



The Scottish Parliament
Pàrlamaid na h-Alba

Education and Culture Committee

11th Report, 2013 (Session 4)

Stage 1 Report on the Children and Young People (Scotland) Bill

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Remit and membership

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The Scottish Parliament
Pàrlamaid na h-Alba

Education and Culture Committee

Remit and membership

Remit:

The remit of the Committee is to consider and report on further and higher education, lifelong learning, schools, pre-school care, skills and other matters falling within the responsibility of the Cabinet Secretary for Education and Lifelong Learning and matters relating to culture and the arts falling within the responsibility of the Cabinet Secretary for Culture and External Affairs.

Membership:

George Adam
Clare Adamson
Jayne Baxter (Member since 3 September 2013)
Colin Beattie
Neil Bibby (Deputy Convener)
Neil Findlay (Member from 22 December 2011 to 3 September 2013)
Stewart Maxwell (Convener)
Joan McAlpine
Liam McArthur
Liz Smith

Committee Clerking Team:

Clerk to the Committee

David Cullum

Senior Assistant Clerk

Terry Shevlin

Assistant Clerk

Lewis McNaughton

Committee Assistant

Fiona Sinclair



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Education and Culture Committee

11th Report, 2013 (Session 4)

Stage 1 Report on the Children and Young People (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. The Children and Young People (Scotland) Bill was introduced in the Scottish Parliament on 17 April 2013. It covers a wide range of provisions, across 13 Parts, each of which seeks to improve support services for children and young people in Scotland.

2. We were the lead committee in scrutinising the Bill at Stage 1. To support us, we received reports from the Local Government and Regeneration Committee, the Finance Committee and the Delegated Powers and Law Reform Committee.

Our approach to scrutiny¹

3. We took a considerable amount of evidence at Stage 1. We received over 180 written submissions² and took oral evidence in relation to the key provisions in the Bill from 25 June to 8 October 2013³.

4. Whilst we took oral evidence from many interest groups, it was not possible to hear from everyone. As ever, we have taken account of all the written submissions provided. The input of all those organisations and individuals who submitted their views to us has been essential and we thank everyone who contributed.

5. Throughout Stage 1 we raised a number of specific concerns about the Bill directly with the Scottish Government seeking additional information and clarification in various areas and have placed all of that in the public domain. We

¹ General information relating to our scrutiny of the Bill is available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/63073.aspx>

² The written submissions received are available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/66626.aspx>

³ The Official Reports of each of the evidence sessions together with associated papers are available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29802.aspx>

would like to record our thanks to the Scottish Government for responding to our concerns within the necessarily short timescales.

The general principles of the Bill

6. At Stage 1 our task is to report on the general principles of the Bill and this report discusses each Part of the Bill in the context of the evidence we received.

7. We support the principles underlying the Bill.⁴ Our view reflects the many positive responses we received about the Bill in general. However, we have some concerns about aspects of the proposed legislation and highlight areas that could be improved or where further clarification is needed ahead of Stage 2.

8. Our scrutiny of the Bill follows on from our recent inquiries into the educational attainment of looked after children⁵ and decision making on whether to take children into care⁶. Those inquiries have informed our scrutiny and we hope our suggestions in this report contribute to the central aim of improving outcomes for children and young people.

9. At the outset, we highlight a number of topics representing overarching challenges in the context of the whole Bill. This provides context for the more detailed analysis that follows in the body of our report, and aims to assist other Members' consideration of the Bill.

Early intervention and prevention

10. As the Bill's Policy Memorandum describes, the Bill "sets out fundamental reforms to children's services in line with the report of the Christie Commission, which highlighted the importance of early years, prevention and personalised service delivery"⁷.

11. Whilst we support this early intervention and prevention approach, we acknowledge the challenges – as indicated in the Financial Memorandum – associated with estimating how the preventative approach will result in future savings.⁸

12. In its report on the Financial Memorandum, the Finance Committee highlighted a number of concerns in relation to the robustness of some of the estimates and assumptions upon which the Financial Memorandum is predicated.

⁴ Liz Smith MSP dissented from this paragraph insofar as it includes Part 4, Provision of Named Persons.

⁵ Education and Culture Committee Report on educational attainment of looked after children (2012). Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/51538.aspx>

⁶ Education and Culture Committee Report on decision making on whether to take children into care (2013). Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/67750.aspx>

⁷ Children and Young People (Scotland) Bill. Policy Memorandum (SP Bill 27 – PM, Session 4 (2013)), paragraph 6. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62233.aspx> Children and Young People (Scotland) Bill. Financial Memorandum (SP Bill 27 – FM, Session 4 (2013)), paragraph 7.

Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62233.aspx>

⁸ Financial Memorandum, paragraph 4.

We invited the Scottish Government to respond to the Finance Committee's findings and specific issues are discussed throughout our report.

Reporting and planning duties

13. The Bill includes a wide range of provisions many of which have overlapping requirements to publish plans, frameworks and reports. There are also varying timescales attached to these duties.

14. For example, the Bill requires publication of children's services plans, early learning plans and corporate parenting plans. These involve different stakeholder groups and have different timescales for publication.⁹

15. Throughout the report, we ask whether a more cohesive approach could be taken in relation to some of the reporting and planning duties in the Bill. We also consider whether there is scope to integrate some duties within the overall legislative framework of which the Bill is a part.

Permeation of children's rights throughout the Bill

16. The Scottish Government originally intended to introduce two separate children's bills, one exclusively on children's rights¹⁰ and the other focusing on children's services.

17. To inform its legislative intentions, the Scottish Government launched a consultation on the children's rights proposals in 2011¹¹. A further consultation followed in 2012¹², which included children's rights proposals along with wider policy issues on children's services.

18. We received evidence saying that there needed to be better links between the children's rights part of this Bill and the other Parts.

Scottish Government consultation and the accompanying documents

19. We note the extensive consultation that the Scottish Government has undertaken in relation to the Bill and particularly its efforts to obtain the views of children and young people. We welcome the Government's continuing engagement with key stakeholders in relation to the development of regulations and guidance under the Bill.

20. This is a wide ranging Bill, which brings together various policies. The accompanying documents have assisted us in our scrutiny of the Bill and we refer to this throughout our report. Whilst we understand the Policy Memorandum is not intended to include the details of the Bill, we observe that some important policy

⁹ Children's services plans must be produced jointly by local authorities and health boards every three years, with annual reports (sections 8 and 13). Education authorities must produce early learning and childcare plans every two years (section 46). A wide range of organisations are to be required to publish corporate parenting plans in such a manner as those organisations consider appropriate (section 55).

¹⁰ Rights of Children and Young People Bill

¹¹ Scottish Government. (2011) *Consultation on Rights of Children and Young People Bill*. Available at: <http://www.scotland.gov.uk/Publications/2011/09/07110058/0> [Accessed 11 November 2013].

¹² Scottish Government. (2012) *Consultation on the Children and Young People Bill*. Available at: <http://www.scotland.gov.uk/Publications/2012/07/7181> [Accessed 11 November 2013].

information appears only in the Financial Memorandum. However, taken together, we consider the Policy Memorandum and accompanying documents contain adequate detail.

DISCUSSION AND FINDINGS

21. The sections of our report consider the main provisions of the Bill, largely in the order that they appear in the Bill.¹³

Part 1 – Rights of children

22. The Scottish Government's policy intention is to ensure that the United Nations Convention on the Rights of the Child (UNCRC) "continues to influence legislation, policy and practice in the near future"¹⁴. Although the key principles and many of the individual rights are already reflected in domestic legislation¹⁵, as the Convention was ratified by the UK in 1991, the Scottish Government believes that further legislative steps are "essential".

23. To achieve this, the Bill places duties on the Scottish Ministers to "keep under consideration" their approach to implementing the UNCRC; to promote public awareness and understanding of the rights of children; and to report (every three years) on the steps they have taken. In addition, the Bill requires certain public bodies to report, at least every three years, setting out the steps they have taken to "secure better or further effect" of the UNCRC requirements. The Bill does not, however, seek to impose on public bodies the wider duties that would apply to Scottish Ministers.

24. We received substantial comment on Part 1 of the Bill.

Limitations of the Bill

25. The Faculty of Advocates stated that, because the UK is already bound by international law to comply with the Convention, Part 1 of the Bill does not further develop the rights of children and young people in Scotland to a significant extent. It argued that the Scottish Government's policy was already to reflect the provisions of the Convention in the development of policy and legislation¹⁶.

26. The Law Society of Scotland described the duty placed on Ministers in respect of the UNCRC as a "diluted version of the existing obligations"¹⁷. Scotland's Commissioner for Children and Young People suggested that the duty in the Bill "is not a practical and effective measure to advance children's rights,

¹³ Part 13 (wellbeing), which underpins the Getting it right for every child (GIRFEC) policy, is discussed with Parts 3-5, which relate to GIRFEC.

¹⁴ Policy Memorandum, paragraph 43.

¹⁵ For example, the right to an education is included in the Standards in Scotland's Schools etc. Act 2000; the courts and children's hearings must regard children's welfare as the paramount consideration and take a child's views into account (Children (Scotland) Act 1995, section 16); local authorities must regard children's welfare as the paramount consideration in relation to any looked after child (Children (Scotland) Act 1995, section 17).

¹⁶ A report on the implementation of the UN Convention on the Rights of the Child in Scotland 1999-2007 (paragraph 21): <http://www.scotland.gov.uk/Resource/Doc/184924/0052026.pdf>

¹⁷ Law Society of Scotland. Written submission

and it contains numerous qualifiers granting Ministers ample discretion”¹⁸. The Commissioner said that he would find “it difficult to imagine an effective legal challenge to the exercise of the duty”, which, he stated, “underlines the weakness of this provision”.¹⁹ Others preferred the duty that had been proposed in the original children’s rights Bill in 2011²⁰, which would have required Scottish Ministers “to have due regard” to the UNCRC.²¹

27. Many children’s organisations and charities went further and called for incorporation of the UNCRC into domestic law. For example, Together²² suggested that incorporation would “embed clear and robust measures of accountability and provide the transparency needed to ensure key bodies understand the impact their work is having on protecting and promoting children’s rights”²³. It suggested doing so would “provide a strong signal from the Scottish Government that all levels of government – and society at large – must take the UNCRC seriously”²⁴. A number of other submissions²⁵ indicated support for Together’s view.

28. The Scottish Human Rights Commission also supported incorporation of the UNCRC.²⁶ However, it acknowledged that the Scotland Act 1998²⁷ already requires Scotland to “observe and implement existing UK international legal obligations, one of which is to implement the UNCRC”.²⁸ The Commission also recognised, as did the Scottish Government, that any move to incorporate the UNCRC would be limited to devolved issues.²⁹

29. We asked witnesses to describe the practical benefits arising from incorporation. Scotland’s Commissioner for Children and Young People told us he believed it would “lead to better outcomes for children and young people”³⁰ and gave examples of where incorporation would be likely to make a difference. He considered that the principal effects would include: requiring Ministers and public authorities to act compatibly with the UNCRC, enabling redress through a range of accessible remedies for individuals and enabling the courts to declare unlawful legislation that is incompatible with UNCRC rights. For example, in relation to the

¹⁸ Scotland’s Commissioner for Children and Young People. Written submission.

¹⁹ Scotland’s Commissioner for Children and Young People. Written submission.

²⁰ In its consultation, the Scottish Government had proposed a duty requiring Ministers to have “due regard” to the UNCRC, which some, such as SHRC and SCRA, believed was stronger than the wording in the Bill.

