Issue 2

# SAFEGUARDING AWARE

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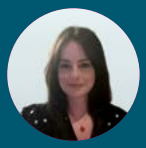
# Contributers



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# Welcome

**Welcome to another edition of the Keoghs Safeguarding Aware newsletter. In the second edition of our newsletter, we are delighted to present a collection of articles from our team, covering various topics, such as:**

**Lauranne Nolan,** Associate and Safeguarding Lead, provides us with an overview of key developments in safeguarding with the new government as well as an update in relation to the mandatory reporting of child sexual abuse duty and the sanctions for failing to report. In addition, Lauranne also considers sexual harassment in the workplace and the new duty for employers which comes into force in October 2024.

**Shannon Boyce,** Solicitor Apprentice, considers the evolving world of artificial intelligence and how this new landscape is being exploited for the purposes of producing child sexual abuse material.

**Patrick Williams,** Associate, considers the recent government consultation into relationships, sex and health education. The consultation looks at what is appropriate to be taught to children and at what age, to ensure the content is factual and age appropriate.

We hope you find the contents informative and helpful. If you would like to discuss any of the articles or their implications, please do not hesitate to contact our Safeguarding Lead, Lauranne Nolan.

For more updates, be sure to listen to our Safeguarding Matters podcast, the latest of which can be found below.

**Safeguarding Matters**

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## Contents

Author: Lauranne Nolan

# Safeguarding and child protection with the new government.

The King's Speech took place on 17 July 2024. The purpose of the monarch's speech is to set out the government's priorities for the months ahead following the Labour Party's general election victory. The speech is written by the government but is delivered by the Monarch and outlines the draft laws that the new government plans to introduce. In addition, it may also include draft bills from the previous government that were abandoned due to the timing of the election and the dissolution of Parliament, meaning these were unable to complete the journey to becoming an Act.

# Martyn's Law

Martyn's Law is set out in the Terrorism (Protection of Premises) Bill. This was something that was in the previous government's plans but has had to be reintroduced. This will become an important piece of legislation that will improve protective security and organisational preparedness across the UK by mandating that those responsible for certain premises and events have to consider the terrorist risk and how they would respond to an attack.

The law is named after Martyn Hett. He was among the 22 people killed in the 2017 terror attack in Manchester at the Ariana Grande concert. His mother championed this campaign when she noted that there was legislation that sets out how many toilets a venue must have and how food must be prepared, but nothing that holds those same venues responsible for having basic security in place.

It is important to note that Martyn's Law doesn't advocate a one-size-fits-all approach – it is all about having a plan relevant to the threat. The bill will require certain venues to fulfil necessary but proportionate steps according to their capacity to mitigate the impact of a terrorist attack and reduce harm. It consists of five requirements, which are to:

+ engage with freely available counterterrorism advice and training;
+ conduct vulnerability assessments of their operating places and spaces;
+ mitigate the risks created by the vulnerabilities;
+ put in place a counter-terrorism plan; and
+ make local authorities plan for the threat of terrorism.

The government is carefully considering the scope of the requirements, including their possible impact so as not to place any undue burdens on the parties responsible for these public places in consideration of other regulatory regimes such as health and safety and with proportionality in mind.

Martyn's Law is not about preventing terrorist attacks from happening but, through it, premises will be better prepared and ready to respond in the event of a terrorist attack. This will likely impact public liability insurance and may require changes in risk assessment and policy wording related to public places and event venues.

# The Mental Health Act 1983 and the need for reform

The Mental Health Act 1983 (the Act) is the law that regulates the compulsory detention and treatment of persons with a mental disorder in England and Wales. Mental disorder is broadly defined in the Act as any disorder or disability of the mind. It also provides the legal framework to authorise the detention of people with a mental health disorder in hospital for assessment and/or compulsory treatment. This is sometimes referred to as 'sectioning'.

