



## **Engender Response to the Scottish Government Consultation Protecting Children: Review of section 12 of the Children and Young Persons (Scotland) Act 1937 and section 42 of the Sexual Offences (Scotland) Act 2009**

### **INTRODUCTION**

Engender welcomes this opportunity to respond to the Scottish Government's consultation on proposed changes to section 12 of the Children and Young Persons (Scotland) Act 1937 and to outline some of our current research relevant to the potential impacts.

The question of a correct approach to a legislative response to emotional neglect is outwith the scope of our expertise. We are generally supportive of updating the current offence in section 12 in order to better reflect more modern understandings of emotional harm in line with the views of Scottish Women's Aid. However, we believe that without careful scrutiny and drafting there may be unintended consequences for vulnerable parents.

We share concerns voiced elsewhere that the proposals do not include sufficient protections for loving parents who are disabled. Accordingly, Engender signed a statement from People First (Scotland) Parents' Group in June 2018 which highlighted the concerns of parents themselves that they may be charged with neglect where they are unable to access the right long-term and targeted support to enable them to parent appropriately.

### **THE EXPERIENCE OF DISABLED PARENTS IN SCOTLAND**

Our position has been further shaped by our recent report [\*Our Bodies, Our Rights: Identifying and removing barriers to disabled women's reproductive rights in Scotland\*](#). This report outlines severe violations of disabled peoples' rights in parenting and their reproductive choices.

The women who participated in our research frequently spoke of the consequence that negative stereotyping and assumptions surrounding their abilities for their parenting. Interactions with care and support services leaves many disabled parents feeling judged, leads to unnecessary referrals to child protection system and the children of disabled women being taken into care.<sup>1</sup> Learning disabled women seem especially likely to encounter these perceptions.

The consultation recognises that 'vulnerable parents' may require additional support so that they are not unfairly criminalised under the proposals, however how such a group will be

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<sup>1</sup> 7 National Centre for Disabled Parents (2004) *They said what? Some common myths about disabled parents and community care legislation*

defined is not clear. Parents could become temporarily vulnerable due to circumstances. Disabled and learning disabled parents may require different kinds and levels of support at different stages depending on their specific needs. The ability of the law to recognise individual circumstances will be vital for its success.

We also believe it is important to recognise that society is more likely to presume that women are the primary caregiver and therefore subject to higher expectations around their ability to parent. In the context of neglect, this has specific consequences for disabled women, for women experiencing domestic abuse or for women who are experiencing mental health difficulties.

While we welcome the Scottish Government's comments in the consultation that there is no intention by proposing amendments to section 12 to increase prosecutions against vulnerable parents, we echo the concerns of other organisations that there remains little clarity as to how vulnerable parents will be supported to avoid this. We therefore echo calls from People First (Scotland) that this intention should be clearly reflected in the revised legal text and the accompanying guidance.

## **A LACK OF ADEQUATE SUPPORT**

Our Bodies Our Rights found that there is a significant lack of data related to disabled parenting and child protection in Scotland, however previous research has suggested that parents with learning disabilities are up to 50 times more likely to have their children placed into care.<sup>2</sup>

Any revisions to section 12 should recognise the state's obligation to provide parents with the necessary help to raise their children (see Article 18, UN Convention on the Rights of the Child and Article 23 of the UN Convention on the Rights of Persons with Disabilities).

Current provision of services has been said to be suffering from a "yawning support gap" in terms of what disabled parents need to parent effectively.<sup>3</sup> Existing policy and service frameworks routinely fail to consider disabled parents; neither the Scottish Government's Disability Delivery Plan nor National Parenting Strategy address disabled parenting.

The Scottish Government and other public bodies have a range of responsibilities to provide disabled parents with access to individualised and ongoing quality support which ensures that they are fully able to parent effectively. It is important that these interventions are established early and continue to be adapted as needed, as opposed to crisis interventions which fail to prevent negative outcomes.

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<sup>2</sup> The Baring Foundation (2006) Finding the right support? A review of issues and positive practice in supporting parents with learning disabilities and their children

<sup>3</sup> Research in Practice (2003) *Disabled Parents – examining research assumptions*; Booth (2000) *Parents with learning difficulties, child protection and the courts*

## ENSURING PROACTIVE SUPPORT

The consultation paper suggests that the Scottish Government believes that parents or carers who have ‘taken all reasonable steps to access the support of relevant services’ would be unlikely to be at risk of criminalisation. This statement presumes the disabled and vulnerable parents know that support is available and that that support is capable of fulfilling their specific needs. In fact it is the state who should proactively design and deliver adequate and accessible services which enable disabled parents to parent effectively.

Potential reforms should also consider why vulnerable parents may not seek out support, for example they may not know it exist, understand inaccessible language or may fear the consequences of interacting with service providers for a multitude of individual reasons.

While Our Bodies Our Rights found that research into what kind of support is available to disabled parents is lacking, the research found that there is limited training and support for professionals in social care, health and education services as well as family members and other carers about the specific issues raised in our report. Without addressing this knowledge gap, the adequacy of available support cannot be presumed.

The COPFS’ Prosecution Code should take the standard of parenting once they have the correct support they need in place into consideration when making decisions as to prosecutions. However reliance on the decision of criminal justice system whether prosecution is in the public interest does nothing to prevent any inadvertent harm being caused and fails to offer disabled parents the security they need to parent effectively and build a family life.

## CONCLUSIONS

Engender believes that the current proposals to reform the criminal law on child neglect have not fully considered the unintended consequences for vulnerable parents including disabled parents.

While we recognise that there is a need to update the law in this area, we would wish to see the government’s stated intention that vulnerable parents not face unnecessary criminalisation properly integrated into the proposals for legislative reform. We would also wish to see more proactive and individualist quality support for parents who need – and who have a right to support – be secured before any potential revisions which risk their criminalisation be implemented.

### FOR FURTHER INFORMATION

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### ABOUT US

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women’s power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions who seek to achieve gender equality and justice.