

Response to the consultation on the Draft Children's Services (Scotland) Bill

DRAFT – Sacro response to the consultation on the Draft Children's Services (Scotland) Bill

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Confidentiality: Sacro is content for both its name, address and the text of its response to be made available to the public (in the Scottish Executive library and/ or on the Scottish Executive website).

Sacro are also content that you share our response internally with other Scottish Executive policy teams who may be addressing the issues we discuss. If they wish to contact Sacro again in the future, we give permission for them to do so. We are content for the Scottish Executive to contact you again in the future in relation to this consultation response.

Children's Services (Scotland) Bill

Consultation will last until 31 March 2007. We welcome all contributions to help us produce more effective legislation. Please fill in the form below to record your views. Other views (in addition to the questions) would also be welcome. Please continue on a separate sheet if necessary. Copies of the completed form should be sent to:

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Responses can be emailed to: gettingitrightforeverychild@scotland.gsi.gov.uk
Or an online response form is available at www.scotland.gov.uk/childrenservicesbill

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Introduction

Sacro welcome the Scottish Executive’s vision in *Getting it Right for Every Child* and fully embrace this is an ambitious project. There are several aspects of the policy that could bring about positive changes to Children’s Services. However, Sacro take this consultation on the draft *Children’s Services Scotland Bill* as an opportunity to comment on the difficulties we face in the implementation of the Bill and the paradoxical nature of some of the surrounding agenda.

Sacro would like to make it clear at the outset that we respond in our capacity as a Voluntary Organisation that has worked for over a decade with both those young people responsible for and those harmed by offending. Sacro’s response should be read in this context as opposed to being a commentary on the full range of Children’s Services.

On reading the introductory sections of the consultation document it is obvious that a lot of thought and debate has already taken place across a range of agencies and professionals in the field of working with children and young people. Chapter 1 is a helpful introduction to the document. The remaining Chapters seem somewhat repetitive and ask the same questions several times. This could be changed in future consultations and reduce the length of the document as well as making it easier to read and respond to. There now follows general comments on the consultation as an introduction.

The overall emphasis of the proposed legislation and the ‘background’ reading to this bill centres around two main emphases: the **placing of a duty on agencies** and the idea that **it should not be an option for children *not to engage with services***. Sacro have concerns with this as it could cause conflicts with the principles of both the United Nations Charter on the Rights of the Child and the ‘Primary Act’ (Children (Scotland) Act, 1995). It might not always be in the best interests of the child for them to engage with a service for a variety of good reasons. Sacro fear that the focus on coercion might corrode a system in Scotland that is built on a foundation that treats people with dignity and respect. It might be that the child is deemed to have the capacity to make decisions for themselves and choose not to engage. The reason could be that the agency they have been approached by does not offer something that suits their needs, it might be that they are at a stage of development whereby committing to changing behaviour is not possible. In these circumstances there is a difference between making young people aware of the consequences of such decisions and coercion. Sacro feel strongly that this issue needs careful consideration in the final drafts of the proposed bill. Although Sacro understand the frustrations of non-engagement with Services there are particular issues to

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consider around children and young people who become persistent offenders. It should be made clear that Sacro does not agree that an overall combination of emphasis on agency duty and coercion of young person as helpful in the area of behaviour change. Many lessons can be learnt from other parts of the UK as well as internationally that the use of high nurture when combined with high control appears to lead to the best outcomes for such children. A duty to provide a service is very different from a duty to 'change' the young person's behaviour, as some of the background material implies. Indeed in Chapter 2, 2.10 the Vision for children suggests that they need to be: "safe, nurtured, healthy, achieving, active, respected, responsible and included." This can appear to be contradicted if a young person behaves in certain ways. Furthermore, a section related to the accountability and responsibility of agencies would be more helpful than a vague notion of placing of a duty on agencies. This could clarify who will be accountable and responsible for different aspects of service provision. There is no mention of the lead role and what that entails, there is no mention of who has statutory responsibility, Sacro suggest that these issues amongst others need reconsidered to make things clearer