In 2017, the then government announced an independent review of the Act in response to concerns about its use. The concerns related to:

+ Increased number of detentions with the amount having doubled since 1983 when the Act was introduced and increasing by 40% between 2007 and 2016;
+ Its application to autistic people and people with a learning disability – under the current Act, people who have autism and people with a learning disability fall within the definition of "mental disorder";
+ Racial disparities and the disproportionate numbers of black and minority ethnic groups in the detained population; and
+ Concerns that some processes are out of step with a modern health system. This included:
+ the safeguards available to patients;
+ the ability of patients to determine which family or carers receive information and are involved in their care; and
+ concerns that detention may be used to detain rather than treat.

**The King's Speech included a commitment to legislate to modernise the Act**

to give people detained greater choice and autonomy, enhanced rights and support, and ensure everyone is treated with dignity and respect throughout treatment.

## This would be achieved through steps such as:

- Increasing the risk threshold for detention – the current wording in the Act provides that in order to detain someone in hospital for assessment or treatment of a mental disorder, it must be necessary for the person's own health or safety or the protection of other people. The draft bill would amend the criteria for detention by introducing two new tests that must be met to fulfil the criteria for detention. First, that "serious harm may be caused to the health or safety of the patient or of another person" and second, that the decision-maker must consider "the nature, degree and likelihood of the harm, and how soon it would occur".
- Limiting the application of the Act to people with a learning disability and/or autistic people to prevent inappropriate detentions.
- Add statutory weight to patient's rights to be involved in planning their care and to choose and refuse treatment as well as the right to replace the nearest relative with the nominated person role, chosen by the patient.
- Remove police stations and prisons as places of safety under the Act.
- Support offenders with severe mental health problems to access timely care as early as possible and improve the management of patients.

**The reforms are likely to take a number of years to implement and would need to be introduced in phases. The government has advised that any changes would not be introduced until there are sufficient staff and structures in place to ensure safety as there are concerns about a lack of community provision for those who would no longer meet the criteria for detention.**

The overall aim is to make it easier for patients and service users to participate in decisions about their care, to restore their dignity and recognise the importance of human rights in mental health care.

### Crime and Policing Bill

The bill is set to include one of the most prominent changes for child protection in that child criminal exploitation (CCE) is set to be classified as an offence and be given a statutory definition for the first time. This would mean it would be easier to prosecute criminal groups who are exploiting children, which is long overdue to protect children and teenagers, and will also help change the mindset of police, social and youth workers.

### Victims, Courts and Public Protection Bill

This will introduce new rules requiring offenders to attend sentencing hearings, which has been something that has drawn attention in recent months.

In addition, the bill proposes to restrict parental rights for any parent convicted of child sex offences. Parental responsibility is something which mothers automatically have and fathers have if they are married to the mother or named on the birth certificate. It is something that can only be removed by the Family Court and is one of the court's most severe powers.

Finally, in recent years there has been significant campaigning regarding registered sex offenders being allowed to change their name by deed poll. The general rule is that any person is entitled to change their name by deed poll and the current position is that the onus is on the offender to notify the police of any name change or change of address. With the onus on the offender to notify the relevant authorities, this is a loophole that has allowed a significant number of offenders to go missing from the system. The inclusion of this matter within this bill means that registered sex offenders will no longer be permitted to change their identity.

**We will be keeping a close eye on the above and will keep you updated with any future developments.**

Author: Patrick Williams

# Government Consultation: Review of the Relationships Education, Relationships and Sex Education (RSE) and Health Education statutory guidance

**On 16 May 2024, the Department for Education launched a consultation seeking views on proposed revisions to the Relationships Education, Relationships and Sex Education (RSE) and Health Education statutory guidance 2019.**

The purpose of this review is to ensure that the current guidance:

- covers all essential curriculum content;
- supports high-quality teaching which is inclusive and meets the needs of pupils; and
- supports schools to develop an open and positive relationship with parents, complementing the role of parents as the primary educators of their children.

The consultation follows recommendations made by a number of stakeholders, including an independent expert panel appointed by the Secretary of State to advise on what it is appropriate to teach in relationships and sex education and health education, and at what age, to ensure all content is factual and age appropriate.