²¹ Scottish Human Rights Commission, Scottish Children’s Reporters Administration, Health and Social Care Alliance Scotland. Written submissions.

²² An alliance of children’s charities, which aims to improve the awareness, understanding and implementation of the UNCRC in Scotland.

²³ Together. Written submission.

²⁴ Together. Written submission.

²⁵ Families Outside, Includem, LGBT Youth Scotland, NSPCC. Written submissions.

²⁶ Scottish Human Rights Commission. Written submission.

²⁷ Scotland Act 1998 (Schedule 5, Section 7). Available at: <http://www.legislation.gov.uk/ukpga/1998/46/contents> [Accessed 11 November 2013]

²⁸ Scottish Parliament Education and Culture Committee. *Official Report, 1 October 2013*, Col 2888.

²⁹ Scottish Government. Written submission.

³⁰ Scottish Parliament Education and Culture Committee. *Official Report, 1 October 2013*, Col 2882.

age of leaving care, he suggested that incorporation would put young people in a stronger position to ensure they have a substantial say in decisions about them.³¹

30. We also discussed the viability of incorporation with other witnesses. For example, Professor Kenneth Norrie opposed incorporation, suggesting it would be “bad policy, bad practice and bad law”³². Whilst the Convention was full of good aspirations for government, it had not, he said, been drafted to be legally enforceable in a court of law as it was “full of wide, broad statements that you cannot possibly ask judges to determine”³³.

31. Professor Elaine Sutherland challenged Professor Norrie’s position. She stated that it was “incorrect to assert that the UN Convention was not drafted or worded to create directly enforceable legal rights in the domestic legal system”³⁴. She supported incorporation and argued that the fundamental point to bear in mind was that “it was not anticipated that every article of the Convention would be incorporated and it will be for those drafting the statute to distinguish the solid from the aspirations and to find the appropriate means of incorporation”.

Improving the Bill

32. Whilst UNICEF UK supported full incorporation of UNCRC into Scots law, should that not be achieved, it proposed a number of practical improvements that it believed would strengthen the duties in the Bill.³⁵ UNICEF UK agreed that Ministers should be required to demonstrate how they have fulfilled their duty to consider the UNCRC, but also suggested that public bodies should be required to act to implement the UNCRC and not just to report on the steps they have taken.

33. Also, in the absence of incorporation, the Children’s Commissioner suggested that Article 3 (child’s best interests to be a primary consideration in all matters affecting the child) and Article 12 (child’s view on all matters affecting them to be given due weight in decision-making) should be given effect through the Bill.³⁶

34. The Minister for Children and Young People said she did not believe the case had been made for full incorporation, citing the comments made by Professor Norrie. She told us—

“The duty in the bill is a duty on ministers to reflect the UNCRC. That will child rights proof all our decisions. A tool will be developed to support that. We will take practical actions to increase awareness of children’s rights, whether through schools or with professionals or parents. As far as the practical impact is concerned, there will be a new duty on ministers to

³¹ Scotland’s Commissioner for Children and Young People. Supplementary written submission.

³² Scottish Parliament Education and Culture Committee. *Official Report, 3 September 2013*, Col 2682.

³³ Scottish Parliament Education and Culture Committee. *Official Report, 3 September 2013*, Col 2682.

³⁴ Professor Elaine Sutherland. Written submission.

³⁵ UNICEF UK. Written submission.

³⁶ Scotland’s Commissioner for Children and Young People. Written submission.

properly reflect the UNCRC in the policies that we take forward as a Government.”³⁷

35. Scottish Government officials explained that, from the evidence Ministers had seen, the benefits of incorporation lay “primarily in relation to improved culture within [public] services and increased awareness of children’s rights”³⁸. Those benefits, officials said, could be delivered through “changes in policy as well as improvements in frontline practice”³⁹, such as through effective embedding of GIRFEC.

36. We asked the Minister to respond to the suggestion from children’s organisations that the Bill does not do enough to ensure that public bodies will help to strengthen children’s rights. The Minister stated that “we have a commitment to raise awareness across the public bodies and there will also be reporting to ensure that we understand where they are on children’s rights”⁴⁰.

Conclusions

37. From the evidence received, we understand that the main argument put forward by some witnesses for full incorporation was that it would put children at the centre of decision-making. However, we received little evidence about how it would do this in practice and whether full incorporation was vital to achieving improved outcomes for children.

38. We also note that the UNCRC is implemented in Scotland in a number of ways already, not least under our obligations in the Scotland Act 1998. In addition, as some supporters of incorporation noted, incorporation would be limited to the powers devolved to the Scottish Parliament.

39. We are not persuaded of the case for full incorporation of the UNCRC into Scots law, although there may be opportunities to improve the Bill by incorporating specific elements of the UNCRC (see paragraph 43). We agree that the benefits arising from incorporation of the UNCRC could be realised from improvements in policy and practice, such as through the implementation of GIRFEC.

40. However, we are concerned about evidence describing the duties in Part 1 as little more than a restatement of existing obligations. **Therefore, we recommend that the Scottish Government provides an explanation of the practical actions it intends to take to increase awareness of children’s rights, including details of the tool⁴¹ that will be developed. We also recommend that, in addition to reporting on the steps they have taken to fulfil their duties under Part 1, Ministers should be required to report on the activities they intend to undertake to further children’s rights in each three-year period.**

³⁷ Scottish Parliament Education and Culture Committee. *Official Report*, 8 October 2013, Col 2947.

³⁸ Scottish Parliament Education and Culture Committee. *Official Report*, 1 October 2013, Col 2644.

³⁹ Scottish Government. Written submission.

⁴⁰ Scottish Parliament Education and Culture Committee. *Official Report*, 8 October 2013, Col 2949

⁴¹ See evidence from the Minister at paragraph 34

41. **In relation to the duties placed on public authorities, we recognise there are different views on the wording of the Bill. We seek further clarification from the Scottish Government on why it has chosen not to include duties to ‘keep under consideration’ and thereafter, to ‘take steps identified by that consideration’.**

42. We welcome the intention to allow public authorities to report under this Part in their annual reports. We note that there are a number of new reporting and planning duties in the Bill, which often fall to the same organisations. **We therefore ask whether some of these duties could be better integrated.**

43. **We note that Article 42⁴² is incorporated in the Bill and request the Scottish Government’s response to the Children’s Commissioner’s suggestion that Articles 3 and 12 also be included.**

44. A number of organisations expressed disappointment that the Scottish Government did not undertake a Child Rights Impact Assessment (CRIA) on the Bill. We wrote to the Scottish Government on this matter. We accept the Scottish Government’s reason for not undertaking a CRIA in this case, which was due to the extensive engagement activities carried out during the Bill’s development. **However, the Scottish Government should commit to undertaking CRIAs in relation to relevant future legislation.**

Part 2 – Commissioner for Children and Young People in Scotland

45. The Bill proposes an extension to the Commissioner’s power of investigation, which would allow it to undertake investigations⁴³ on behalf of individual children and young people (to be known as individual investigations). The Policy Memorandum describes the effect as “introducing an additional mechanism to support children in seeking redress where they feel their rights, views and interests have not been properly taken into account”⁴⁴.

46. As is currently the case, the Commissioner would be able to investigate any person or organisation in the public, private or voluntary sector that provides a service to children and young people.⁴⁵ The difference is that the Commissioner would be able to do so in relation to individuals rather than only where an issue is of relevance to a group of children and young people. It is anticipated that this would give rise to a small number of investigations, perhaps 1 to 4 each year.⁴⁶

47. The Bill’s Financial Memorandum has estimated that the new functions would require additional funding of around £160,000 per year (except in the first year⁴⁷).

⁴² Article 42 of the UNCRC states that “The Government should make the Convention known to all parents and children”. The Bill aims to achieve this by the duty on Scottish Minister to “promote public awareness and understanding ... of the rights of the child” (section 1(2)).

⁴³ Currently, the Commissioner may only conduct an investigation where an issue is relevant to all children, or a specific group of children (general investigations).

⁴⁴ Policy Memorandum, paragraph 49.

⁴⁵ Explanatory Notes, paragraph 14

⁴⁶ Financial Memorandum, paragraph 31.

⁴⁷ In the first year, staff, travel and accommodation costs have been estimated at a level equivalent to half a year. The total estimated cost in the first year is £83,190, compared with £162,109 in subsequent years.

Most of this increase would fund costs associated with the Commissioner employing three additional full-time members of staff⁴⁸. All costs would fall on the Scottish Parliamentary Corporate Body.

Avoiding duplication with the functions of other bodies

48. The Bill proposes that, in line with the Commissioner's existing power to conduct general investigations, the Commissioner would only be permitted to conduct an individual investigation that did not duplicate the function of another organisation⁴⁹.

49. The Scottish Public Services Ombudsman (SPSO) has responsibility for considering complaints and responding to concerns raised by members of the public. Whilst the SPSO welcomed the new powers of investigation it was concerned about the potential for overlap with its own functions. The SPSO referred to the Commissioner's power to investigate as likely to "amount to service failure or maladministration, the categories which are the categories we judge complaints by"⁵⁰.

50. In response to these concerns, the Commissioner confirmed he was in active discussion with the SPSO and other scrutiny bodies.⁵¹ He also said he had discussed the operation of the proposed powers with several local authorities and that, between now and the Bill's enactment, planned to "look at the detail and discuss how wide the scope will be, how we will interpret it and how it will sit with other investigatory bodies"⁵².

51. The majority of those who submitted written evidence on this Part supported the extension of the Commissioner's powers. However, some suggested the "considerable cost of staffing the Commissioner's office to support more investigations"⁵³ would be better spent on mediation services⁵⁴ and other forms of legal redress⁵⁵ for children and young people.

Flexibility to resolve cases without formal investigation

52. In addition to allowing the Commissioner to conduct individual investigations, the Bill would allow the Commissioner to resolve a matter without recourse to a formal investigation. It is intended that this new power would only apply to matters that are covered by the power to conduct an investigation.⁵⁶

⁴⁸ The Financial Memorandum indicates that the following staff will be required: a Head of Casework and Legal, an Investigator, and a Casework Support Officer.

⁴⁹ The Explanatory Notes (paragraph 16) refer to the following organisations that have responsibility for considering complaints and responding to concerns raised by members of the public: the Scottish Public Services Ombudsman, the Care Inspectorate, and the Equality and Human Rights Commission.

⁵⁰ SPSO. Written submission.

⁵¹ Scottish Parliament Education and Culture Committee. *Official Report, 1 October 2013*, Col 2900

⁵² Scottish Parliament Education and Culture Committee. *Official Report, 1 October 2013*, Col 2903

⁵³ Anne Black, an independent social work consultant

⁵⁴ Fostering Network. Written submission.

⁵⁵ Clan Childlaw. Written submission.

⁵⁶ Scottish Government. Written submission.

53. The Commissioner said he expected most of the additional resources would be required in order to resolve cases without needing to conduct a full scale investigation. He estimated “this could involve hundreds of cases”.⁵⁷

54. The Commissioner also described how the new power would give him discretion to become involved in cases at an early stage, possibly where local processes had not been exhausted. He considered that early resolution of cases was of crucial importance and that “making them [children and young people] exhaust all local complaints processes would not be the best approach”⁵⁸. In such cases, he said his primary role would be to “refer and signpost [the complainant] back to existing complaints processes”⁵⁹.