There appears to be an increasing pressure for information to be shared between agencies. This can lead to many difficulties (see Chapter 5, Section 5.6 for example). Sacro have experience of engaging with many agencies over the years and have agreed to information sharing protocols. These however are limited by both internal Confidentiality policies, ethical constraints and the Data Protection Act 1998. It is appropriate to share essential information for example, name, address, age and gender or sex. However, other sensitive details should only be shared under circumstances where there is a potential risk to service users themselves or to other people as well as when 'in the best interests of the child'. This issue needs careful consideration as Sacro have been in the position where they were asked to share all details of a young person's life with all agencies involved; this can be counterproductive and can amount to large amounts of hearsay being used as fact. It is therefore encouraging that Section 14 of the draft Bill addresses such issues as far as a Children's Hearing is concerned. This type of 'protection' should be replicated in the rest of the Bill with criteria setting out that sharing of sensitive information should be limited to the child's best interests. This avoids the misuse of information sharing in multi-agency settings. Indeed it is illegal to share information inappropriately.

The Assessment triangle could be interpreted as 'one size fits all' (as suggested in Chapter 4, section 4.78, page 24 of the consultation papers). It needs to be made clear that this is a broad illustration of which aspects of a child or young person's life should be considered. The illustration helps drive a theoretical underpinning of programmatic and service delivery. It should be stressed that an assessment of *risk* needs to be clear on what it is assessing. In Section 2.14 of the introductory Chapters, we suggest adding 'the' and 'to the child' in the

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sentence: "Action improves each child's situation and reduces *the risk to the child*". It should be made clear that the *risk* assessment needs to be made by trained skilled practitioners who understand the difference between a child **who is at risk** through unmet needs and the common misinterpretation (especially apparent in the proposed National Occupational Standards) that we are assessing how much a child **is a risk** to their community (although we recognise that is a consideration for some agencies). Those making assessments also need to be clear on the distinction between an 'adolescent limited offender' and 'life course persistent offender'. There are complex issues around addressing anti-social behaviour and offending to deal with the perception of fear in our communities. It is however crucial that we retain the Scottish context of Kilbrandon that has been our strength when working with children, young people and their families. Scotland needs to be careful not to allow the conflation of anti-social behaviour with offending. This is a very serious problem that needs much more careful thought and clarification in certain sections of the bill. These issues will be discussed further under the responses to the questions section below.

Sacro would raise concerns over the concept of the "delivery of good outcomes" (Section 2.16, page 6). Sacro suggest that throughout the documentation this is replaced with "delivery of robust well resourced services that can encourage good outcomes". Measuring whether the delivery of a service produces successful outcomes is extremely important. However, Sacro suggest it is not helpful to measure the success of a service as if they **directly** deliver such outcomes. Good outcomes will be produced by a well delivered service.

Sacro would welcome an opportunity to review the 'prototype child's record and plan' that is to be in place by March 2007.

In Chapter 4 there are several references to the 'duties' that will be imposed on agencies. As mentioned above, as a voluntary organisation whose remit is to offer a service that is voluntary to all concerned, it is difficult to understand how a duty can be placed on that service. Sacro suggest further clarification of the sort of duties that can be imposed and under which circumstances. Sacro suggest that it is important that voluntary measures are used before enforcement or compulsory measures are introduced. Therefore, the position of the voluntary sector within a continuum of services is to offer voluntary support to address issues of concern before compulsory measures are seen as necessary. If the Bill wishes to express a view that non-engagement is not an option then this should be restricted to compulsory measures administered through statutory authorities. Other than a duty to provide a service that a service user either can opt in or out of it is difficult to understand this concept in our role.

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Sacro welcomes that there are two main tests that trigger referral to the Children’s Reporter; however, this does raise issues around offending cases. For example when a Reporter considers a disposal, they need to be confident that the evidence is of a certain standard before referring to another agency. In the *Getting it Right For Every Child* proposals Sacro understand and agree that we should see ourselves as coming to the child and indeed have operated this way since Youth Justice Services were started. However, if agencies such as the Police, Social Work or Education want to make referrals are they then in a position that they need to make the decisions of guilt or innocence once reserved for Reporters? Sacro have serious concerns about Social Work, Police, Schools and other agencies perceiving that they are taking on a role of the judiciary. This said, Sacro are in favour of providing a Restorative Service to young people which avoids charges being brought, thus alleviating such issues. Clear protocols and guidance are being developed by Restorative Justice Services.