## The guiding principles for carrying out this review are to remain the same as the guidance issued in 2019, which is as follows:

The role of parents in the development of their children's understanding about these subjects is vital. Parents are the first teachers of their children.

Relationships, Sex, and Health Education (RSHE) must be taught sensitively and inclusively, with respect for the backgrounds and beliefs of pupils and parents.

RSHE should prepare young people for the complexities of the world they are growing up in, and give them the tools to stay happy, safe, and healthy, and to act respectfully towards others and keep others safe.

All of the subject content must be age and developmentally appropriate.

Schools must have flexibility to shape their curriculum according to the needs of their pupils and communities.

# This consultation is an opportunity to give serious consideration to the following issues:

### Frequency of review of RSHE guidance

While previous guidance included a commitment to review the content of the RSHE statutory guidance every three years, it is considered a risk that a rigid timetable could undermine stability for teachers. It is, therefore, proposed that a less restrictive commitment is given in the terms of "This guidance will be kept under review".

### Structure of RSHE guidance

Feedback from teachers is that this guidance is too long and confusing. It is recommended that the guidance is restructured in order to simplify the content.

### Schools' relationships and sex education policies

All primary schools are required to have a policy for relationships education, and secondary schools are required to have a policy for relationships and sex education.

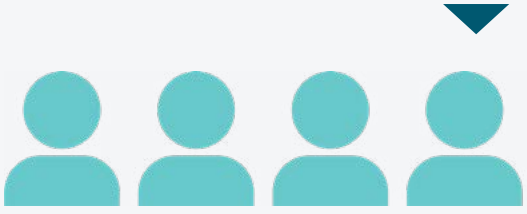
Proposed amendments to the guidance include asking schools:

- to differentiate between relationships and sex education (if they teach sex education) so that parents are clear about the content they can request withdrawal from.
- to explain how they will handle questions from pupils in relation to content that is restricted to older children, that relates to topics in primary sex education that the school doesn't cover, or relates to sex education from which the pupil has been withdrawn.
- to explain how parents can view curriculum materials.

### Openness with parents in respect of how schools share RSHE materials with parents

It is recommended that schools provide increased transparency to parents in respect of RSHE materials and the proposed guidance is as follows:

+ There is a strong public interest in parents being able to see all materials used to teach RSHE, if they would like to, and schools should not agree to contractual restrictions which prevent this.
+ Contractual clauses which seek to prevent schools sharing resources with parents at all are void, given the public interest in parents being able to see all RSHE material.
+ Schools should comply with any applicable copyright law when sharing materials with parents, and this may be through a parent portal or a presentation, but might include parents being given copies of material to take home.



## Age limits on teaching certain subjects

It is recommended that children build on their knowledge sequentially throughout their education and age limits for teaching of particular subjects are recommended as follows:

### Primary School:

Not before Year 3: online gaming, video game monetisation, scams, fraud and other financial harms.

Not before Year 4: growth, change and the changing adolescent body.

Not before Year 5: sex education topics in line with what pupils learn about conception and birth as part of the national curriculum for science.

Secondary School:

Not before Year 7: harmful sexual behaviour, including sexual harassment and the concepts and laws relating to it, including revenge porn, upskirting and taking intimate sexual photos without consent, public sexual harassment, and unsolicited sexual language/attention/ touching.

Not before Year 8: references to suicide (as part of teaching about health and wellbeing).

Not before Year 9: discussing the details of sexually explicit materials, violent abuse and the concepts and laws relating to domestic abuse. Explicit discussion of the details of sexual acts, in the context of teaching about intimate and sexual relationships, including in relation to contraception and STIs.

## Flexibility for age limits

In certain circumstances, schools may decide to teach age-limited topics earlier, provided it is necessary to do so in order to safeguard pupils and provided that teaching is limited to the essential facts, without going into unnecessary details.

## Sexual orientation teaching

Topics in respect of Lesbian, Gay, Bisexual and Transgender are now in one place and include additional content on gender reassignment and gender identity. Primary schools have discretion over whether to discuss sexual orientation or families with same-sex parents.