55. It appeared to us that the Commissioner had interpreted this power more widely than intended. We, therefore, invited the Scottish Government to clarify the position. It responded as follows—

“This provision is designed to offer the Commissioner some flexibility in dealing with a case which could otherwise be dealt with through an investigation. Paragraph 16 of the Explanatory Notes makes clear that the Commissioner may not undertake such an investigation where that would duplicate the work of any other complaint handling body. We would therefore not foresee there being a role for the Commissioner to have extensive, ongoing involvement in a case prior to local processes being exhausted and it is not our view that the Commissioner should take on any mediation-type role.”⁶⁰

56. The Scottish Government did, however, accept that the proposed new power linked to individual investigations was likely to result in an increase in enquiries for support received by the Commissioner’s office. The Government felt it was important that the enquiry-handling service continued to be delivered, and recognised the resource implications associated with an increase in enquiries⁶¹.

Conclusions

57. We support the Commissioner’s work in representing children’s interests. We also welcome the Commissioner’s commitment to co-operate with the various complaints-handling bodies in order to ensure the Bill does not give rise to overlap or duplication of functions.

58. However, we are concerned by the misunderstanding about what the new power of investigation will allow. It appears that the Commissioner interprets the scope of the new power more widely than intended by the Scottish Government. **We expect all parties to be clear about the interpretation of the**

⁵⁷ Scottish Parliament Education and Culture Committee. *Official Report, 1 October 2013*, Col 2899

⁵⁸ Scottish Parliament Education and Culture Committee. *Official Report, 1 October 2013*, Col 2903

⁵⁹ Scottish Parliament Education and Culture Committee. *Official Report, 1 October 2013*, Col 2903

⁶⁰ Scottish Government. Written submission.

⁶¹ The Financial Memorandum states that the Commissioner’s office currently receives between 350 and 425 enquiries per year (paragraph 33).

Commissioner's new powers and suggest that, if necessary, the Bill should be amended to ensure this.

59. The issue of resources is closely linked to the interpretation of the Commissioner's new powers. If the resources are primarily aimed at funding staff to handle more enquiries, we question whether the proposed level of staffing is necessary. We are mindful of evidence indicating that the estimated £160,000p.a. could be better spent on, for example, greater access to mediation for children and young people, and are keen to ensure that any costs are fully justified. **We recommend that the Scottish Government gives further consideration to the volume and type of work that any extra enquiries will require.**

Getting it right for every child (GIRFEC)

60. Parts 3 to 5 and Part 13 of the Bill advance the Scottish Government's policy of Getting it right for every child (GIRFEC). GIRFEC supports better-integrated and child-centred service planning and delivery across children's services. It was developed in a number of Pathfinder areas in 2006 and, since 2011 the Scottish Government has expected it to be implemented by all local authorities.

61. Inconsistencies in the implementation⁶² of GIRFEC have been noted, therefore one of the stated aims of the Bill is to achieve greater consistency and build on good practice. We acknowledge the need for flexibility in order to allow local circumstances to be taken into account in the delivery of services for children and young people, however, we agree with the Scottish Government that GIRFEC should be implemented more consistently than it is at present.

62. The Bill includes a number of proposals relating to GIRFEC—

- a requirement for the joint preparation of children's services plans (Part 3);
- an expectation that every child and young person shall have an assigned named person (Part 4);
- a duty to require the preparation of a child's plan (Part 5); and
- a definition of "wellbeing", which underpins GIRFEC and includes indicators (known as the SHANARRI indicators⁶³) to assess children's needs (Part 13).

63. These provisions seek to deliver – in line with the Bill's overall principles of early intervention and prevention – coordinated children's services that will

⁶² The Scottish Government's GIRFEC Implementation Report shows the extent to which the policy has been rolled-out across Scotland. The Report is available at: [http://www.scottish.parliament.uk/S4_EducationandCultureCommittee/Children%20and%20Young%20People%20\(Scotland\)%20Bill/GIRFECreport.pdf](http://www.scottish.parliament.uk/S4_EducationandCultureCommittee/Children%20and%20Young%20People%20(Scotland)%20Bill/GIRFECreport.pdf) [Accessed 13 November 2013]

⁶³ The SHANARRI indicators are: safe, healthy, achieving, nurtured, active, respected, responsible, and included.

improve the wellbeing and life chances of children and young people in Scotland.⁶⁴ These are discussed in the following sections of our report.

64. In recognition of the fact that the definition of wellbeing underpins the GIRFEC provisions included in the Bill, this is discussed briefly here rather than at the end of the report. Although many organisations welcomed⁶⁵ the statutory introduction of the term ‘wellbeing’ and the SHANARRI indicators, several organisations felt that it could cause confusion in that other children’s legislation refers to the term ‘welfare’.⁶⁶ For example, the Law Society of Scotland stated that the correlation between the two terms was unclear.⁶⁷ Professor Norrie, however, considered that the two concepts were different and that it was therefore appropriate to use the two different words in legislation.⁶⁸

Conclusion

65. We support the principles of GIRFEC and **want to see GIRFEC implemented consistently and effectively throughout Scotland.**

Part 3 – Children’s services planning

66. The Bill introduces a duty on local authorities⁶⁹ and each relevant health board to prepare joint children’s services plans every three years.⁷⁰ The Bill also introduces an annual reporting mechanism and detailed requirements about the consultation, purpose and aims of the plans. The intended effect is that “those bodies responsible for expenditure, planning and delivery of services will work together in considering how to improve the whole wellbeing of all children and young people in their area”.⁷¹

67. Much of the evidence we received on this Part supported the principle of integrating children’s services planning. For example, COSLA said it had long-argued for better integration of public services locally.⁷² The North of Scotland Planning Group, a collaboration of six health boards, recognised the benefits of joint-working between local authorities and health boards, particularly in remote and rural areas, in the provision of children’s services.⁷³ The Care Inspectorate also highlighted that, where third sector and independent service providers were integrated in children’s services planning, this helped to “harness their contribution, knowledge and expertise towards meeting local need”.⁷⁴

⁶⁴ Policy Memorandum, paragraph 55.

⁶⁵ Children’s Hearings Scotland, Action for Children, Advisory group on ASL, YouthLink Scotland. Written submissions.

⁶⁶ Falkirk Children’s Commission. Written submission.

⁶⁷ Law Society of Scotland. Written submission.

⁶⁸ Professor Kenneth Norrie. Written submission.

⁶⁹ Currently, local authorities are required to develop singular children’s services plans under section 19 of the Children (Scotland) Act 1995

⁷⁰ Policy Memorandum, paragraph 63.

⁷¹ Policy Memorandum, paragraph 63.

⁷² COSLA. Written submission. Scottish Parliament Education and Culture Committee. *Official Report, 17 September 2013, Col 2791*

⁷³ North of Scotland Planning Group. Written submission.

⁷⁴ Care Inspectorate. Written submission.

68. There were numerous calls for children's services planning to be linked with the wider planning framework and, specifically, with community planning, single outcome agreements (SOAs), and other legislation. For example, Action for Children called for greater coordination at the planning stage and to defining outcomes for community planning and SOAs⁷⁵. COSLA wanted us to consider how the Bill would sit within the existing community planning landscape and the proposals expected in a community empowerment and renewal bill.⁷⁶

69. NSPCC Scotland highlighted links with the proposed Public Bodies (Joint Working) (Scotland) Bill and the recent Social Care (Self Directed Support) (Scotland) Act 2012, which had, or were expected to have, implications for the planning and delivery of children's services. It argued that—

“The impact of this broader legislative landscape on children's lived experiences must be a central consideration of the Children and Young People (Scotland) Bill.”⁷⁷

70. Others highlighted the importance of integrated service provision from the perspective of children and young people with disabilities and complex needs. For Scotland's Disabled Children (FSDC) said there needed to be good planning when young people transition from children's services to adult services or move between local authorities.⁷⁸ Also, UNICEF UK wanted the GIRFEC approach to children's services to be joined-up with the broader children's rights framework and suggested that “a child rights framework needs to be introduced within children's services planning, through which public bodies can safeguard, support and promote the rights and well-being of children in their area”⁷⁹.

71. COSLA called for section 17, which gives the Scottish Ministers discretionary power to constitute a joint board to undertake children's services planning, to be removed from the Bill.

72. The Local Government and Regeneration (LGR) Committee scrutinised this Part of the Bill and reported to us. It highlighted that community planning partnerships (CPPs) would have a key role to play if the aims of the Bill were to be realised. In the context of the forthcoming legislation to strengthen the roles and responsibilities of CPPs, the LGR Committee sought clarity around the implementation of the Children and Young People Bill and how it would fit with the role of CPPs in the new partnerships and arrangements.⁸⁰

Conclusions

73. We support the better integration of children's services planning. This is of particular importance in ensuring the smooth transition, between types of services

⁷⁵ Action for Children. Written submission.

⁷⁶ COSLA. Written submission.

⁷⁷ NSPCC Scotland. Written submission.

⁷⁸ For Scotland's Disabled Children. Written submission.

⁷⁹ UNICEF UK. Written submission.

⁸⁰ Scottish Parliament Local Government and Regeneration Committee, 2013 (Session 4).

Memorandum on Children and Young people (Scotland) Bill. Paragraphs 43-45. Available at:

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/LGR_Committee_memoirandum_on_SP_Bill_27_and_SP_Bill_32.pdf [Accessed 13 November 2013]

as well as geographically, for children and young people with disabilities or complex needs.

74. It is crucial, therefore, that the proposals in the Bill sit within an overall framework that is easy for service users and service providers to navigate.

75. The Scottish Government should clearly illustrate how children's service plans fit within the wider Government strategy to integrate service planning across for example, the Public Bodies (Joint Working) (Scotland) Bill, the proposed Community Empowerment (Scotland) Bill⁸¹ and with Single Outcome Agreements and Community Planning Partnerships.

76. We agree with COSLA that the discretionary power conferred upon Scottish Ministers to constitute a joint board (section 17) is not the right approach. We welcome the Scottish Government's confirmation that it intends to bring forward the necessary changes to the Bill at Stage 2.⁸²

77. On a separate issue, we received a public petition which called for the Bill to place a duty on local authorities to provide sufficient and satisfying play opportunities for children of all ages and abilities.⁸³ The Scottish Government confirmed that Part 3 "would encompass the contributions that local authorities, health boards and other relevant service providers can make to supporting play opportunities for children"⁸⁴. We welcome this confirmation from the Government as well as its work in developing the Play Strategy Action Plan⁸⁵.

Part 4 – Provision of named persons

78. The Bill makes provision for every child and young person up to the age of 18 (or beyond if still at school) to have a named person. The Policy Memorandum says that named persons will be part of a network of support that will ensure children and young people "get the right help at the right time"⁸⁶. The network of support will always include the family and/or carers.

79. Although the named person role is part of the wider GIRFEC policy and exists in some parts of Scotland, it "has not been implemented systematically across the whole country"⁸⁷. The Policy Memorandum states that the provisions are designed to underpin the national GIRFEC approach and to help ensure that services for children and families are provided consistently nationwide.

80. The proposal for named persons has received substantial comment. Views ranged from opposition to the fundamental principle of having a named person on

⁸¹ Consultation on the Community Empowerment (Scotland) Bill was launched 6 November 2013.

Available at: <http://www.scotland.gov.uk/Topics/People/engage>

⁸² Letter to the Delegated Powers and Law Reform Committee (17 September 2013)

⁸³ [Public Petition PE1440](#). Available at:

<http://external.scottish.parliament.uk/GettingInvolved/Petitions/PlayScotland> [Accessed 13 November 2013]

⁸⁴ Scottish Government. Written submission.

⁸⁵ Scottish Government. (2013). *Play Strategy for Scotland: Our Action Plan*. Available at: <http://www.scotland.gov.uk/Publications/2013/10/9424> [Accessed 13 November 2013]

⁸⁶ Policy Memorandum, paragraph 67.

