To: Principals
Designated Teachers for Child Protection
All grant-aided post primary schools

2 February 2009

Dear Colleague

CHILD PROTECTION: LEGISLATION CHANGES TO AGE OF CONSENT

1. The Sexual Offences (NI) Order 2008 commences today. The Order contains a number of important changes which clarify issues of consent in rape and sexual assault cases and aims to give children greater protection against sexual abuse.

2. This letter highlights for schools the key changes which have implications for pupils and signposts sources of further more detailed information and advice.

Key Changes

3. The key changes are:
   
   • A child below the age of 13 years, does not, under any circumstances have the legal capacity to consent to any form of sexual activity.
   
   • The age at which a young person is legally considered competent to give consent to sexual activity changes from 17 years to 16 years. The new offence of 'sexual activity with a child' means such activity with those below 16 years is illegal.
   
   • The term 'sexual activity' includes all sexual contact, not just sexual intercourse.
   
   • Sexual activity involving a child between the ages of 13 years and 16 years is illegal, even where ostensibly consenting.
- It is an offence for an adult to have any sexual activity with a young person below 18 years if the adult is in a position of trust with that young person, for example in a school, youth club or residential setting.

- It is an offence for anyone to take indecent pictures of children under 18 years.

- The Order removes the mandatory requirement to ‘report an offence’ in respect of sexual activity with a child committed by children or young persons under 18 years of age, so that unnecessary reporting of mutually agreed teenage sexual activity is prevented.

Child Protection Issues

4. The advice for schools’ staff on learning about underage sexual activity remains broadly as set out in ‘Circular 1999/10: Child Protection: Pastoral Care in Schools’ (page 7), with appropriate age changes. In brief, this is:

- All sexual activity involving a child of 12 years and under is sexual abuse and must be reported to the investigating agencies - PSNI or the relevant Social Services.

- A child of 13 years can be every bit as vulnerable as their younger peers and information that indicates that they are engaged in sexual activity should be treated very seriously. In all such cases the matter should be discussed with social services in the relevant Trust.

- Sexual activity involving a child between the ages of 14 and 15 years, while illegal, may not necessarily constitute sexual abuse or exploitation. The decision to initiate child protection action in such cases is a matter of professional judgement. Each case should be considered individually and advice sought from the Designated Officer for Child Protection.

- Sexual activity by children aged 16-17 years is not an offence, however, young people under the age of 18 years are still entitled to protection. It is important to ensure in these cases that there are no concerns about sexual abuse, exploitation or abuse of trust to be addressed.

- The offence of taking indecent pictures of children under 18 years can apply in a situation where a pupil has taken rude pictures using a mobile phone of others under 18.

Sources of Advice

5. Advice is available, in the first instance, for schools’ staff from the Child Protection Support Service for Schools (CPSSS) at your local Education and Library Board. The Designated Officers for Child Protection are available to discuss with you the general legislation changes or your concerns about a specific case.
6. A series of information leaflets about the changes in the legislation can be downloaded from the NIO website: http://www.nio.gov.uk/sexualoffences. There is a leaflet targeted specifically at young people explaining the changes and you may wish to make it available as part of an appropriate personal development class.

7. The Department of Health, Social Services and Public Safety is to issue guidance for practitioners and professionals about the implications of the law on child protection procedures. From 16 February, a copy of this guidance can be accessed at


Further Advice

8. The information in this letter will be incorporated into the next revised guidance on Child Protection to be issued by the Department.

Yours faithfully

Mary Potter
Pupil Support Unit