaign on this issue. In 2003 we held a roundtable discussion in the European Parliament to highlight the existing gaps in advance of EU enlargement. The NSPCC has also worked closely with the Home Office,

taking part in the Home Office seminar in March 2004 and joint information trips to Belgium and France in 2004.

At UK level the NSPCC has campaigned for, helped develop and supported recent legislation to prevent unsuitable people working with children at national level. These include:

- The Police Act 1997 including implementation of Part V in Northern Ireland
- Response to the Interdepartmental Working Group on Preventing Unsuitable People from Working with Children, Protection of Children Act 1999
- The Protection of Children and Vulnerable Adults (NI) Order 2003
- The Sexual Offences (Amendments) Act 2000
- The Criminal Justice and Court Services Act 2000
- The Sexual Offences Act 2003
- Response to the CRB consultation paper on the Reform of the Disclosure Process.
- The response to the Northern Ireland Office consultation 'Safer Recruitment in Northern Ireland'.

The NSPCC welcomed the specific reference in the Bichard report on the difficulty of checking overseas workers. The report concluded that, 'this is clearly an area of potential weakness in the protection of young people' and recognised the risks and loopholes posed by the lack of information sharing between EU member states

The NSPCC employs nearly 2000 staff and several hundred volunteers to work towards the mission of ending cruelty to children. A large number of those staff and volunteers have a great amount of contact with children and young people on a regular basis. The NSPCC has a strong interest in ensuring that vetting and checking systems are as robust and thorough as they can be so that unsuitable and unsafe individuals, from the UK or any other EU member state, are not able to secure positions with children.

General comments

The NSPCC supports the aims of this framework decision and recognises that it is being proposed as a useful supplement to previous framework decisions including the decision on combating the sexual exploitation of children and child pornography (2003) which established a minimum common EU approach to sexual offences.

We believe that prohibitions based upon sexual offences against children are a useful start for the EU. We recognise the complexities involved in establishing a common approach across all 25 member states in relation to a comprehensive move towards protecting children from all forms of sexual abuse and exploitation.

The NSPCC, while supportive of this initiative, has some concerns which include: the clarity of the definitions outlined in Article 2, the reasons for non-recognition and non-enforcement in Article 7 and the appeals provision in Article 9. We support the Home Office suggestion to examine the potential of extending this framework decision to include non court ordered prohibitions. Our concerns are outlined below, along with comments on the specific points request by the Home Office.

The UK vetting system, although not perfect, is considered to be one of the most rigorous in Europe. The picture varies considerably across the EU with not every member holding a list or a mechanism to track and monitor those who have been disqualified from working with children. It is our belief that any weakness in this framework decision could potentially be exploited by sex offenders. We are most concerned that sex offenders may seek to lessen the time of a court ordered prohibition by moving between member states seeking out more lenient penalties.

1. Do you think it is appropriate that prohibitions arising from sexual offences are mutually recognised and enforced across the EU?

The NSPCC believes it is appropriate that prohibitions arising from sexually offences against children are mutually recognised and enforced across the EU. The principle of open borders and the free movement of goods, services and of course people has many advantages for EU citizens. However it has also made it easier for individuals to take advantage of open borders for criminal purposes and to evade detection.

Children are one of the most vulnerable groups within the community and are powerless and defenceless without the protection of family or State intervention. The fact that there is no formal mechanism to share information and mutually recognise disqualifications at EU level, despite several member states negotiating bilateral agreements, has resulted in confusion and delays.

There have been a number of recent cases in which closer EU co-operation could have made a real difference to our ability to protect children from the activities of sex offenders. In 2004, the case of Michel Fourniret in Belgium highlighted a serious failure between neighbouring member states to share information. This resulted in a convicted sex offender gaining employment in a school in Belgium.

