

# REFORMING SCOTS CRIMINAL LAW AND PRACTICE: THE CARLOWAY REPORT



## Scottish Government Consultation Paper

### RESPONDENT INFORMATION FORM

Please **Note** this form **must** be returned with your response to ensure that we handle your response appropriately

#### 1. Name/Organisation

Organisation Name

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#### 3. Permissions - I am responding as...

Individual

*Please tick as appropriate*

Group/Organisation

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*  Yes  No

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*

Yes

No

Please return the completed respondent information form and questionnaire by 5 October 2012 to: [carlowayconsultation@scotland.gsi.gov.uk](mailto:carlowayconsultation@scotland.gsi.gov.uk)

or

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You can access the consultation online at <http://www.scotland.gov.uk/consultations>.

Sacro welcomes the opportunity to respond to the consultation on changes to the Scottish criminal justice system. Our response focuses on questions relating to children and vulnerable suspects as this is where our expertise lies in relation to the issues raised in the consultation.

That said, Sacro supports the suggested changes, which are expected to result in a simpler system that upholds a suspect's rights and to be fairer and easier to understand by those who must be part of it. Sacro also supports the proposals to give consideration to what best meets the needs of a child when decisions are being made about him/her and to define a child as being anyone under 18 years of age. This is in line with the UNCRC and also supports the Whole System Approach that was piloted in Scotland, where there were many positive outcomes reported during the pilot, when children and young people under 18 years of age were kept out of both the Children's Hearing system and Court system wherever possible.

## THE CARLOWAY REPORT - CONSULTATION QUESTIONNAIRE

### CHILD SUSPECTS (Chapter 7 of the consultation paper)

#### **Question 21**

*Do you agree with Lord Carloway's recommendation that, for the purposes of arrest, detention and questioning, a child should be defined as anyone under the age of 18 years? Please explain why.*

Yes

This is in line with UNCRC and will also mean that provisions concerning notification to a parent, carer or other responsible person and the persons having access to a child suspect will be extended to these children and young people.

#### **Question 22**

*Do you agree that there should be a general statutory provision that, in taking any decision regarding the arrest, detention, interview and charging of a child, the best interests of the child shall be a primary consideration?*

Yes

- *How would such a provision work in practice?*

If the best interests of the child over ride the need to arrest, detain or question a child then the result would be to keep more children and young people out of the formal system. There is increasing evidence that children who enter the formal system tend to be more likely to remain in the system and increase their risk of offending behaviour in the future. The recent pilot of the Whole System Approach kept many children and young people under 18 years of age out of the formal systems, through diversion from prosecution. Overall, it was found that there was a reduction in offences and re-offending during the pilot<sup>1</sup>.

#### **Question 23**

*Do you agree with the terms of the Report that the general role of the parent, carer or responsible person should be to provide any moral support and parental care and guidance to the child and to promote the child's understanding of any communications between the child, the police and the solicitor?*

Yes

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<sup>1</sup> <http://www.scotland.gov.uk/Topics/Justice/crimes/youth-justice/reoffending/whole-system-evaluations>

Sacro agrees that generally the parent, carer or responsible person should provide support, care and guidance. However, clarity is needed around the decision making process in regards to the person best placed to give such support and Sacro would suggest that guidance is needed.

- *Should the responsibilities of a parent, carer or responsible person be provided for in statute or achieved through guidance and the possible provision of support or in some other way?*

Parents, carers or responsible persons are expected to provide support and guidance to their children as a norm. Other than highlighting this responsibility, it is difficult to understand what statutory responsibilities would add to the process. Simple guidance and support to parents (carers and persons responsible) would be better.

#### **Question 24**

*Do you have comments on the recommendation for children aged 16 or 17 years to be able to waive their right of access to a lawyer only with the agreement of a parent, carer or responsible person?*

This would require both the child and parent (carer or responsible person) to understand what the right to a lawyer means. Clear guidance on steps to take whilst exploring this would be helpful. If a child aged 16 or 17 wanted to waive the right to access a lawyer and this child had the capacity to make an informed decision, it might breach the child's right to having his/her views taken into consideration if this could only be done with the agreement of parents, carers or responsible persons. There may be a good reason for the child not wanting support from their parent, carer or a responsible person.