⁸⁷ Policy Memorandum, paragraph 69.

the belief that it diminished the role of the parent and the suggestion that the needs of vulnerable children might get lost in the universal service, to backing for the early intervention approach of which the named person was felt to be an integral part. Many bodies highlighted practical and resource issues that needed to be resolved for the role to work effectively.

The role of parents

81. Some bodies opposed the named person role as they felt it did not recognise the role of the parent. The Faculty of Advocates stated it would “dilute the legal role of parents” whether or not there is any difficulty in the way that parents are fulfilling their statutory responsibilities”.⁸⁸ Similarly, Schoolhouse Home Education Association criticised the proposals as amounting to “an interference with private and family life”⁸⁹. The Scottish Parent Teacher Council described them as effectively seeking to “usurp the role of the parent”⁹⁰.

82. In response, the Minister acknowledged that “the parent is the most important person, and the most important educator, in a child’s life”⁹¹, and said that the named person provisions were “about providing a support network and framework for families, **if they need it** [emphasis added]”⁹².

The role of named persons

83. Support for the principle of the named person role focused on the benefits of having a recognised professional who knew the family and acted as the main point-of-contact for them. Highland Council said that when GIRFEC began, the named person requirement was not included in the list of components, and it was “developed through practice and experience, and discussions with families and professionals”⁹³.

84. Highland Council described one of the key benefits of the named person role as delivering “earlier support and more effective intervention for more children”⁹⁴. Earlier interventions, it said, generally led to more successful outcomes. The Council also highlighted the role of the named person as providing a clear point of contact, which was important for the family and other professionals.

85. Scottish Government officials described the premise of the named person as the “idea of establishing a good, trusted relationship between the individual and someone whom ... the family know and see reasonably regularly”⁹⁵. Similarly, Highland Council regarded the named person as “someone who has a good understanding of the child and family’s circumstances”⁹⁶.

⁸⁸ Faculty of Advocates. Written submission.

⁸⁹ Schoolhouse Home Education Association. Written submission.

⁹⁰ SPTC. Written submission.

⁹¹ Scottish Parliament Education and Culture Committee. *Official Report, 8 October 2013*, Col 2946

⁹² Scottish Parliament Education and Culture Committee. *Official Report, 8 October 2013*, Col 2946

⁹³ Scottish Parliament Education and Culture Committee. *Official Report, 24 September 2013*, Col 2849

⁹⁴ Highland Council. Written submission.

⁹⁵ Scottish Parliament Education and Culture Committee. *Official Report, 8 October 2013*, Col 2954

⁹⁶ Highland Council. Written submission.

86. At our meeting on 17 September, we asked witnesses⁹⁷ whether, in a practical sense, the introduction of a named person would lead to a better service and therefore a reduction in neglect. All of those witnesses said it would. For example, the Royal College of Nursing referred to a growing evidence base, which suggested that “a comprehensive approach to universal services, with tiered support, would reduce neglect and improve mental health and attachment relationships later in a child’s life”.⁹⁸

87. In considering the implementation of the named person role for young people who have left school and are under the age of 18, it is notable that Highland Council had difficulties in assigning a named person⁹⁹. In its written evidence, the Council said “not only has this been difficult to achieve in practice, there are doubts about the desirability and necessity of this measure”¹⁰⁰.

88. Highland Council recognised its success in implementing GIRFEC was in part due to the positive culture of collaborating across different frontline services.¹⁰¹ Highland Council acknowledged that it enjoys an effective relationship with the police force and other bodies and has a very active third sector.

Specific duties of the named person

89. Some witnesses expressed uncertainty about the duties of the named person. Most evidence, including that from Highland Council, described the role of the named person as being that of a single point of contact.

90. The Bill sets out a number of fairly high-level duties¹⁰² that the named person will be expected to carry out, with further details to be provided in guidance.

91. In considering the details of how a named person would go about their work, however, there were some very different expectations about the role. For example, there was doubt around the level of involvement that the named person would be expected to have in complex child protection issues, such as where a child’s plan was required. Barnardo’s Scotland described the named person role as “a named co-ordination point” and considered that “the moment we start talking about managing a child’s plan, we move into lead professional territory”¹⁰³. Highland Council’s view was similar: “the named person would support early

⁹⁷ The following witnesses are referred to: Barnardo’s Scotland, Association of Headteachers and Deputies in Scotland, and Royal College of Nursing Scotland

⁹⁸ Scottish Parliament Education and Culture Committee. *Official Report, 17 September 2013*, Col 2804

⁹⁹ Scottish Parliament Education and Culture Committee. *Official Report, 24 September 2013*, Col 2857

¹⁰⁰ Highland Council. Written submission.

¹⁰¹ Scottish Parliament Education and Culture Committee. *Official Report, 24 September 2013*, Col 2855

¹⁰² The Bill specifies that a named person would be expected to carry out the following functions: advising, informing or supporting a child or a parent; helping a child or a parent to access services; and discussing or raising a matter about a child with a service provider (Section 19(5)).

¹⁰³ Scottish Parliament Education and Culture Committee. *Official Report, 17 September 2013*, Cols 2802 and 2806

interventions but as soon as more than one agency got involved the co-ordinating role would move to the lead professional”¹⁰⁴.

92. The Scottish Government indicated there would be some flexibility in the role of the named person—

“Where concerns about a child or young person’s wellbeing require to be addressed by co-ordinated intervention from more than one service or agency, then a Lead Professional can be identified to take on that co-ordinating role. The Named Person will either take on the role of Lead Professional themselves, or will agree with the partners involved in supporting the child/young person, who is most appropriate to take on the lead professional role to manage the multi-agency Child’s Plan.”¹⁰⁵

93. In addition, the Financial Memorandum seems to suggest there was more to the role of named person than simply acting as a point of contact for families. In relation to midwives and health visitors, it states that a named person’s responsibilities could potentially involve—

“holistic assessment based on information received and observed, any preparation towards the creation of a child’s plan where needed, and management of the plan through an on-going involvement with the child and family as required”¹⁰⁶.

94. In oral evidence, the Minister concluded there was a need to develop “robust guidance” to accompany the Bill. This would “give greater clarity to professionals working with children and families across the country”.¹⁰⁷

The professional who performs the role of named person

95. We also received evidence that raised questions about which professionals should perform the role of named persons, and their capacity to do so.

96. Whilst the Bill does not specify those professionals who should have the role, it is envisaged that it will be performed by practitioners employed by health boards or education authorities. For a child who is below school age, the named person will be assigned by a health board and, depending on the age of the child, will be a midwife or a health visitor. For a child or young person of school age (and up to 18 years old), the named person will be assigned by the local authority and will be a senior teacher (normally the head or deputy head teacher). Specific provision is made for children and young people who attend independent or grant-aided schools, or who are in secure accommodation.

97. Concerns were raised about the capacity of staff and organisations to undertake the role of named persons. In particular, the Royal College of Nursing

¹⁰⁴ Scottish Parliament Education and Culture Committee. *Official Report, 24 September 2013*, Col 2857

¹⁰⁵ Scottish Government. Written submission.

¹⁰⁶ Financial Memorandum, paragraph 59

¹⁰⁷ Scottish Parliament Education and Culture Committee. *Official Report, 8 October 2013*, Col 2955

stated that there was an insufficient number of health visitors in Scotland¹⁰⁸ and 450 additional health posts would be required¹⁰⁹. Unison agreed, suggesting health visitors were already overworked and, with the addition of the named person role, the situation would be “almost critical”¹¹⁰.

98. With health visitors having such heavy workloads, it appears that it would be difficult for them to maintain a close relationship with the families to which they had been assigned. However, NHS Lothian told us it was exploring “more creative ways” of ensuring the requirements of the Bill could be met. For example, it was looking at delegating some of the administrative functions under the Bill to other staff. This would free-up up health visitors and midwives to undertake the necessary face-to-face assessments and other planning duties.¹¹¹

99. There were similar concerns about teachers’ capacity to take on the named person role in addition to their teaching duties. The Educational Institute of Scotland highlighted the pressures headteachers would have on their time and stated “only time will tell whether the duties of the named person simply quantify what is currently happening or increase their workload”¹¹².

100. However, Highland Council reported that teachers, health visitors and midwives felt that the named person role “does not change what they do but it changes how they are regarded”¹¹³.

101. We also received evidence questioning how the named person role would operate during school holidays.¹¹⁴ The Scottish Government confirmed where a named person was not contactable during school holidays, the local authority would be required to make arrangements for another member of education services to deal with any concerns.¹¹⁵ These arrangements may not correspond with the premise that the named person should be someone who knows the child and has a good understanding of the family’s circumstances.

102. Other comments highlighted that named persons must be able to support the complex needs of vulnerable children and young people. Some questioned whether a named person would have the breadth of experience required to handle effectively the needs of children with speech, language or communication difficulties¹¹⁶; who are deaf¹¹⁷; or, who have learning disabilities¹¹⁸.

¹⁰⁸ Royal College of Nursing Scotland. Written submission.

¹⁰⁹ Scottish Parliament Finance Committee, *Official Report*, 18 September 2013, Col 2972

¹¹⁰ Scottish Parliament Education and Culture Committee. *Official Report*, 10 September 2013, Col 2694

¹¹¹ NHS Lothian. Written submission.

¹¹² Scottish Parliament Education and Culture Committee. *Official Report*, 10 September 2013, Col 2696

¹¹³ Scottish Parliament Education and Culture Committee. *Official Report*, 24 September 2013, Col 2861

¹¹⁴ Scottish Parliament Education and Culture Committee. *Official Report*, 3 September 2013, Col 2693. Fostering Network Scotland, Getting It Right For Every Midlothian Child, Down’s Syndrome Scotland. Written submissions.

¹¹⁵ Scottish Government. Written submission.

¹¹⁶ Royal College of Speech and Language Therapists. Written submission.

¹¹⁷ National Deaf Children’s Society. Written submission.

103. Others questioned whether a named person would be assigned to children who were educated at home¹¹⁹, whilst there was also a desire for children and young people to have a say in who their named person should be¹²⁰. We note from the Policy Memorandum that the Bill will ensure that certain groups of children and young people with a less typical pattern of involvement with health or educational services, such as home-educated children, are provided with a named person¹²¹. In such cases the appointment of a named person will be left to local authorities.

Resources and the cost of the named person role

104. The Scottish Government expects the early intervention approach to save money after the first year of implementation. The Financial Memorandum estimates that for children (up to the age of five years) with ‘emerging or significant concerns’¹²², the total additional hours required (by a midwife, health visitor or public health nurse) would be 50 hours (10 hours per year group) in the first year of implementation, decreasing to 34, 26 and 23 hours in subsequent years.¹²³

105. This assumption that savings would be realised after the first year and on such a scale was disputed in evidence to the Finance Committee.¹²⁴ For example, the Royal College of Nursing Scotland stated “if the approach is effective, there might be a small reduction over time”¹²⁵.

106. Whilst NHS Lothian expressed confidence some savings would be achieved, it suggested “they were more likely to occur in services later in the life course”. It did not, however, expect to see a difference as quickly as the Scottish Government predicted and stated “the general consensus” among the child commissioners and the public health nursing advisory group was the financial model in Part 4 “is a bit off course”.¹²⁶

107. Similarly, Highland Council considered that, even now (three years after GIRFEC had been fully implemented), it was “fairly premature to look at the outcomes, but we are starting to see green shoots”¹²⁷. Highland Council did note, however, that the implementation of GIRFEC had brought savings, which it had decided to reinvest in early intervention and preventative services.¹²⁸

108. In response, Scottish Government officials told the Finance Committee they expected “intensive input” to result in a lesser requirement for support the following year—

¹¹⁸ Muir Maxwell Trust. Written submission.