Sacro welcomes the decision that victims are not invited to a hearing and are encouraged that Restorative Justice is described under Section 4.45 as something that can be used to address the impact of offending as opposed to reducing offending. In light of this and the anxiety expressed in the paragraph above, clearer criteria for the use of each service type might be helpful as an appendix at least.

Sacro notes that in Chapter 4, section 4.83 the views of 41 young people (out of over 1 million) were considered. It is suggested that it would be worth consulting many more young people in the future.

Although already mentioned above Sacro would like to discuss further the sections in Chapter 5 related to “Engaging with young people involved in offending”

Chapter 5, Section 5.12 says “We must ensure that it is clear that engagement with interventions put in place to change behaviour is not optional.” This is unhelpful to both the Service and the young person. In Sacro Youth Justice Services, a core value is that of voluntariness. Paradoxically this has resulted in an average engagement level of 70% over the past 5 years. Indeed the very people that this consultation document suggests allowing no option, when allowed the choice, decided to engage.

To oppress and coerce young people into taking part in services is at the very least a breach of their rights and could actually increase their offending. Studies showing that oppressive, coercive fear based approaches and incarceration increased offending.¹ These studies

¹ Dowden and Andrews, 1999; Gendreau, French & Taylor, 2002. Lowenkamp & Latessa, 2005; Farabee, 2005).

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(amongst many others) are widely recognised in the field of youth justice and Sacro suggest strongly that the legislation needs some reworking. We do not want to widen the net, threaten our children, create new powers which would put the most at risk children to become stigmatised and ultimately criminalised as has happened with similar measures in other areas of the UK (Goldson, 2006; Muncie & Goldson, 2006).

There now follows responses to the set questions at the back of the consultation document on the draft Children’s Services (Scotland) Bill.

Part 1: The draft Bill

Q1 Do you think that the concept of well-being in relation to the duties on agencies set out in sections 1 and 2 of the draft Bill is helpful?

Yes.

However, in Section 2: Action as to well-being (2) “Where a relevant agency is aware that a child poses a risk to the safety of another person, the agency must take such action as it considers appropriate.” This appears to leave it very much open to interpretation depending on what that agencies value base is. For example it could lead to secure accommodation in some areas where behaviour agreements (which could be more helpful and less costly) would be used in another. Could further guidance be provided in the interests of consistency?

Q2 Do you feel that the duties on agencies proposed in sections 1 and 2 of the draft Bill will ensure that all relevant agencies can and will act to so that children get the help they need when they need it?

No.

As discussed above in our initial comments, Sacro suggest that the word ‘duty’ needs clarification. If the duty is to provide and commit to provision of a service as opposed to a ‘duty’ to provide a positive outcome then it is helpful. However, a duty to co-operate is difficult to embrace if agencies have conflicting values. Sacro suggest that explicit reference to the overarching principles of the UNCRC and The Children (Scotland) Act, 1995 would be a helpful addition to aid such co-operation. Sacro suggest that co-operation between agencies should be based upon the principles of the Act (Bill). This

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would allow agencies seeking to act or seek information at odds with the Act to justify their own actions/requests rather than have another agency explain their reluctance to co-operate with them.

Q3 In your view, do the proposals in sections 2(5) and 5 of the draft Bill for recording agency decisions and actions and for a multi-agency action plan provide enough of a framework to deliver effective planning across agencies for the child and their family?

Yes

A multi-agency plan is an ambitious idea when considering the issues around information sharing and the potentially conflicting values of agencies involved. Hopefully the pathfinder projects will find a way forward in this area.

Q4 It is the intention that the proposals in sections 4 and 5 of the draft Bill for collaboration of agencies will provide a robust but simple framework for agencies to work together locally. In your opinion, do you think that the framework will enable this to happen?