Collecting evidence on the incidences of cross border abuse has been challenging for the NSPCC, mainly due to language barriers within the EU. However, through our work in Northern Ireland we are aware of the difficulties faced there on recognising and enforcing disqualifications. On the Island of Ireland there are two very different arrangements to stop unsuitable people working with children. The lack of non-adjudicated disqualification arrangements in the Republic of Ireland has created serious problems in Northern Ireland where staff frequently live and work on different sides of the border. In addition there is growing evidence from NSPCC NI that some sex offenders are using gaps in the different legislation and policy on a

North/South basis to manipulate assessment and risk management arrangements. In recent years the NSPCC NI has worked closely with the Irish Society of the Prevention of Cruelty to Children (ISPCC) to highlight the problems and loopholes to the Irish government in particular.

If child sex offenders can move between member states in search of employment, we must consider what safeguards need to be put in place to effectively protect children. Mutually recognising prohibitions from working with children is one such safeguard.

2. Do you think that the reasons for non-recognition or non-enforcement are sufficient?

We are concerned about Article 7(a) which states that the enforcing state may refuse to recognise and enforce a prohibition if the penalty is time-limited under the law of the enforcing state, where the offences concerned are subject to the jurisdiction of that state under criminal law.

It is our understanding that this article could result in an individual, who for example has been disqualified from working with children in the UK, moving to another member state where the same crime has a lesser, time limited, penalty. We seek further clarification on this provision for non-enforcement as we believe it to be insufficient. We would advocate that the enforcing state should fully recognise the penalty as laid down by the issuing state.

3. Do you think that Article 9, the process whereby the recognition and enforcement of a prohibition can be appealed, is sufficient?

We are aware that member states have different attitudes towards civil liberties, including the way in which sex offenders are managed following their release. We therefore believe that the appeals provision in this decision must be robust, respecting the human rights and civil liberties of the offender, while also upholding the principle that the welfare of the child is paramount.

We have concerns regarding Article 9 (1) which allows for an appeal to be brought before a court in the enforcing, rather than issuing state. We seek further information on this and advocate for the appeal to be placed before a court in the issuing state. Failure to enforce a prohibition could result in children in some member states having a higher level of protection than children in other member states. This would be unacceptable.

4. What do you think of the suggestion that this Framework Decision could be extended to cover prohibitions received for violence and 'or drug offences against children?

Since 1997 measures to protect children from unsuitable people in England and Wales, and to a degree Northern Ireland, have seen the rapid extension of these measures to include not just sexual offences but also violent and drug related offences.

The review of the Sex Offender Act 1997 identified an anomaly in the range of offences that trigger registration. A number of high profile sex offender cases reported in the media, involved the conviction of the more serious offence of murder and as a result did not trigger the registration requirements under the Act. This anomaly was addressed in further legislation. It would be useful for the UK government to raise this point, as this may also be a difficulty in the legal jurisdictions of some member states.

In England and Wales, the Criminal Justice and Court Services Act 2000, and in Northern Ireland the Protection of Children and Vulnerable Adults (NI) Order 2003, introduced disqualification orders for those given a qualifying sentence of 12 months or more, making them eligible for disqualification from working with children. Schedule 4 of the Criminal Justice and Court Services Act contains a list of specified sexual and violent offences against a child and these include murder, manslaughter, malicious wounding, and grievous bodily harm.

As an organisation set up to protect children from all forms of abuse we would like to see a system in the EU that recognises all forms of abuse and offences committed against children where prohibitions of working with children with children. We believe that this framework decision is a useful start.

We recognise the complexities involved in extending the offences beyond those defined in the Council framework decision on combating sexual exploitation of children and pornography to include other forms of abuse and drug related offences. However, we would like to see a continuing dialogue with the EU on taking forward recognition of a wide range of criminal offences against children.

5. You may be aware that there are administrative systems to bar individuals who are considered unsuitable to work with children from such work. The government may seek to explore the options for including such other categories of prohibited persons within this initiative. What do you think of this initiative?