¹¹⁹ Law Society of Scotland. Written submission.

¹²⁰ Scottish Youth Parliament, Includem. Written submissions.

¹²¹ Policy Memorandum, paragraph 71

¹²² According to the Financial Memorandum, 18% of children are categorised as having emerging or significant concerns, which would likely require additional work for the named person.

¹²³ Financial Memorandum, Table 11

¹²⁴ Finance Committee report, paragraphs 49-65

¹²⁵ Scottish Parliament Finance Committee, *Official Report*, 18 September 2013, Col 2981

¹²⁶ Scottish Parliament Finance Committee, *Official Report*, 18 September 2013, Col 2982

¹²⁷ Scottish Parliament Education and Culture Committee. *Official Report*, 24 September 2013, Col 2850

¹²⁸ Scottish Parliament Education and Culture Committee. *Official Report*, 24 September 2013, Col 2847

“We would expect that early intervention will lead to less time being spent year on year ... The assumption is that the 10 hours that we invest on average ... will bear fruit and that such an intensive investment of health visitor time will not be needed as we go forward.”¹²⁹

109. The Finance Committee reported its concern about the disparity in evidence from health boards and the Scottish Government on costs and savings.

110. In response, the Scottish Government told us that “no health boards had taken a ‘big bang’ approach¹³⁰ to GIRFEC investment” and “so it is not possible to test the Financial Memorandum assumptions with real-world experience”.¹³¹ Furthermore, the response refers to an evaluation of the implementation of GIRFEC¹³², which indicated some savings in time had been identified because of fewer meetings and reports to write. However, as the evaluation found, it may be the case for many of these professionals that the savings are partially offset by their new responsibilities and tasks.¹³³

111. These comments indicate that there is some doubt as to whether the estimated savings will be realised in the timeframe set out in the Financial Memorandum.

112. The Financial Memorandum also refers to costs for training local authority and health board staff in relation to the named person role. It is assumed these would be one-off costs occurring in 2015-16 only. Whilst it acknowledges such training would also be required in future years, it states “going forward this training will then form part of standard Continued Professional Development (CPD), and be absorbed as part of the ongoing training requirements of these organisations”¹³⁴.¹³⁵ However, COSLA considered ongoing training and support for teaching and other local authority staff “may not be simply addressed by one-off funding”¹³⁶.

Conclusions

113. We note that the implementation of GIRFEC in Highland was a success. That was, in part, as a result of the culture of integration and collaborative working across various frontline services. **We invite the Scottish Government to provide details of the range of support it will make available to ensure that local authorities and health boards are able to replicate the successes experienced in Highland, recognising the different circumstances that will prevail in different parts of the country.**

¹²⁹ Scottish Parliament Finance Committee, *Official Report, 18 September 2013*, Col 2991

¹³⁰ The Scottish Government describes a ‘big bang’ approach as embedding GIRFEC through an intensive investment.

¹³¹ Scottish Government, supplementary written submission (28 October 2013)

¹³² The Impact on Services and Agencies Part 2, which is available at:

<http://www.scotland.gov.uk/Resource/Doc/1141/0117444.pdf>

¹³³ See page 27 of The Impact on Services and Agencies Part 2 (link included at previous footnote)

¹³⁴ Financial Memorandum, paragraph 48

¹³⁵ In its supplementary written submission, the Scottish Government stated that these assumptions had been based on consultation with those local areas furthest advanced in implementing GIRFEC (Highland, City of Edinburgh, Falkirk, Fife, South Ayrshire, and Perth and Kinross).

¹³⁶ COSLA, supplementary written submission.

114. **We believe the success of the named person role will depend on the Scottish Government's ability to work with its local partners to clarify a number of practical issues, which we bring to the attention of the Parliament.** These include the issues which a named person would be expected to handle outwith their core professional area; the types of intervention a named person would be expected to make; the point at which a named person would be expected to pass a case to a lead professional; the circumstances in which it would be appropriate for a named person to take on the role of lead professional; the ability of children and young people to have input into who is assigned as their named person; and the extent to which a named person would be expected to be involved with children and young persons for whom no support or intervention is required.

115. Concerns were expressed to us and the Finance Committee which cast doubt on the potential savings for health boards from the named person role. We note that this is, at least in part, due to a lack of real-world experience on which to base the financial assumptions. **In view of this, we consider that further resource may be required for health boards to implement GIRFEC, and we recommend that the Scottish Government be prepared to make such support available where appropriate.**

116. We also acknowledge the concerns about the capacity of health visitors and the numbers required to deliver the requirements in the Bill. This indicates to us that there are wider issues about health visitor numbers. **The Scottish Government should therefore explain how it will ensure that the demands placed on health visitors across the entire policy landscape will be met.**

117. **We are concerned about the operation of the named person role during school holidays. This is an area that requires further consideration by the Scottish Government and its local partners.**

118. Given Highland's experience of implementing GIRFEC, **the Scottish Government should explain how the proposal to assign a named person for young people who have left school and are under the age of 18 will work.**

119. Finally, we note some views that the role of lead professional could usefully be included in the Bill. Whilst we understand the difficulties in legislating for the role, given that lead professionals may be employed from outside the public sector, we are concerned about the potential for confusion and lack of consistency in the way it will operate alongside the named person. **We therefore recommend that the Scottish Government monitors the situation as these roles develop with a view to legislating for the lead professional in future, if necessary.**

120. **Whilst acknowledging the concerns raised in evidence about practical and resource issues, we support, in principle, the proposal to introduce the role of named person.**^{137 138}

¹³⁷ Liz Smith MSP dissented from this paragraph.

¹³⁸ Neil Bibby MSP and Jayne Baxter MSP suggested the following alternative wording for this paragraph, which was disagreed to: "We support, in principle, the proposal to introduce the role of

Part 4 – Information sharing

121. Where concerns about a child's wellbeing exist, the Bill would allow information to be shared without the family's consent. The current test for information sharing without consent is whether there is a 'risk of significant harm' to the child, although it has been shown that the application of the threshold can vary¹³⁹. The Bill proposes a lowering of the threshold and allows information to be shared without consent where there is a 'concern about wellbeing'.¹⁴⁰ Any information sharing would nevertheless have to be within the framework of the European Convention on Human Rights and the Data Protection Act 1998.

122. The decisions on whether to seek consent and what, if any, information to share, are left to the judgement of the professionals concerned, albeit with the aid of guidance. The Policy Memorandum explains that the power to share information in this way enables the named person to be able to perform their role effectively.¹⁴¹

123. Our consideration has focused on understanding the circumstances in which a service provider or relevant authority ought to share information about wellbeing without consent, where there is no risk of significant harm to the child.

124. A number of witnesses voiced support for the proposals. Barnardo's Scotland suggested that the lower threshold for sharing information would make it easier to identify concerns about a child at an earlier stage.¹⁴² Children in Scotland considered that, without the information-sharing provisions as proposed in the Bill, "we would not be able to achieve some of our aspirations for early intervention"¹⁴³.

125. However, the Govan Law Centre was concerned that the proposals would result in a diminution of an individual's right to privacy. It described the Bill as proposing "a significant erosion of the right to privacy for children and families with few (if any) safeguards built in"¹⁴⁴. It also argued the broad definition of wellbeing would "inevitably leave the matter to subjective interpretation", and questioned whether there was any justification for breaching an obligation of confidence and

named person, but have concerns about practical and resource issues that were raised in evidence."

¹³⁹ The Privacy Impact Assessment (PIA), which accompanies the Bill states: "Currently, information about a child may be shared where the child is at a significant risk of harm. The meaning of 'at risk of significant harm' may be construed differently by different people; therefore, it is important that a common understanding is reached and shared amongst all who work with children or with adults who have significant access to children." (Page 5). The PIA is available at: <http://www.scotland.gov.uk/Resource/0041/00418731.pdf>

¹⁴⁰ The Bill requires information to be shared between service providers and relevant authorities (sections 26(1) and 26(3)). Relevant authorities are all those listed in Schedule 2. Service providers are health boards, local authorities, managers of independent and grant-aided schools and managers of secure accommodation (section 30).

¹⁴¹ Policy Memorandum, paragraph 76

¹⁴² Scottish Parliament Education and Culture Committee. *Official Report*, 17 September 2013, Col 2797 and 2799

¹⁴³ Scottish Parliament Education and Culture Committee. *Official Report*, 10 September 2013, Col 2726

¹⁴⁴ Govan Law Centre. Written submission.

sharing information about a “mild concern regarding any aspect of wellbeing”¹⁴⁵. In addition, the Law Centre criticised the Privacy Impact Assessment which accompanies the Bill, stating that it “does not demonstrate an appreciation of the purpose and requirements of data protection legislation (nor, indeed, other aspects of human rights legislation)”.¹⁴⁶

126. Other witnesses were concerned about the proposals’ impact on potentially vulnerable children and young people. For example, LGBT Youth Scotland felt that the Bill could exacerbate situations where the confidentiality and privacy of LGBT young people could be breached by allowing information about, for example, sexual orientation to be shared without consent.¹⁴⁷ In relation to children and families living with domestic abuse, Scottish Women’s Aid was concerned that the proposal would be interpreted as “legislation for the sharing of any information about any child or young person, their family and family life and personal circumstances even where they are not considered to be at risk”.¹⁴⁸

127. Professor Kenneth Norrie referred to a lack of clarity in the Bill and described the drafting as having “huge ambiguities”¹⁴⁹. The terms ‘might be relevant’ and ‘ought to be shared’ that are used in section 26, were, he said, contradictory and so would leave it to the courts to strike the balance. He considered that section 27 was the worst part of the Bill and stated that “if you manage to strike it out and leave everything else, you will have achieved quite a lot”¹⁵⁰. His particular difficulty with section 27 was that it provided a “blanket defence to the prohibition on disclosing information”¹⁵¹, which he felt, would significantly weaken the prohibitions included in other legislation¹⁵².

128. The Information Commissioner’s Office (ICO) agreed with Professor Norrie’s concerns about section 27 and urged the Scottish Government to reconsider its content.¹⁵³

129. In addition, there was general agreement from witnesses representing the interests of education and health professionals that the drafting in sections 26 and 27 of the Bill would benefit from being “tightened up”¹⁵⁴. Overall, however, the witnesses felt that clear guidance would provide the necessary safeguards and

¹⁴⁵ Govan Law Centre. Written submission.

¹⁴⁶ Govan Law Centre. Written submission.

¹⁴⁷ LGBT Youth Scotland. Written submission.

¹⁴⁸ Scottish Women’s Aid. Written submission.

¹⁴⁹ Scottish Parliament Education and Culture Committee. *Official Report*, 3 September 2013, Col 2691

¹⁵⁰ Scottish Parliament Education and Culture Committee. *Official Report*, 3 September 2013, Col 2691

¹⁵¹ Professor Norrie. Written submission.

¹⁵² Professor Norrie specifically referred to the prohibitions in section 182 of the Children’s Hearings (Scotland) Act 2011 on any person publishing information that can identify a child (or his or her school) if the information concerns any children’s hearing or associated court process.

¹⁵³ Ken Macdonald, Assistant Commissioner for Scotland and Northern Ireland, ICO, supplementary written submission.

¹⁵⁴ Scottish Parliament Education and Culture Committee. *Official Report*, 17 September 2013, Col 2801

give professionals confidence about what information they should and should not share.¹⁵⁵

130. In response to the general concerns about the information sharing provisions, the Minister emphasised the importance of establishing clear guidance, which would “enable and empower”¹⁵⁶ professionals to make appropriate judgements on the information they share.