## Gender reassignment teaching

It is recommended that:

+ Schools should teach about the protected characteristics, including gender reassignment.
+ Schools should be clear that an individual must be over 18 before they can legally reassign their gender. This means that a child's legal sex will always be the same as their biological sex and that, at school, boys cannot be legally classified as girls or vice versa.
+ Schools should not teach about the concept of "gender identity" which is a highly contested and complex concept.
+ Schools should not use materials that use cartoons or diagrams that oversimplify this complex concept or that could be interpreted as aimed at younger children.
+ If asked about the topic of gender identity, schools should teach the facts about biological sex and not use any materials that present contested views as fact, including the view that gender is a spectrum.
+ Schools should consult parents on the content of external resources on this topic in advance and make all materials available to them on request.

## Addressing prejudice, harassment and sexual violence

There is to be a new section specifically addressing prejudice, harassment and sexual violence and harmful sexual behaviours, to include new content in respect of the harmful behaviours that pupils may be exposed to, including online, which may normalise harmful or violent sexual behaviours.

## Primary sex education

The new guidance is clear that where primary schools choose to teach sex education its focus should be to help pupils understand human reproduction and for their own safety, taking into account the new recommended age limits (see above).

**The consultation closed on 11 July 2024, with a response from the Department for Education to be published on www.gov.uk in autumn 2024.**


Author: Shannon Boyce.

# How the artificial intelligence landscape is being exploited

**In July 2024, the Internet Watch Foundation (IWF) published an updated report evaluating changes in child abuse imagery since their previous report of October 2023. It found that artificial intelligence (AI) technology is being exploited to produce child sexual abuse material (CSAM), and this is growing at a rapid rate despite the government and other world leaders tightening legislation and regulations.**

The IWF made recommendations to the government within this report which state:

1. That the government legislates to ensure that paedophile manuals which exchange hints and tips on how to utilise text-to-image-based generative AI tools to create child sexual abuse material are made illegal by extending the existing criminal offence to cover pseudo images.

2. That the government legislates to make it an offence to use personal data or digital information to create digital models or files that facilitate the creation of AI or computer-generated child sexual abuse material.

3. That the government legislates to tackle the rise in generative AI chatbots which simulate the offence of sexual communication with a child.

4. That the government legislates to ensure nudifying technology is not available to UK-based users and encourages other governments globally to take similar measures.

The UK Information Commissioner's Office (ICO) and Ofcom are responsible for upholding the Age-Appropriate Design Code (also known as the children's code) and the Online Safety Act (the Act) respectively. The government has indicated that they will not rush to enact further new legislation and one of the most important things needed now is space for regulators to work. It will take time to ascertain whether the new legislative regime will prove effective before making any significant changes or amendments.

The Act makes a number of references to the importance of keeping content such as pornography and content that encourages suicide, self-harm or eating disorders away from children while also ensuring that other types of inappropriate content are managed in an age-appropriate way.

One suggestion is that all children should be provided with appropriate education about the risks as well as the opportunities of digital technologies and support the use of them responsibly. The idea is that children should be empowered to use technology. As a result, many think that a multi-agency policy focus on supporting and educating internet users is long overdue and that media or digital literacy should be a core pillar of online safety strategy alongside regulation of technology companies.