Yes

However, as in Sacro’s response to Q 2, clarification on where an agency has the right not to co-operate needs clarification as per Section 4, (3) (a). Furthermore, in 4 (5) (b) discussion around information sharing is also needed to clarify the boundaries of how only relevant information should be shared.

Sacro welcome the designated person under Section 5 and feel that this should be used to help ensure that plans are adhered to by all agencies involved. Monitoring the continued well-being of the child or young person is also essential in this role.

Q5 Are you content with the definition of relevant agencies (including parts of the voluntary sector) in section 7?

No

Sacro would prefer that explicit mention of voluntary organisations were made. This is especially in light of the voluntary nature of the work agencies such as Sacro carry out. This could include a small section describing how duties for such organisations mean a duty to provide a service which can be opted in or out of by the person accessing the service for a ‘situational condition’ (e.g. offences, truancy etc.)

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What characteristics should make an agency a relevant agency?

Any agency who can assess and deliver a service for children and young people, who operate under the principles of the Primary Act and the UNCRC.

If you are responding on behalf of an organisation, should your organisation be included within the definition of relevant agencies?

Yes, however there should be clarification as discussed above.

Q6 With regards to section 11, do you agree that the Principal Reporter should not be a member of the Administration (the Board) of the Scottish Children’s Reporter Administration?

Yes

Q7 The new power in section 12 for the Principal Reporter to appoint a representative if certain criteria are met is meant to safeguard the rights of those children who need such representation. Are you content with the introduction of this new power?

Yes

Sacro welcome this additional power and feel that the use of the safeguarder needs to be retained. Even where legal representation is needed, the safeguarder has a separate and unique role and should still be available to the child or young person.

Q8 In section 12 the criteria for legal representation is expanded to include the appointment of a legal representative where a Children’s Hearing is likely to make a movement restriction condition. Are you content with the introduction of these new criteria?

Yes, however, as in question 7 Sacro would hope that these new additional powers do not start to change the Children’s Hearings’ experience unnecessarily.

Q9 Section 14 introduces new provision to withhold information about the child where disclosure would be significantly against the child’s interests. Are you content with this new provision?

Yes

Sacro wholeheartedly support this new provision. Indeed Sacro suggest widening this power to assist in data protection of information sharing between agencies. Limits need to be put upon what is appropriate to share as there is increasing pressure to divulge inappropriately due to misinterpretation of information sharing protocols. Sacro do not

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encourage unnecessary obstructions to the sharing of relevant and appropriate information, however the misuse of protocols can be a danger.

Q10 Are you content with the proposals in section 15 of the draft Bill to change the grounds for referral to the reporter and the Children's Hearing to reflect the needs of a child and the need for compulsion?

Yes

Sacro support the need to free the Children's Hearing system resources to allow it to deal with such cases as stipulated in section 15. This will allow Services to deal with other issues more appropriately (e.g. offending behaviour with no other unmet need). This avoids the misuse of referring to the Reporter's simply to access Services for the young person. However, as stated in the introduction to this response there is increasing anxiety that due to this change, agencies which do not believe that restorative justice services are worthwhile may simply choose not to use them. Safeguards to ensure continuing use of voluntary sector service would be helpful. Also there is anxiety that agencies that used to refer cases to the Reporter for disposal, might be in a position where they are expected to assess guilt and innocence. Clarification around such issues would be necessary. For example if the Police charge a young person and they do not accept the charge can they then send to the reporter for a decision?

Q11 The relevant situations in section 15 are intended to improve on the existing conditions in section 52(2) of the 1995 Act and to address possible gaps such as self-harm by a child and exposure to domestic abuse. Do you feel that the relevant situations are appropriate?

Yes and although Sacro accept that the intended improvement there are also concerns that part of section 15 might be misused in attempts to net widen. In section 15, 52B, (d) where a Local Authority fails to make a successful application for an Anti-social behaviour order, they might attempt to use the 'situational conditions' laid out in (d) as grounds for referral to the Reporter. Sacro suggest adding something that stops such use of the legislation. Fortunately the situational condition is only one of three 'tests' however, this could be made stronger.