131. Following the evidence session, we invited the Minister to respond to the specific concerns about the breadth of sections 26 and 27. In relation to section 26, the Minister emphasised that the provisions “must be read in the context of being constrained by the ECHR and reserved legislation such as the data protection act”¹⁵⁷. She also referred to the work that the Government was doing to engage with various organisations to update the Privacy Impact Assessment, which included “exploring the potential impact of sections 26 and 27”¹⁵⁸. The Minister said this engagement activity and the evidence we received on information sharing would enable the Government to “fully consider all views on sections 26 and 27”¹⁵⁹.

Conclusions

132. We recognise the concerns raised by witnesses and welcome the Minister’s commitment to give further consideration to the information-sharing provisions in the Bill and, in particular, to “fully consider all views on sections 26 and 27”¹⁶⁰. We expect any necessary safeguards to be introduced at Stage 2. We suggest that, in considering what revisions to bring forward, the Scottish Government engages with those who have raised concerns about the drafting with us.

133. We agree that training and guidance for professionals will be absolutely crucial in determining the effectiveness of the proposals. All relevant service providers, including from the private and third sectors, must receive training and guidance in order to ensure there is a consistent approach to information-sharing. It is vital that the training and guidance engenders a common understanding of what constitutes proportionate, necessary information sharing.

134. Our expectation is that there should be a presumption that consent should be sought, however we recognise this will be left to the judgement of the professional concerned.

135. The Scottish Government is working with various groups to update the Privacy Impact Assessment (PIA) that accompanies the Bill. Given its

¹⁵⁵ Scottish Parliament Education and Culture Committee. *Official Report*, 17 September 2013, Cols 2797, 2798, 2801 and 2799-2800

¹⁵⁶ Scottish Parliament Education and Culture Committee. *Official Report*, 8 October 2013, Col 2950

¹⁵⁷ Scottish Government. Supplementary written submission.

¹⁵⁸ Scottish Government. Supplementary written submission.

¹⁵⁹ Scottish Government. Supplementary written submission.

¹⁶⁰ Scottish Government. Supplementary written submission.

significance, we request the Scottish Government makes it available to us at the earliest opportunity.

136. On a related matter, we received evidence about electronic information sharing by public bodies. Highland Council highlighted the ability to share information electronically as an important factor in ensuring that accurate and up to date information could be accessed by those who needed it¹⁶¹. NHS Lothian referred to the development of joint IT infrastructure and information sharing as a key challenge under the Bill¹⁶², and Falkirk Children’s Commission said there was a “lack of national IT support or coherent guidance”¹⁶³. In response to these concerns, the Scottish Government referred to the work of the Information Sharing Board that was funding local initiatives to improve information sharing as part of GIRFEC.¹⁶⁴

137. We note the evidence we received in relation to electronic information sharing. Concerns about the ability of organisations to share information electronically were also raised with us during our inquiries this Session. We therefore urge the Scottish Government to consider what further support it can provide to public services to improve their ability to share information in relation to the Bill.

Part 5 – Child’s plan

138. The Bill proposes that a child’s plan must be created for any child who has a “wellbeing need” that requires “targeted intervention”.¹⁶⁵ A child’s plan will require a local authority or health board to provide services to meet the wellbeing needs of a child, where those needs cannot be met by services provided to children generally.¹⁶⁶

139. The Bill does not alter the existing statutory duties on agencies to prepare co-ordinated support plans¹⁶⁷ or plans for looked after children¹⁶⁸. This received some criticism. The Advisory Group for Additional Support for Learning considered that the Bill fell some way short of enabling a single co-ordinated approach to planning. It called for the opportunity to be taken to “harmonise the planning tools used for children into an efficient and coherent single plan”. Similarly, Glasgow City Council considered that, unless the child’s plan replaced existing plans under the Additional Support for Learning legislation, “we will continue to have a separate planning process and document”¹⁶⁹.

140. The importance of having a single child’s plan was also highlighted by a number of others. From its experience, Highland Council said the introduction of a

¹⁶¹ Scottish Parliament Education and Culture Committee. *Official Report, 24 September 2013*, Col 2862

¹⁶² NHS Lothian. Written submission.

¹⁶³ Falkirk Children’s Commission. Written submission.

¹⁶⁴ Scottish Government. Written submission.

¹⁶⁵ Section 31(1) and (3)

¹⁶⁶ Explanatory Notes, paragraph 80

¹⁶⁷ Under the Education (Additional Support for Learning) (Scotland) Act 2004

¹⁶⁸ Under the Looked After Children (Scotland) Regulations 2009

¹⁶⁹ Glasgow City Council. Written submission.

single planning process and single plan had “achieved a transformational impact on assessment and action processes”¹⁷⁰.

141. Others commented that the child’s plan should include a dispute resolution process in the event of disagreement over its contents or delivery¹⁷¹. It was also suggested that the views of children and young people should be taken into account in the development of a child’s plans¹⁷².

142. The Minister confirmed the intention of the proposals in Part 5 was not to increase any bureaucracy, but to ensure there was a co-ordinated approach¹⁷³. She said the other statutory plans – the co-ordinated support plans and plans for looked after children – would be considered as part of the broader legislative framework for supporting the wellbeing of a child.¹⁷⁴ However, she said cognisance would need to be taken of the new legislative landscape to “make sure that all the different parts of the legislation properly dovetail”¹⁷⁵.

Conclusions

143. We recommend that the Scottish Government ensures the child’s plan can be produced in such a way as to allow the easy incorporation of other statutory requirements.

144. We also recommend the Scottish Government considers the suggestions made in evidence to us calling for the inclusion in the Bill of a mechanism to resolve disputes in relation to a child’s plans, and for children and young people’s views to be taken into account in developing child’s plans.

Part 6 – Early learning and childcare

145. The Bill places a duty on local authorities to increase the amount of funded early learning and childcare¹⁷⁶ from 475 hours per year to 600 hours, for 3 and 4 year olds. It would also extend provision for the most vulnerable 2 year olds who were or who had been, at any time since turning two, classed as ‘looked after’ or subject to a kinship care order (see Part 10).

¹⁷⁰ Highland Council. Written submission.

¹⁷¹ Advisory Group for ASL, Govan Law Centre. Written submissions.

¹⁷² Barnardo’s Scotland, Down’s Syndrome Scotland, Aberlour Child Care Trust, Includem, Youthlink. Written submissions.

¹⁷³ Scottish Parliament Education and Culture Committee. *Official Report, 8 October 2013*, Col 2974

¹⁷⁴ Scottish Parliament Education and Culture Committee. *Official Report, 8 October 2013*, Col 2973

¹⁷⁵ Scottish Parliament Education and Culture Committee. *Official Report, 8 October 2013*, Col 2975

¹⁷⁶ The current requirement for 475 hours is defined as school education for children under school age. Early learning and care is still ‘school education’ (schedule 4 para 2). An additional definition is added by the Bill: “a service, consisting of education and care, of a kind which is suitable in the ordinary case for children who are under school age, regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting” (section 42).

Extending entitlement

146. Whilst there was support for this Part of the Bill, there were calls to extend the entitlement. For example, Save the Children was disappointed the Bill did not go further “to drive the fundamental transformation in Scotland’s childcare infrastructure required to support children and families”. It called for the Bill to extend the entitlement to all 2 year old children living in poverty, with a view to entitling all 2 year olds in the future.¹⁷⁷ Several others wanted to see the provision extended to include 2 year olds with additional support needs or with disabilities¹⁷⁸, and for school age children¹⁷⁹.

147. The Minister told us that although she was not prepared to announce an extension to the coverage, the Bill was a “first step in transforming childcare” and it provided the opportunity to extend coverage at a later date, if required.¹⁸⁰ She stated that “we want it to be a quality offering, done in a manageable and sustainable way, and that is what we are achieving through the provisions in the Bill and the funding that goes along with it”¹⁸¹.

Additional flexibility

148. The Scottish Government consultation on the Bill proposed a prescriptive approach requiring local authorities to offer the same minimum set of options to achieve consistent flexibility of early learning and childcare provision. The Explanatory Notes state that concerns about that proposal were received and, as a result, the Bill gives “local authorities more flexibility to determine choices and options for patterns of delivery”¹⁸².

149. In evidence, a number of organisations highlighted the importance of flexibility in the provision of early learning and childcare. We heard how increased flexibility, including after-school care¹⁸³ (which is not covered by the Bill) and the ability to use the provision across two full days¹⁸⁴, would make it easier for parents to take up employment.

150. We also, however, heard that a large degree of flexibility could raise some concerns. The course director of the BA in Childhood Practice at the University of Strathclyde said that if children attended an early years establishment for seven and a half hours over two days they could have “difficulties settling and the continuity of their educational experience could be delivered in a patchwork manner”¹⁸⁵. In addition, the course director suggested that if the additional hours

¹⁷⁷ Save the Children. Written submission.

¹⁷⁸ For Scotland’s Disabled Children, Scottish Children’s Services Coalition, Capability Scotland. Written submissions.

¹⁷⁹ Children in Scotland, Children 1st. Written submissions.

¹⁸⁰ Scottish Parliament Education and Culture Committee. *Official Report*, 8 October 2013, Col 2969

¹⁸¹ Scottish Parliament Education and Culture Committee. *Official Report*, 8 October 2013, Col 2969

¹⁸² Explanatory Notes, paragraphs 33-34

¹⁸³ Scottish Parliament Education and Culture Committee. *Official Report*, 10 September 2013. Col 2751

¹⁸⁴ Scottish Parliament Education and Culture Committee. *Official Report*, 10 September 2013, Col 2751

¹⁸⁵ Scottish Parliament Education and Culture Committee. *Official Report*, 17 September 2013, Col 2771

were to be broken up into small amounts and added to several days in the week this could reduce the time available to staff for planning and training.¹⁸⁶

151. As COSLA stated, any flexibility in the pattern of service provision would be introduced incrementally—

“Following discussions with Scottish Government we agreed that the Bill would require local authorities to deliver the increased hours in as practical way as possible by August 2014 with no immediate requirement for more flexibility for parents. ... In subsequent years additional flexibility will be introduced gradually, in consultation with parents, and within the overall resources made available by Scottish Government.”¹⁸⁷

152. COSLA told us that local authorities had the professional expertise to ensure that the service is provided as flexibly as possible.¹⁸⁸

153. The Minister said the reason for increasing the number of hours (from 475 to 600) was to provide more flexibility for parents and families who were struggling to balance work and life.¹⁸⁹ She also said the Bill would allow families to have an input in the way in which the local authority configures its services.

Resources and costs

154. The provisions in Part 6 are the most expensive, with an estimated cost of £100m in the first full year of implementation.¹⁹⁰ In its report on the Financial Memorandum, the Finance Committee raised a number of issues about the costs. It was particularly concerned about the partner provider payments¹⁹¹ made by local authorities to nurseries and sought further details from the Scottish Government on whether, for example, the costings were sustainable.

155. We also received evidence indicating a wide variation in partner provider payments. The National Day Nurseries Association (NDNA) suggested nurseries were underfunded to an average of £500 per child per year for early learning and childcare places¹⁹². The NDNA also suggested the funding gap worked “against the objectives of a high quality professional workforce” because nurseries were “unable to provide salaries commensurate with a profession”. It called on the Scottish Government to “assess the level of funding needed centrally and explore

¹⁸⁶ Scottish Parliament Education and Culture Committee. *Official Report, 17 September 2013*, Col 1771

¹⁸⁷ COSLA. Written submission.