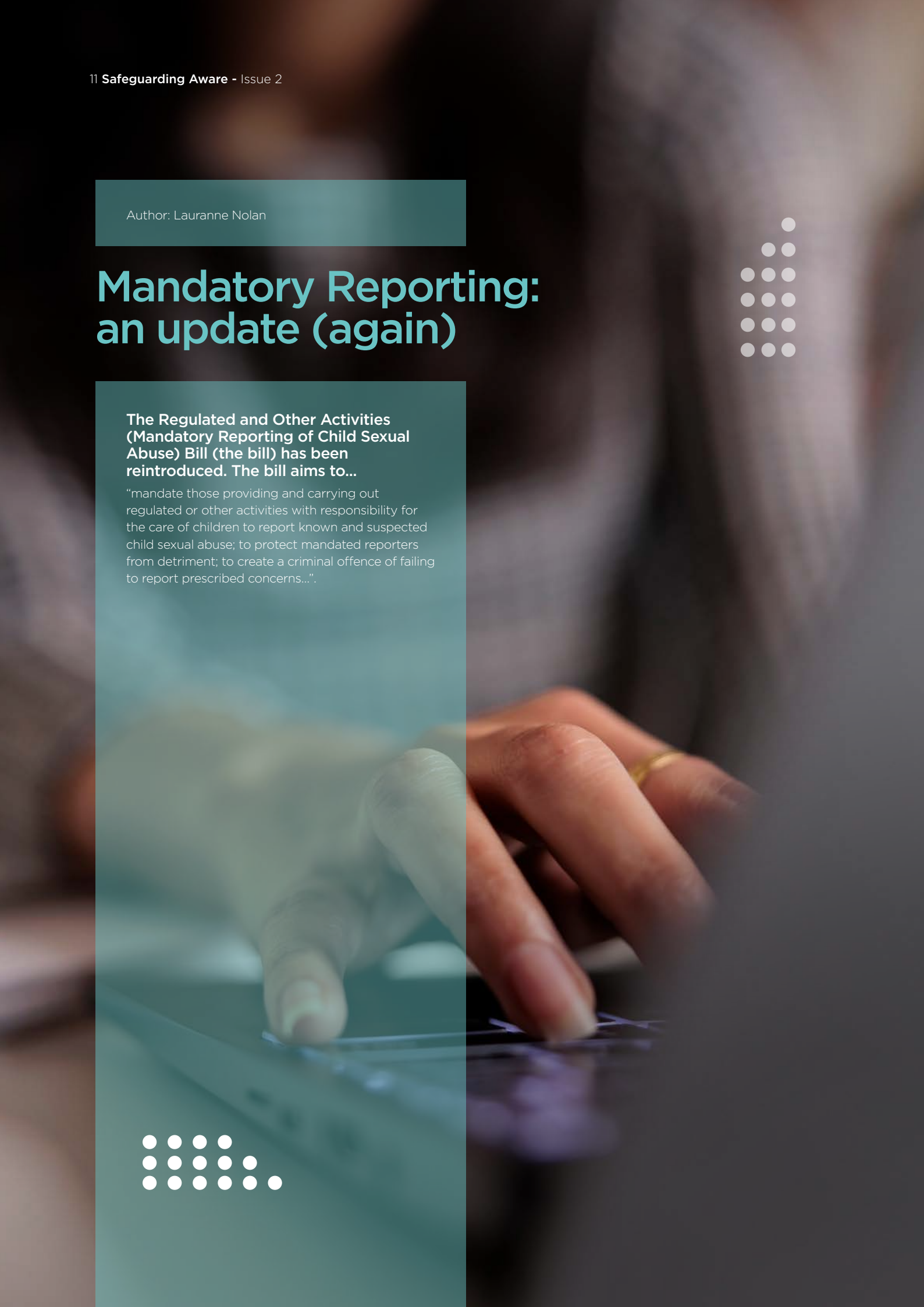
The relevant bodies should now be well versed on the complex social realities of personal technology use and now is the time to invest in the support structures needed to ensure the rapid growth of AI technology has an adequate regulatory framework.

Author: Lauranne Nolan

# Mandatory Reporting: an update (again)

**The Regulated and Other Activities (Mandatory Reporting of Child Sexual Abuse) Bill (the bill) has been reintroduced. The bill aims to...**

"mandate those providing and carrying out regulated or other activities with responsibility for the care of children to report known and suspected child sexual abuse; to protect mandated reporters from detriment; to create a criminal offence of failing to report prescribed concerns...".