Q12 In your opinion, do the provisions in section 16 of the draft Bill to expedite the establishment of the situational condition where the relevant person accepts the condition but

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the child has not understood or is not able to understand provide adequate and appropriate protection for the rights of the child?

Yes in part – the wording could make things much clearer.

Q13 In your opinion, do you feel that the proposals in section 17 for interim supervision requirements provide an appropriate additional option to a Children’s Hearing when they are unable to dispose of a case?

Yes

Q14 In relation to section 18, it is intended that any agency which is taking, or is expected to take, action in accordance with a supervision requirement should have a duty to take such action. It is also intended that a Children’s Hearing may impose specific duties on an agency. A formal enforcement process will apply to breach of duties as is currently the case in relation to duties imposed on a local authority. The provisions in relation to duties set out in section 18, together with existing duties of a local authority, are intended to adequately and appropriately provide for duties to act in relation to a child subject to a supervision requirement. Do you think that they do so?

Yes

Again it needs to be clarified what exactly duty means in this section. A duty to commit to providing a service is acceptable, however a duty to effect ‘behaviour change’ is unacceptable. Monitoring and evaluating a service can help to address issues in service delivery. Managing practice can effectively address practice issues and improve performance. Imposing a duty inappropriately could lead to ineffective practice being hidden and things could get worse for the child or young person. As in Sacro’s response to Q5 above, clarification around imposing a duty on ‘relevant’ agencies is required. In section 18, (1) 71B, (2) services such as Restorative Justice Services cannot be specified in a Supervision agreement. Care needs to be taken that the Bill will not be misinterpreted and used inappropriately in such circumstances.

Q15 In relation to section 20 on warrants, it is intended that section 66 will apply where there is an application to the sheriff under section 65. It is intended that section 69 will apply where the situational condition is accepted/established (and there is no current section 65 application). Section 45 and section 63 will continue to apply in their own particular circumstances. Further

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refinement to ensure this effect is intended. In your opinion or in the opinion of your organisation, will such an approach simplify warrant procedures?

Yes

Further simplification around warrant procedures would be beneficial.

Part 2: Issues for consideration

Q16 The consultation document sets out a number of proposed changes to the Children (Scotland) Act 1995 arising from the Vulnerable Witnesses (Scotland) Act 2004. Are you content with these proposals?

Yes

Q17 For the small group of young people who continue to pose a risk to themselves or others, and who cannot or will not engage with services who are working to change their behaviour, we wish to explore further options to compel them to change their behaviour. To secure continued support and intervention for young people involved in offending we would like to hear your opinions on:

- How we can best ensure that children's services continue to support young people who offend to cease offending and make a successful transition into positive adulthood?

Sacro propose that there should be more investment in Services which specialise in intensive work with young people (e.g. Freigarroch and Barnardo's New Directions Initiative). Provision of stable accommodation is a key area to be addressed for young people. For those moving on from being accommodated by the Local Authority and for vulnerable young people leaving the parental home this is particularly important. Personal Change programme services, which understand the needs of such life course persistent offending and are able to engage with them would also be helpful. Many services are based upon the adult model and young people are frequently excluded for missing appointments for being under the influence when they do attend. It is important that young people receive encouragement for their success rather than exclusion for their lapses.

- How we could formalise systems to ensure that this happens?

Further formalisation of systems is unnecessary. More investment in services which are known to support and help young people are more important, as is an understanding that for change to occur a longer period of working together is necessary. Sacro suggest a

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minimum of 9 months should be allowed (e.g. Sacro Personal Change Programme). Sacro promote an understanding (see academic research on desistance, McNeil, 2002) that breaches of agreements and chaotic episodes are expected and used as points of change. Sacro understands that inappropriate behaviour needs to be challenged, however this can be done whilst still respecting an individual's dignity. The person can be encouraged to take responsibility for their actions and understand consequences of breaking agreed upon, clear and structured boundaries.

- How we might respond to the concerns of our communities in the best way to deal with the problem of persistent offending by young people?