¹⁸⁸ Scottish Parliament Education and Culture Committee. *Official Report, 17 September 2013*, Col 2778

¹⁸⁹ Scottish Parliament Education and Culture Committee. *Official Report, 8 October 2013*, Col 2965

¹⁹⁰ Financial Memorandum, Table 17

¹⁹¹ Scottish Parliament Finance Committee. 2013 (Session 4) *Report on the Financial Memorandum of the Children and Young People (Scotland) Bill*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/68414.aspx> (Paragraph 74-85) [Accessed 13 November 2013]

¹⁹² National Day Nurseries Association. Written submission.

mechanisms to protect that investment at local level". One option it suggested was to reintroduce a minimum floor¹⁹³.

156. COSLA responded to the call for a standard rate of payments to partner providers and stated "as the Bill is currently framed, no resource would be available to adjust the floor"¹⁹⁴. Its view was "the decision on rates paid for this service must fall within local decision making by councils, as they have the best understanding of the resources available to deliver all services"¹⁹⁵. The Scottish Government is content to leave the decision to individual local authorities on how much to pay partner providers.¹⁹⁶

157. The Minister also referred to the quality of care. She emphasised it was important that what was being provided had "to be of a quality that will respond to the real needs of children"¹⁹⁷. She suggested the work undertaken over the last few years "to make sure that the workforce is appropriately trained is paying dividends" and she said "we can have confidence that we are delivering a quality offering for three and four-year-olds".¹⁹⁸

Conclusions

158. We note that early years intervention is generally regarded as being of crucial importance to a child's development and we support its proposed expansion. We also support the general desirability of continuing to expand this to two year olds as quickly as possible.

159. We welcome the Bill as a first step in the expansion of early learning and childcare, although a minority of us would like the Bill to go further.

160. Whilst we accept local authorities will need some time to ascertain the level of need locally, **we urge the Scottish Government and COSLA to work to ensure that flexible arrangements are made available as quickly as possible to enable families to take advantage of the new provision.**

161. We note the suggestion some nurseries are underfunded. We emphasise that the increase in supported hours of early learning and childcare must not have a detrimental effect on the quality of the service that is provided, or the sustainability of provision in the voluntary and private sectors.

162. On a related point, we heard calls for the Bill to revise the point at which children's entitlement to supported childcare would begin. Currently, children are entitled to use the service from the start of the school term following their third birthday. It has been suggested this system is unfair in that the amount of

¹⁹³ Until 2007, Scottish Executive guidance had specified a recommended minimum payment to partner providers

¹⁹⁴ Scottish Parliament Education and Culture Committee. *Official Report, 17 September 2013*, Col 2776

¹⁹⁵ COSLA. Supplementary written submission.

¹⁹⁶ Scottish Government. Supplementary written submission.

¹⁹⁷ Scottish Parliament Education and Culture Committee. *Official Report, 8 October 2013*, Col 2965

¹⁹⁸ Scottish Parliament Education and Culture Committee. *Official Report, 8 October 2013*, Col 2966

childcare to which children are entitled depends on when their birthday falls.¹⁹⁹ We wrote to the Scottish Government asking it to respond to those concerns and asking whether it intended to take any further action on the matter. The Government confirmed its policy intention was for the current entitlement to continue. It also stated that it encouraged local authorities to commence early learning and childcare closer to the child's third birthday where they have capacity to do so. **We invite the Scottish Government to provide further explanation of why it is not appropriate for the Bill to include measures on this matter.**

Part 7 – Corporate parenting

163. The Bill places duties on a range of organisations²⁰⁰ that are to be regarded as 'corporate parents' for the purpose of working to meet the needs of looked after children and young people and care-leavers.²⁰¹ The Bill also sets out particular responsibilities of corporate parents (section 52) and requires organisations to develop plans (section 53) and reports (section 55).

164. Currently, local authorities have legal duties towards looked after children and Government guidance sets out how community planning partners can act as corporate parents.

165. The Scottish Government believes there is a need to legislate in order to ensure the concept of corporate parenting is implemented consistently across Scotland and to increase awareness of the concept.²⁰²

166. There was wide support for the concept of corporate parenting. In particular, Who Cares? Scotland said the Bill conveyed the right message about the need for public services to take responsibility as corporate parents.²⁰³ They emphasised though, that without detailed guidance the current ambiguity surrounding the role of corporate parents would continue.²⁰⁴ Others also highlighted the need for clarity in relation to, for example, the roles and responsibilities of adult health services when dealing with 16-25 year olds.²⁰⁵

167. A number of comments questioned whether all the organisations listed as corporate parents should have such a role. For example, the Scottish Children's Reporter Administration felt the list had been too widely drawn and many of the organisations – including itself – should not be included. Also, it was concerned that conferring duties on such a wide list of organisations would run the risk of "diluting the core concept to the point that it loses all meaning"²⁰⁶. Others too, did not see their roles as corresponding directly to the duties of a corporate parent, such as Children's Hearings Scotland²⁰⁷ and the Scottish Court Service²⁰⁸.

¹⁹⁹ Reform Scotland "[An equal start](#)"; Children in Scotland. Written submission.

²⁰⁰ Listed in Schedule 3

²⁰¹ Policy Memorandum, paragraph 104

²⁰² Policy Memorandum, paragraph 105

²⁰³ Scottish Parliament Education and Culture Committee. *Official Report, 10 September 2013*, Col 2742

²⁰⁴ Who Cares? Scotland. Written submission.

²⁰⁵ NHS Ayrshire and Arran. Written submission.

²⁰⁶ Scottish Children's Reporter Administration. Written submission.

²⁰⁷ Children's Hearings Scotland. Written submission.

168. We asked the Scottish Government to explain why the list of organisations with corporate parenting duties had been drawn so widely. In response, it stated the list encompassed “as many organisations as possible that have a key role in the decision making processes that affect looked after children”²⁰⁹.

Conclusions

169. **We note the evidence received indicating that several organisations do not agree with their inclusion on the list of corporate parents. This risks diluting the concept of corporate parenting. In the absence of specific criteria, we seek further clarification from the Scottish Government about the reasoning underpinning the decisions to identify those with corporate parenting responsibilities.**

Part 8 – Aftercare

170. The Bill places a duty on local authorities to continue to provide care-leavers with aftercare support up to the age of 26 (but only where they are classified as looked after at school-leaving age).²¹⁰ If a person requests such additional support then a needs assessment²¹¹ must be carried out by the local authority.²¹²

171. We heard strong support for the proposal to extend aftercare, although several called for it to go even further. Who Cares? Scotland prepared a detailed proposal to give young care-leavers a right to return to care up to the age of 26. It argued for a care-leaver to be able to maintain their relationship with their core care provider, that is “someone who they know and trust”^{213 214}.

172. Others made similar points. The Fostering Network Scotland wanted young people in Scotland to have the opportunity to stay with their foster carers until the age of 21.²¹⁵ Scotland’s Commissioner for Children and Young People felt the Bill should “give young people who leave care aged 16-17 years and who subsequently become homeless, a right to be looked after and accommodated by the local authority”²¹⁶.

173. Others supported strengthening the Bill through extending the qualifying criteria for receiving aftercare. For example, Aberlour Child Care Trust called for the removal of the requirement in the Bill for an individual to be classified as looked after at school-leaving age. It suggested this was necessary in order to ensure support would be available to those who had left care but still required

²⁰⁸ Scottish Court Service. Written submission.

²⁰⁹ Scottish Government. Written submission.

²¹⁰ Currently, the Children (Scotland) Act 1995 requires local authorities to provide support up to the age of 18, and with discretion to do so up to 21.

²¹¹ It is envisaged that ‘eligible needs’ will be those essential to daily living

²¹² Policy Memorandum, paragraph 110

²¹³ Who Cares? Scotland. Written submission.

²¹⁴ Scottish Parliament Education and Culture Committee. *Official Report, 10 September 2013*, Cols 2737-2739

²¹⁵ Fostering Network Scotland. Written submission.

²¹⁶ Scotland’s Commissioner for Children and Young People. Written submission.

support.²¹⁷ Others wanted the duties to apply to young people with disabilities²¹⁸, those in kinship care²¹⁹, and those with additional support needs²²⁰.

174. In addition, there were concerns that local authorities would be given too much discretion to decide whether to provide support, and a number commented that an appeals mechanism²²¹ should be included in the Bill.²²²

175. In response to the calls to strengthen Part 8, the Minister was clear that adequate support should be provided to young people as they make the transition from care to independence. She said she was interested in the view of Who Cares? Scotland about providing support to the age of 26, and wanted to “ensure that the support we have in place is adequate and allows the young folk in question to have outcomes that are no different from those of their peers who are not looked after”²²³. In addition, the Minister said she was sympathetic to some of the evidence seeking an extension to the qualifying threshold.

Conclusions

176. We have spent significant time examining the educational attainment of looked after children²²⁴ and decision making on whether to take children into care²²⁵. It is clear from these inquiries that further work is required to improve outcomes for looked after children.

177. We welcome the positive comments from the Minister about her aim to ensure young care-leavers receive the support they require. Whilst the Bill will go some way to achieving this aim, we consider the range of support for our most vulnerable young people could be further enhanced.

178. We acknowledge the evidence that we heard from Who Cares? Scotland and others and invite the Government to respond to their suggestions that the Bill should include a right for care-leavers to return to care up to the age of 26; allow young people who have spent time in care, but are not in care at school-leaving age, to be eligible for aftercare; and include a mechanism enabling care leavers to appeal against decisions taken about the level of care they receive.

²¹⁷ Aberlour Child Care Trust. Written submission.

²¹⁸ For Scotland’s Disabled Children. Written submission.

²¹⁹ Scottish Kinship Care Alliance. Written submission.

²²⁰ Scotland’s Children’s Services Coalition. Written submission.

²²¹ Against the decision of a local authority about whether and what kind of support is required.

²²² Aberlour Child Care Trust. Written submission; Action for Children. Written submission; Scottish Association of Social Work. Written submission.

²²³ Scottish Parliament Education and Culture Committee. *Official Report*, 8 October 2013, Col 2971

²²⁴ Education and Culture Committee Report on educational attainment of looked after children (2012). Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/51538.aspx>

²²⁵ Education and Culture Committee Report on decision making on whether to take children into care (2013). Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/67750.aspx>

Part 9 – Counselling services

179. This Part of the Bill would require local authorities to provide counselling services to parents (or individuals with parental rights and responsibilities) for an ‘eligible’ child.

180. There is minimal detail included in the Bill. The definition of an eligible child, together with descriptions of the types of services to be included, are to be specified in regulations.²²⁶

181. We sought clarification from the Scottish Government about the intention of this Part of the Bill. In response, the Government confirmed counselling services would be available where a child’s wellbeing was at risk and particularly where a child was at risk of being taken into care. In such cases, access to counselling services would act as “an early and effective intervention to support parents”²²⁷.

182. The lack of detail in the Bill was criticised by some who provided evidence. For example, COSLA suggested it was difficult for local authorities to be able to assess the impact of the proposals on the basis that “local authorities are to provide undefined counselling services to parents or those with parental rights and responsibilities of an undefined group of children”²²⁸.

183. In its report to us on the delegated powers within the Bill, the Delegated Powers and Law Reform Committee considered that the order making powers providing for eligibility for counselling should be made under the affirmative procedure rather than negative procedure as specified in the Bill.²²⁹

184. Other witnesses suggested the term ‘counselling services’ was unhelpful²³⁰ and too prescriptive²³¹. In particular, the British Association for Counselling and Psychotherapy (BACP) highlighted references in the Financial Memorandum to family therapy, family mediation and family conferencing and appeared to suggest they had been incorrectly described as falling under the umbrella of counselling. The BACP also highlighted what it considered to be a significant omission, namely the absence of counselling support for children and young people themselves.