## A brief recap

Mandatory reporting was one of the centrepiece recommendations from the final report of the Independent Inquiry into Child Sexual Abuse (IICSA) published in October 2022. Prior to this, the above bill had already been presented to the House of Lords for its first reading; however, it did not progress any further than that. This was likely due to the publication of the final IICSA report and the delay in the government's response to the recommendations.

In May 2023, the government confirmed its acceptance of the recommendation and agreed to implement a mandatory reporting regime for child sexual abuse which was to be informed by a full public consultation. The government, therefore, made a call for evidence where it sought views from persons working in regulated activity, volunteers undertaking regulated activity, anyone working with children in any capacity, people working in positions of trust, police officers, local authorities, NHS trusts, and those working in education settings as well as members of the public as to how the implementation of the duty was likely to impact children and organisations as well as affected workforces and volunteers and how different aspects could be implemented.

Once the call to evidence concluded, the government proceeded to launch a consultation to set out the proposals for delivering a mandatory reporting duty and test the remaining undecided policy questions.

Finally, after all of the above and approximately 18 months after the original bill was introduced, the government issued its full response to the call for evidence and consultation confirming that the mandatory reporting duty would be introduced through amendments to the Criminal Justice Bill which was at the Commons Report stage.

However, a general election was then called which meant that the Criminal Justice Bill did not complete its passage through Parliament in time and did not become an Act.

### Present position

Following the King's Speech on 17 July 2024, the convening of a new government and the opening of Parliament, the bill has been introduced once again. When passed, it will become the Regulated and Other Activities (Mandatory Reporting of Child Sexual Abuse) Act 2024.

The bill sets out that any providers of one or more of the activities set out in the bill "who know of, or have reasonable grounds for suspecting the commission of sexual abuse of children in their care after the date of the passing of this Act" must, as soon as is practicable after it comes to their knowledge or attention, report it to:

- The Local Authority Designated Officer (LADO); or
- Local Authority Children's Services; or
- such other single point of contact with the local authority as that authority may designate for that purpose.

This applies whether or not the activities are defined as regulated activities involving children and it applies whether a commission of sexual abuse takes place, or is alleged or suspected to have taken place, in the setting of the activity or elsewhere. The report can be made orally but if that does happen then the maker of the report must confirm the report in writing no later than seven days thereafter.

A person who makes a report in good faith, or takes any other actions as required by this Act, may not be held liable in any civil or criminal or administrative proceeding, and may not be held to have breached any code of professional etiquette or ethics or to have departed from any acceptable form of professional conduct. Reports and the identities of the persons making them must be received and held by their proper recipients in confidence.

However, failure to fulfil the duty and follow the correct procedure is an offence. In addition, an individual will be found guilty and it would be deemed an offence if "a person ... causes or threatens to cause any detriment to a mandated person ...or to another person, either wholly or partly related to the mandated person's actual or intended provision of a report under this Act...".

### The consequences of the two offences are:

- If a person is found guilty of failing to report then they are liable on summary conviction to a level 5 fine on the standard scale. Level 5 is an unlimited fine. This used to be limited to £5,000 but that was removed in 2015. The court will take into account the severity of the offence and the ability of the offender to pay.
- If a person is found guilty of the offence of causing or threatening to cause detriment to a person making the report or someone related to the provision of a report is liable on summary conviction to a level 4 fine on the standard scale which is limited to up to £2,500.

The only defence to the above is that you have evidence you did make the report or that there is a suspension from the Secretary of State so that you are exempted from compliance with the duty.

## Conclusion

The bill will now continue with its journey to become an Act of Parliament. The date of the second reading has not yet been scheduled. In the interim, it will be important for organisations to provide all the necessary training, support and resources to those working with children to enable professionals to comply with their legal duties and report concerns of child sexual abuse promptly and appropriately.

Author: Lauranne Nolan

# Sexual harassment in the workplace

The Worker Protection (Amendment of Equality Act 2010) Act 2023 (the Act) is due to come into force on 27 October 2024. The Act places a new duty on employers that they "must take reasonable steps to prevent sexual harassment of employees in the course of their employment." Lauranne Nolan, an Associate and the Safeguarding Lead in the specialist abuse team at Keoghs, considers this further.

