

Scottish Government Consultation

**Establishing a statutory
Appropriate Adult service
in Scotland**

March 2018

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Why we are consulting

The purpose of this consultation is to seek your views on plans to place existing, non-statutory, Appropriate Adult services on a statutory footing. A statutory service will help to ensure vulnerable people who come into contact with the justice system receive the same level of high quality support across Scotland.

We intend to use regulation-making powers in the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”) to establish a statutory service. Section 105 of the 2016 Act requires us to consult publically prior to laying such regulations.

Overview of the Appropriate Adult service in Scotland

The existing role of an Appropriate Adult is primarily to facilitate communication during police procedures between the police and vulnerable suspects, accused, victims, and witnesses (aged 16 or over) who have communication difficulties as a result of a mental disorder. The role of the Appropriate Adult does not include support for children under the age of 16. Support in these circumstances is provided by the child’s parent or guardian, or the local authority as appropriate.

At present, Appropriate Adult services in Scotland are delivered on a non-statutory basis. As a consequence, the way in which services are delivered varies across the country. In some areas they are provided by local authorities, whilst in others they are provided by Health/Social Care and Justice partnerships, or contracted out to third parties.

The Scottish Appropriate Adult Network (SAAN) is a collective network comprising Appropriate Adult Co-ordinators from across Scotland, plus representatives from Police Scotland, Social Work Scotland, the Judicial Institute for Scotland, the Crown Office and Procurator Fiscal Service, the Mental Welfare Commission and the NHS, with the Scottish Government participating as an observer. The Network meets on a quarterly basis and produces (and regularly reviews) national guidance and an annual report containing information on Appropriate Adult services across Scotland.

Legislative background

The 2016 Act contains a number of provisions relating to support for vulnerable persons. Section 42 requires the police to facilitate the provision of communication support for vulnerable adults in police custody. Sections 98 to 106 provide the Scottish Ministers with regulation-making powers to place a duty on a person or persons to have responsibility for providing this service in Scotland and to establish suitable oversight and training arrangements.

The establishment of a statutory service, using the powers at sections 98 to 106, is considered necessary in supporting the effective commencement of section 42 and, therefore, improving support for vulnerable people who come into contact with the criminal justice system in Scotland. For this reason, section 42 of the 2016 Act was not commenced at the same time as the remainder of Part 1 of the 2016 Act, in January this year, but will be brought into force alongside regulations made under sections 98 to 106.

How we have developed the model to date

There has already been significant work undertaken to develop a model for establishing a statutory Appropriate Adult service in Scotland – a diagram setting out this model is provided in the annex to this consultation. The development of this model began in 2015 with delivery partners and stakeholders invited to contribute via a workshop and a high level options paper. Further workshops were held in June 2016, the outcomes of which demonstrated support for the four roles set out below – delivery, training, quality assessment and oversight.

An Appropriate Adults Working Group was established in 2017 and met four times from June to September 2017 to further develop the model. The Working Group comprises representatives from the Scottish Appropriate Adult Network, COSLA, Social Work Scotland, the Care Inspectorate, the Mental Welfare Commission, Police Scotland, the Crown Office and Procurator Fiscal Service, the Forensic Network, the Royal College of Speech and Language Therapists and the Scottish Government Justice, Legal and Health and Social Care Directorates.

We also established an Appropriate Adults Advisory Group in 2017, providing the opportunity for those who work with service users, and service users themselves, to offer an expert opinion on the emergent model. We held an Advisory Group workshop on 12 December; in attendance were representatives from the Supporting Offenders with Learning Disabilities (SOLD) network, the Centre for Youth and Criminal Justice, Victim Support Scotland, Alzheimer Scotland, the National Autistic Society, Scottish Autism and the Law Society of Scotland. The Royal College of Speech and Language Therapists also contributed to this session. Much of this session focussed on the essential detail that will sit below the legislation and will be fundamental to ensuring the successful roll out of a statutory service, such as guidance, training and accreditation, and sharing of information.

Alongside the work on developing the model, we have been discussing resourcing implications with COSLA to ensure a level of funding that means delivery of the service is sustainable for local authorities. This work will continue to run in parallel with the consultation and will initially take the form of a modelling exercise to estimate the likely demand on local authorities, particularly in light of the recent implementation of Part 1 of the Criminal Justice (Scotland) Act 2016.

Scope of work

The scope of this piece of work is the support required to facilitate communication between vulnerable people and the police. It does not extend to in-court support, including the distinct role of an intermediary. The main reason for limiting this consultation to police procedures is to ensure the statutory Appropriate Adult service is established timeously, building on the expertise that already exists in non-statutory services across Scotland. We consider this a strong base to build upon, providing an essential service for vulnerable people, and an appropriate area in which to prioritise resources.