Responding to a community is very different from reacting to a community and compounding their fear of young people. Mistakes have been made in the past in attempts to reassure communities. Many initiatives and oppressive policies have been advertised. This has had the effect of raising hopes and expectations that things will be done to stop behaviours. Since trying to control and use threat to encourage desistance usually causes the opposite, it is hardly surprising that the public are angry and feel let down. To portray young people in the media as threatening and dangerous is irresponsible and further reinforces that our young should be feared and are out of control. Perhaps we need to realise that they are not there to 'be' controlled, but to be respected and treated with dignity and then perhaps the young people will regain control of *their own* lives with support and assistance from agencies that have a duty to provide that support.

- What, if any, legislative requirements do you believe would be required to deliver this?

Sacro feel that there is enough legislation to deliver this. However, it needs reworked to reflect the values underpinning the earlier comments above. New legislation and or policy which makes it illegal to discriminate against young people using terms like Ned, Yob, thug and other disrespectful terms would possibly be more helpful at this time.

Q18 The Scottish Executive is committed to promoting and supporting the rights of children and to reflecting the provisions of the UN Convention on the Rights of the Child in the development of policy and legislation. To ensure that we are effectively promoting and supporting the rights of children we would like your views on the following:

- The Bill as drafted is intended to improve children's rights in Scotland. Do you feel it will do so effectively?

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It is difficult to say one way or the other at this stage, as some of the sections could be interpreted as being against the child's rights. For example where there is no option for the child but to engage with a service.

- Should we also consider a general duty on agencies working to meet the needs of children to also promote and support the rights of children?

Sacro would suggest that this is the more important duty to place on agencies than the earlier duty mentioned. This would ensure that agencies focus on the rights and dignity of the child. This could also ensure that the rights of children in Scotland are enshrined in the new bill.

Q19 The Scottish Executive is committed to equality of opportunity for all regardless of race, religion or belief, disability, sexual orientation, age or gender, language, social origin or political opinion. Do you have any views on whether anything in the draft Bill will have a differential impact on equality communities?

Yes -The draft Bill as it stands could discriminate against the very children and communities it is ostensibly set up to serve. It could be that if someone behaves anti-socially that this is conflated into offending and treated under section 15, (1), 52A, (2) as situational conditions that allow referral to the Reporter (if the other two tests are also passed). Furthermore, if a young person has offended, the bill as it stands seems to suggest that there is no option for them but to engage with an agency. In Sacro's view (backed up by years of research findings) this is possibly the worst way to attempt to engage with already vulnerable children and Sacro strongly argue that this needs revision. The bill itself is not clear on this issue, however all accompanying documentation in preceding Chapters suggest that coercion is appropriate. Whilst understanding that there needs to be consequences for young people who are not able to make changes to their behaviour, these are already in place within current systems (supervision). Again Sacro emphasise that consequences are necessary, however, they should be supportive, challenging and treat the young person with dignity and respect.

Q20 We would be grateful for views on what further legislative provision for information sharing beyond that proposed in the Protection for Vulnerable Groups (Scotland) Bill may be necessary to deliver the Getting it right for every child agenda.

No comment

Q21 Would amending the definition of a child 'in need' in the Children (Scotland) Act 1995 be helpful to the aims of Getting it right for every child without causing unwanted consequences?

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Yes, although we would need to monitor consequences of such amendments as they develop.

Comment

Q22 We would be grateful for informed comment on any or all of the matters discussed in the partial Regulatory Impact Assessment including views on any matters arising from the draft Bill which may (in your view) have cost implications.

Sacro would suggest a combination of options 2 and 3. There are resource implications and there are also anxieties about the future of some services. Restorative Justice aims to address the harm caused by young people and provides reassurance to those directly harmed and to the wider public through experiences held within the community.

Another lost opportunity of the Bill could be that there are still 32 different ways of working across the 32 Local Authorities in Scotland.

Comment

Q23 We are interested in any other views you have on both the content of the draft Bill consultation and on ways which we could make this type of exercise more accessible to a wider range of people in the future.

As mentioned earlier, there is a lot of repetition throughout the consultation document and the same points and questions are raised in several Chapters. This is quite confusing and a shorter more concise presentation would be helpful. A good question needs asked once with one explanation in the same place, rather than in a subsequent Chapter.

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