## What does the new duty mean?

The Equality Act 2010 already provides protection against sexual harassment in the workplace in that it allows an employment tribunal to find an employer liable for sexual harassment based on the conduct of their employees. The Act goes further and imposes a mandatory, proactive duty on the employer to take reasonable steps to prevent their employees from experiencing sexual harassment in the course of their employment in addition to the protection afforded under the Equality Act 2010. Then duty also extends to when employees are working outside of their office, and when they are attending social events that are considered an extension of work.

In addition, employment tribunals will have the authority to increase compensation for sexual harassment by up to 25% if an employer is found to have breached this duty.

## The Act

The Act was introduced as a private member's bill by Wera Hobhouse, MP for Bath. Following its introduction and passage through Parliament, two significant changes were implemented. The original bill was drafted on the basis that employers would be required to take "all reasonable steps" (our emphasis) to protect employees which, as already mentioned above, has now been reduced to employers only being required to take "reasonable steps". Further to this, the bill sought to reintroduce protection against harassment of employees by third parties such as clients and customers and this has been removed from the Act.

A claim for sexual harassment cannot be made as a freestanding claim – it must be in addition to an existing claim for harassment. However, if an employee is successful in their claim for multiple forms of harassment, the 25% uplift available to the employment tribunal will apply not just to the sexual harassment element but to all of the compensation awarded for the claim.

## The Impact

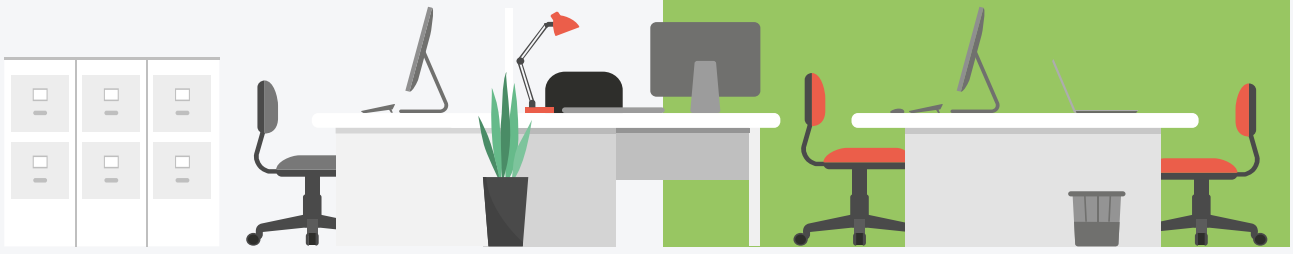
While the Act has been criticised in that it is a "watered-down" version of the original draft, the implementation of the duty presents a real opportunity for organisations to create and embed safer cultures within their workplace. By demonstrating their commitment to a safer culture it builds trust among employees and gives people the confidence to raise concerns and seek support. Failing to do so could have costly consequences, as well as being damaging to the company's reputation and culture.

To demonstrate that they have taken reasonable steps, employers should ensure they are reviewing and refreshing their harassment policies and reporting procedures, conducting regular training sessions with employees and taking any harassment complaints seriously. Simply having policies and training in place will not be enough.

This is also a good opportunity for employers to conduct a review of their company's culture to improve inclusivity and identify areas for improvement. This can be achieved by conducting audits on the effectiveness of company training, policies and reporting structures.

The culture and environment of a place of work have become topical in recent weeks due to the controversy surrounding Strictly Come Dancing. While there have been no allegations of sexual harassment made at this time, there appears to be an environment of bullying and verbal abuse from the professional dancers to members of staff as well as celebrities such as Amanda Abbington, Zara McDermott and Laura Whitmore. Many have reported that they did not feel they could raise issues due to the fact that the show was so prestigious and highly regarded.

As stated above, a claim for sexual harassment cannot be made as a freestanding claim for the purposes of an employment tribunal but it remains to be seen whether there is an increase in civil claims following the implementation of the act.



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