We acknowledge that further work is required to explore how best to provide communication support to vulnerable people in criminal proceedings and for those aged under 16, whether through a registered intermediary scheme or other communication support model, and will consider this as part of wider work to reform the criminal justice system for vulnerable people.

CONSULTATION QUESTIONS

Delivery

At section 42 of the 2016 Act, a vulnerable person is described as a person who, owing to mental disorder, appears to the police unable to (i) understand sufficiently what is happening, or (ii) communicate effectively with the police.

“Mental disorder” is defined in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 as covering any:

- mental illness;
- personality disorder; or
- learning disability.

The description of who is entitled to support is intended not to be overly prescriptive, to ensure those who need support are entitled to it. But we also need to ensure it does not inadvertently include those who have a temporary condition affecting their ability to communicate due to, for example, drugs or alcohol.

We intend to use the powers in the 2016 Act to extend statutory support to victims and witnesses who meet the criteria for vulnerability set out above. This will reflect the current non-statutory provision of Appropriate Adults to victims, witnesses and persons in police custody.

- 1. We propose to use the definition of vulnerable person as set out at section 42 of the Criminal Justice (Scotland) Act 2016, but extended to cover victims and witnesses. Do you agree?**

Yes

No

If no, please tell us how you would define vulnerability for this purpose.

In terms of the purpose of communication support, this is also set out at section 42 of the 2016 Act (in relation to people in police custody), as follows:

- help the person in custody to understand what is happening, and
- facilitate effective communication between the person and the police.

2. We propose to use the definition of the type of support to be made available as set out at section 42 of the Criminal Justice (Scotland) Act 2016, Do you agree?

Yes

No

If no, please tell us how you would define the type of support to be made available.

The regulation-making powers in the 2016 Act allow the Scottish Ministers to place a duty on a person or persons to ensure that people are available to provide Appropriate Adult support.

Our intention, informed by discussions with delivery partners and third sector organisations, is to place this duty on local authorities. Based on feedback we have received, via earlier discussions and the Working Group, we consider local authorities best placed to determine how to provide the service in the local area. This includes the flexibility to provide the service in-house or contract it out, dependent on what fits best with local circumstances.

As noted above, we are working with COSLA on resourcing and ensuring the service is sustainable for local authorities.

3. We propose to place the duty on local authorities for ensuring that people are available to provide Appropriate Adult support, do you agree?

Yes

No

If no, who do you think this duty should be placed on?

It is our intention to keep the duty on local authorities, as will be set out in regulations, at a fairly high level but to develop more detailed guidance to sit below this. The benefit of such an approach is that the duty will be set out clearly in secondary legislation for the provider, but the underlying detail can be developed to reflect Scotland's diverse geographic and demographic make-up. For example, setting a definitive time within which an Appropriate Adult must attend a police station does not reflect the challenges faced by rural versus urban areas.

A flexible approach also allows for updates to be made regularly and easily, in line with changes to the criminal justice system and to reflect any developments in our understanding of how best to meet the needs of vulnerable people. Having such

detail set out in legislation makes it harder to update on a regular basis and any changes become dependent on the legislative calendar.

- 4. We propose to keep details of the statutory duty at a high level but develop more detailed guidance to sit below this and to which those responsible for delivery must have regard, do you agree with this approach?**

Yes

No

If no (i) why do you disagree?

(ii) are there any specific details you think should be in legislation?

Training

The regulation-making powers at section 101 of the 2016 Act allow the Scottish Ministers to place a duty on a person or persons to provide training to Appropriate Adults. Section 102 of the 2016 Act provides for the person upon whom the training duty has been placed to make recommendations to the provider of Appropriate Adult services, about the way that service is delivered, and to the Scottish Ministers.

Our intention, informed by discussions with delivery partners and third sector organisations, is to place this duty on local authorities. Local authorities will be given the flexibility to determine how best to provide training in the local area, whether delivery be in-house or contracted out.

Discussions have also indicated that, whilst local delivery of training would be advantageous, there requires to be some form of overarching training framework developed and agreed at a national level to ensure consistency of service across Scotland. It is our intention, therefore, to develop a national training framework to ensure consistency of quality and content, whilst allowing for training to be tailored according to local needs.

The curriculum for such a framework could include the role and responsibilities of an Appropriate Adult, various operational processes to be followed, relevant tools that the Appropriate Adult may wish to use to provide the necessary support to vulnerable people, the level of support and supervision to be provided to Appropriate Adults, and other such matters.