We are aware of the risk posed by those who do not have a criminal conviction. Grubin's¹ research for the Home Office on understanding the risk of sex offending brings together the available research. A number of studies (in this research) asking sex offenders about the number of their victims found that the men admitted to many more sexual offences than the official record showed. In Abel's research² 224 non-incestuous child molesters claimed over 5,000 acts against 4,435 *female* victims and 153 non-incestuous child molesters claimed over 43,000 acts against nearly 23,000 *male* victims. If the level of sexual offending reported by Abel et al. was typical of offenders in England and Wales, Grubin concludes that the 110,000 men in the 1993

¹ Grubin, D., (1998) Sex offending against children: Understanding the risk. London: Home Office

² Abel, G.G., Becker, J.V., Mittelman, M.S., Cunningham-Rathner, J., Rouleau, J.L. and Murphy, W.D. (1987) 'Self-reported sex crimes of nonincarcerated paraphilics', Journal of Interpersonal Violence 2: 3-25.

population who had a conviction for a sexual offence against a child could potentially have abused 66% of all children under 16”.

Administrative systems can play an important role in identifying those who have been identified as posing a risk of harm to a child, but may not have a criminal conviction. In England and Wales the following administration lists exist:

- The Protection of Children Act 1999 (POCA) list which identifies those people considered unsuitable to work with children and places a statutory requirement upon child care organisations to refer names for possible inclusion on the list.
- List 99 which is a sensitive and confidential list of people who have been barred or restricted from employment within an education setting.

We would like to see the extension of the administrative system to include other categories of prohibited persons. The framework decision defines prohibition as:

“ shall mean a temporary or permanent ban on exercising professional activities related to the supervision of children referred to in Article 5(3) of Council Framework Decision 2004/68/JHA of December 2003 on combating the sexual exploitation of children and pornography, arising from a conviction for an offence under Article 1(1) “

In our experience, both as an employer and as a major child protection organisation, the definition of professional activities is crucial. We recommend that the definition of professional activities should be based upon the way in which organisations operate today to deliver services to children and also upon the ways in which abusers target children.

The way in which many organisations work with children has dramatically changed in recent years and the principle of children’s and young people’s participation, in the development of services, has meant that many more people have contact with children than in the past. Definitions used previously, in the UK context, have concentrated on direct services to children and young people. There are now new roles in the fields of communications, fundraising and policy which involve face to face contact with children through interviews, focus groups and other events.

The emergence of new technology has also meant different ways of delivering services related the safeguarding and protection of children. This includes:

- Counselling, or personal advice to children by telephone or means of electronic communication
- Monitoring or supervision communication (including via chatrooms) by electronic communication

- Monitoring illegal material (including abusive images of children) on any form of electronic communication system for the purpose of preventing such abuse

We also believe that the following categories should be covered:

- Employers of children
- Supervisors of children in the work place – where children are on work experience training schemes
- Senior and functional managers within children’s charities. These staff are often in a position to gain access to children through visits to projects, teams, conferences, campaign activities, and other events
- All staff working in positions where they can gain access to children through their data.

We recommend that the definition of professional activities, referred to in Article 2(c) of the framework decision, should be based upon the way in which organisations operate today to deliver services to children, and also upon the ways in which abusers target children.

Conclusion

In conclusion, our knowledge supports the fact that some sex offenders will go to considerable lengths to gain access to children; this includes moving from one setting to another, from one professional activity to another, and one country to another.

The NSPCC believes that everyone has a responsibility for safeguarding children: Government, organisations and employers, paid and unpaid staff, all have an important part to play. Parents across the EU have a right to believe that the organisations which they entrust their children to are safe.

The NSPCC supports this initiative and advocates that this framework decision enters into force as soon as possible and urges the UK government to prioritise the adoption of this decision during the UK Presidency of the EU.

For further information or clarification on any comments please contact:
Tara Hopkins, NSPCC EU Adviser Tel: 020 78257426; e-mail: thopkins@nspcc.org.uk or Christine Atkinson, NSPCC Policy Adviser, Child Protection. Tel: 0207 8252741; e-mail: catkinson@nspcc.org.uk