#### **Question 25**

*Do you have comments on the recommendation for children aged 16 or 17 years to be able to waive their right of access to a parent, carer or responsible person, but that in such cases they must be provided with access to a lawyer?*

Sacro agrees that in these circumstances the child or young person must be provided with access to a lawyer. Sacro see this as important to ensure that he/she has proper legal advice and support, especially if the child chooses not to access support from the parent, carer or responsible person. As above, there may be good reason for the child not wanting support from their parent, carer or a responsible person, but in this circumstance a lawyer should be available to protect them.

#### **Question 26**

*What are your views on the recommendation that children under 16 should not be able to waive their rights to legal advice?*

Sacro agrees that children under 16 should be given legal advice and not be able to waive that right.

## **VULNERABLE ADULT SUSPECTS (Chapter 8 of the consultation paper)**

### **Question 27**

*Do you agree with Lord Carloway's recommendation that there should be a statutory definition of a "vulnerable suspect"*

Yes

- *Do you agree with the definition proposed by Lord Carloway?*

No

- *If not, what do you think the definition should be?*

Sacro suggests that the definition needs to be wider. As it stands the definition is too open to subjectivity and possible prejudice. For example if a suspect is 'known' to the courts or police as someone who has used substances over time the suspect could be treated as a non-vulnerable suspect as he/she has no recognised condition from the three choices. There may be people falling into this category who should also be treated as vulnerable suspects because of their need for extra support from appropriate adults to advocate on their behalf. Sacro has seen examples of this in its arrest referral services, where the client groups are not perceived as vulnerable due to the nature of their needs. The definition needs to be wider to protect and support all vulnerable groups.

### **Question 28**

*Do you agree with Lord Carloway's recommendation that the role of an Appropriate Adult should be defined in statute?*

Yes

- *Do you agree with the definition proposed by Lord Carloway?*

Yes

- *If not, what do you think the definition should be?*

Sacro agrees with the definition of an Appropriate Adult set out in Lord Carloway's recommendations as it will ensure that vulnerable suspects are protected and do not access inappropriate support from someone whose interests are more personal thus undermining the needs of the vulnerable suspect.

### **Question 29**

*Do you agree with Lord Carloway's recommendation that statute should provide that a vulnerable suspect must be provided with the services of an Appropriate Adult as soon as practicable after detention and prior to any questioning?*

Yes – Sacro recommends that consideration be given to the introduction of time scales in statute as well as a definition to ensure that this provision is given as quickly as possible. The current recommendation of 'as soon as practicable' is too open to interpretation.

- *If so, do you agree that the current role of an Appropriate Adult should be extended so that a vulnerable suspect can only waive their right of access to a lawyer if the appropriate adult also agrees to this?*

No

This is too general and treats vulnerable suspects in the same way as under 16 year old children. This should be dealt with on a case-by-case basis rather than a general rule. Vulnerable suspects might have the capacity to understand their rights and make some decisions on their own. That said clear guidance and structures must be in place to ensure that their right to a lawyer is understood and only then can they waive this right. This would not stop people accessing support from an appropriate adult should it be necessary.

### **Question 30**

*Do you agree with Lord Carloway's recommendation that statutory provision should be made to define the qualifications necessary to become an Appropriate Adult?*

No

- *If so, what steps do you think are required to decide what these qualifications should be?*

Stipulating qualifications might result in creating barriers against those willing to provide this service. Sacro suggests that whilst a specific qualification may not be necessary, stipulating the relevant general or specific skills, experience and knowledge required to provide support to vulnerable suspects; along with a more general statement of what the

appropriate adult is required to do would be helpful. However, Sacro would suggest that more research is required before making such a change.