- 5. We propose to place a duty on local authorities to deliver training to Appropriate Adults. Do you agree with this?**

Yes

No

If no, who do you think this duty should be placed on?

The feedback we have received thus far has been consistent in highlighting the need for a national framework for training to be developed with input from the relevant

specialists, for example, speech and language therapists, mental health professionals etc. We will establish a training oversight group consisting of representatives from relevant organisations, for example, the Royal College of Speech and Language Therapists, the Forensic Network, representatives from Appropriate Adult services and others, in order to develop this framework.

Quality Assessment

In developing the model for a statutory service, there was a consensus from delivery partners and stakeholders alike that it was essential for there to be some form of ongoing monitoring and quality assessment of Appropriate Adults services. The functions of such a role would be to monitor, assess and review the quality of the Appropriate Adult service delivered, within the wider context of the criminal justice system.

The regulation-making powers at section 100 of the 2016 Act allow the Scottish Ministers to place a duty on a person or persons to assess the quality of Appropriate Adult support. Section 102 of the 2016 Act provides for the person upon whom the quality assessment duty has been placed to make recommendations to the provider of Appropriate Adult services, about the way that service is delivered, and to the Scottish Ministers.

Through discussion and an analysis of options, we identified the Care Inspectorate as the appropriate body for this role due to its expertise in inspecting care services and its work to make sure people get safe, high quality care that meets their needs.

6. We propose to place a duty on the Care Inspectorate to carry out a quality assessment role in relation to the provision of Appropriate Adult services, do you agree?

Yes

No

If not, who do you think should be responsible?

It will be the responsibility of the body on which the quality assessment duty is placed to determine how best to assess the quality and effectiveness of Appropriate Adult services. However, initial discussions have indicated that a quality improvement framework would be an appropriate assessment model, which local authorities could use to self-evaluate, rather than a traditional inspection format. The quality assessment body could then draw together the outputs and identify key themes from across the country. An example of such a model currently in use is the [Community Justice in Scotland – approach to evaluation](#), developed by the Care Inspectorate to sit within the Outcome, Performance and Improvement Framework for community justice in Scotland.

There could also be the option for thematic inspections if deemed necessary. Delivery partners and stakeholders have also highlighted the need to look at the service as part of a wider system, and not in isolation, and to explore the relationships with other agencies operating in the criminal justice system.

Fundamental to any quality assessment process will be the views and experiences of those who use the service and those who support users of the service. This in itself presents some challenges given the often brief nature of a vulnerable person's interaction with an Appropriate Adult and the sometimes complex communication needs of service users. We have already had some initial discussions with stakeholders as to how we could support individuals to provide feedback, for example, through the Forensic Network and the SOLD Network, but would welcome further input on this matter.

7. How might we best engage with service users to understand their experience?

Oversight

Early discussions of the model identified the need for some form of oversight role - to provide a national picture, with a focus on a user perspective, highlighting good practice and actively contributing to, and challenging, policy development in this area.

We have identified the Mental Welfare Commission as a suitable candidate to take on this role due to its expertise in providing information and advice on mental health care and treatment, empowering individuals and their carers, and influencing and challenging service providers and policy makers.

8. We propose to place a duty on the Mental Welfare Commission to have oversight of how Appropriate Adults services are provided across Scotland, do you agree?

Yes

No

If no, who do you think should be responsible?

Following further consideration, we propose that the functions of the oversight role could include:

- providing a comprehensive definition of what AA services should be delivering
- providing a system-wide overview
- producing good practice guidance
- contributing to policy development in this area

Further consideration is being given to the functions of the oversight role and how it would interact with the delivery, training and quality assessment roles, and that of the Scottish Appropriate Adult Network. We would welcome your views on this matter.

9. Do you agree with the proposed functions of oversight role?

Yes

If yes, are there any other functions you think this role should incorporate?

No

If no, what functions do you think this role should incorporate?

General comments

10. Please use this space to provide any additional comments you may have.

Responding to this Consultation

We are inviting responses to this consultation by Tuesday 26 June 2018.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.gov.scot/criminal-justice/appropriate-adult-service/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of Tuesday 26 June 2018.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

Appropriate Adults Consultation
Victims and Witnesses Team
GWR
St Andrew's House
Regents Road
Edinburgh EH1 3DG

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore

have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to inform our approach to drafting regulations for establishing a statutory Appropriate Adult service in Scotland. We will also use the information gathered to inform the next stages of the project. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to appropriateadults@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78851-748-5 (web only)

Published by The Scottish Government, March 2018

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS389866 (03/18)

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