Conclusions

185. We note the calls for further information on the measures to be provided and request that the Scottish Government provides such information as early as possible.

186. We agree with the recommendation of the Delegated Powers and Law Reform Committee that, due to the significance of eligibility for these

²²⁶ Explanatory Notes, paragraphs 155-156

²²⁷ Scottish Government. Written submission.

²²⁸ COSLA. Written submission.

²²⁹ Scottish Parliament Delegated Powers and Law Reform Committee. 50th Report, 2013 (Session 4). *Children and Young People (Scotland) Bill* (SP Paper 398) (Paragraphs 38-45). Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/68276.aspx>

[Accessed 13 November 2013]

²³⁰ COSLA. Written submission.

²³¹ Association of Directors of Social Work, NHS Lothian. Written submissions.

matters, the affirmative procedure should apply rather than the negative procedure.

Part 10 – Support for kinship care

187. The Bill places a duty on local authorities to provide kinship care assistance to families that have obtained, or are in the process of obtaining, a kinship care order, for an eligible child.²³²

188. The Policy Memorandum states that the rationale for the legislative change is to “encourage more individuals to become kinship carers for those children who do not require regular supervision or corporate parenting”²³³. The Financial Memorandum states that part of the purpose of the kinship care order and the accompanying measures “is to reduce unchecked growth in formal kinship care”²³⁴.

Context

189. As this section of our report refers to some specific terms, we provide a description of the main ones to assist understanding. **Kinship care** is the care of children by their extended family or a close friend of the family. Where the child is placed by the local authority, then the child is ‘**looked after**’ (also called **formal kinship care**). However, for the majority of children, kinship care arrangements are made privately between family members without local authority involvement (known as **informal kinship care**). In cases where there is some local authority involvement, unless the child is placed by the local authority as a looked after child, this is still informal kinship care.

190. There are a number of ways in which local authorities can provide support to kinship carers. Local authorities can provide **discretionary support** to any kinship carer, and this can include a financial allowance. For those in formal kinship care arrangements, the Looked After Children (Scotland) Regulations 2009 set out requirements for assessment and support. In neither case is there a set, national minimum payment.

191. Payments made to all kinship carers are disregarded as income under the UK Government benefits system. However, if a person is a kinship carer of a looked after child and receiving a local authority payment for accommodation or maintenance, they cannot claim child benefit and child tax credit for that child. This is to avoid the situation where double payments are made. They will however receive the **income disregard** for other benefits they might claim, such as housing or council tax benefit.

Detail of provisions

192. As the Financial Memorandum states, a kinship care order is not a new statutory order, but is the new name given to section 11 orders²³⁵, where such an

²³² Policy Memorandum, paragraph 118

²³³ Policy Memorandum, paragraph 117

²³⁴ Financial Memorandum, paragraph 128

²³⁵ These orders are made under section 11 of the Children (Scotland) Act 1995. Section 11’ orders regulate parental rights and responsibilities and can currently be applied for by kinship carers in order to give legal underpinning to the child’s residence with them

order is issued to a kinship carer.²³⁶ The main difference between the existing section 11 orders and the proposed kinship care orders is that the latter attaches, where the child is eligible, the provision of kinship care assistance.

193. The criteria for determining whether a child is eligible to receive kinship care assistance will be included in regulations. However, the Scottish Government told us its intention is that an eligible child will be one “whose wellbeing would be at risk of being impaired and, in particular, where they are at risk of coming into care, if the kinship care assistance is not made available”²³⁷.

194. The types of support that will constitute kinship care assistance will also be included in regulations. However, the Bill specifies that such support could include counselling, advice or information, financial support, or any service provided by a local authority on a subsidised basis.²³⁸

Financial support under a kinship care order

195. The range of support envisaged under the Bill, particularly the inclusion of financial support, was broadly welcomed. However, a number of organisations expressed concern about the level of support that would be provided to kinship carers.

196. The Scottish Kinship Care Alliance was particularly critical and believed that the kinship care order was “not fit for its stated purpose of supporting more kinship carers, or increasing permanence in kinship care placements”. It argued that the primary reason for this was “because there is no guarantee of additional support as part of the proposed kinship care order”.²³⁹

197. The Scottish Kinship Care Alliance was also concerned that any support provided under a kinship care order would not be comparable to what was provided to kinship carers of looked after children. It called for the same level of support to be offered and specifically mentioned priority access to specialist psychological and educational services, through-care or after-care services, and passported benefits such as school meals and uniform allowances.²⁴⁰ Citizens Advice Scotland felt that not including ongoing financial assistance under the order, gave credence to the position that “looked after and not looked after children in kinship care fall neatly into two distinct groups, with the former having more serious care needs that require greater financial support”.²⁴¹

198. Another key concern was the level of local authority discretion in awarding any payments. The Child Poverty Action Group (CPAG) Scotland stated that “if local authorities are enabled rather than obliged to provide financial assistance to kinship carers, there will be a strong likelihood of a ‘postcode lottery’ of support developing.”²⁴² Although the Association of Directors of Social Work acknowledged there were differences in the payments local authorities made to

²³⁶ Financial Memorandum, paragraph 106

²³⁷ Scottish Government. Written submission.

²³⁸ Financial Memorandum, Table 23; Explanatory Notes, paragraph 163

²³⁹ Scottish Kinship Care Alliance. Written submission.

²⁴⁰ Scottish Kinship Care Alliance. Written submission.

²⁴¹ Citizens Advice Scotland. Written submission.

²⁴² Child Poverty Action Group Scotland. Written submission.

kinship carers, it argued that there needed to be “significant local determination of what is required in an area”.²⁴³

199. We asked the Scottish Government to respond to the concerns that kinship carers would not receive adequate support under the Bill. Government officials confirmed that they had begun to consult with stakeholders about the content of the regulations, and that some aspects of these concerns would be addressed in the context of its ongoing review of allowances paid to kinship carers of looked after children²⁴⁴.

Kinship care orders and the UK benefits system

200. CPAG Scotland, and a number of others, questioned how the kinship care order would interact with the UK benefits system. Whilst the Bill should avoid most, if not all, of those difficulties (as children would no longer have looked after status), CPAG asked whether any financial assistance provided under a kinship care order would be disregarded as income under the benefits system. CPAG was concerned that if such payments were not disregarded, the financial assistance might simply be clawed back.

201. In written evidence, the Scottish Government stated that a holder of a kinship care order would be “recognised as any parent would be within the benefits system”²⁴⁵. Therefore, the “kinship carer can claim the same benefits such as Child Benefit and Child Tax Credit as any parent would”.

202. We discussed the potential for claw-back with the Minister and Scottish Government officials in relation to transitional payments.²⁴⁶ They confirmed that where a kinship carer received a payment under the benefits system this would be deducted from any transitional payment made under a kinship care order.

203. We raised these issues with the UK Department for Work and Pensions and HM Revenue and Customs and extracts from their responses are included below.

204. Department for Work and Pensions—

“Without knowing the precise details and purpose of the financial support that will be provided to kinship carers under the new Bill, we cannot guarantee that it will have no effect on benefit entitlement. [...] If the intention is that the new payments broadly replace or replicate the purpose of these existing payments, it is very likely that we would recommend to our Ministers that they too would be disregarded. However, if the new

²⁴³ Scottish Parliament Education and Culture Committee. *Official Report*, 3 September 2013, Col 2703

²⁴⁴ The Scottish Government’s Kinship Care Financial Review is likely to announce its findings by the end of 2013.

²⁴⁵ Scottish Government. Written submission.

²⁴⁶ Scottish Parliament Education and Culture Committee. *Official Report*, 8 October 2013, Cols 2973-4

payments are significantly more generous or for a different purpose, we would need to consider whether a disregard could still be justified.”²⁴⁷

205. HM Revenue and Customs—

“Under the ‘informal’ Kinship Care proposals, and subject to receiving details of what payments will actually be made, it appears that the children will no longer be considered to be ‘looked after’ by the Local Authority and, as a consequence, the Kinship Carer would be able to claim Child Tax Credit. We would need to see your draft regulations to understand precisely what will be paid out before a final view could be given.

“Similarly, in relation to Child Benefit, it is not yet clear from the information provided what package of support will ultimately be available. We would need to look at this again once the secondary legislation has been drafted but our initial view is that Child Benefit would continue to be available to the Kinship Carer in respect of the children being informally looked after. There is one exception to this generalisation and that is in relation to the transition from ‘formal’ to ‘informal’ Kinship Care where a top-up payment of £70 per week could be paid for up to 3 years where equivalent support is not available through the UK benefits system. We’re not certain what that means in practice and would need to understand more about these payments before a final view could be given.”²⁴⁸

Resources and the cost of kinship care orders

206. The Financial Memorandum predicts that from 2017-18 between 6% and 11% of kinship carers of looked after children would apply for kinship care orders; and that between 1.5% and 3.5% of kinship carers of not looked after children would apply for an order.

207. In its report, the Finance Committee highlighted evidence it received from local authorities, which “cast doubt” on these assumptions²⁴⁹. The City of Edinburgh Council, for example, did not think there was robust evidence that families would move from a position in which their child is looked after (where they receive a set of resources to support that situation), to the new kinship care order. In relation to children who are not looked after, the Council felt the estimate in the Financial Memorandum was an underestimate and therefore the costs falling on local authorities would be greater than predicted. COSLA also highlighted what it saw as “considerable uncertainty over how many families will take up an order”

²⁴⁷ Correspondence from Department for Work and Pensions. 6 November 2013. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/66626.aspx> [Accessed 13 November 2013]

²⁴⁸ Correspondence from HM Revenue and Customs. 1 November 2013. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/66626.aspx> [Accessed 13 November 2013]

²⁴⁹ Scottish Parliament Finance Committee. 2013 (Session 4) *Report on the Financial Memorandum of the Children and Young People (Scotland) Bill*. (Paragraph 112) Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/68414.aspx> [Accessed 13 November 2013]

and considered that the financial risk facing local government was “potentially significant”.²⁵⁰

208. The Finance Committee specifically asked us to seek further details from the Scottish Government on the estimated costs associated with diverting children from formal kinship care. The Government’s response re-stated its belief that the order would be an attractive alternative to formal kinship carers. However, it also acknowledged that it was “very difficult to model [the costs/savings], because of the complex behaviour of children going in and out of care”²⁵¹.

Conclusions

209. We agree with the principle that children ought not to be classed as ‘looked after’ for any longer than is necessary and welcome the aim to reduce the number of children in formal kinship care.

210. However, we acknowledge concerns that ‘looked after’ status can sometimes be seen as a gateway to resources and support. We consider it is crucial that local authority support provided under the Bill’s kinship care order is based on the needs of the child rather than resources or legal status. The transition from being ‘looked after’ to not being ‘looked after’ should not mean the removal of support still required by kinship carers and their families. To this end, we welcome the kinship care order with its duty requiring local authorities to provide assistance and consider this has the potential to ensure any necessary support is provided.

211. We recognise, however, the concerns raised by some kinship carers about the level of support available under the kinship care order and that much will depend on the detail of the regulations and how local authorities implement the provisions. **We therefore welcome the Scottish Government’s work in engaging with stakeholders, including local authorities and groups representing kinship carers, on the contents of the regulations and ask the Government to reassure kinship carers about the level of support they can expect to receive under the new arrangements.**

212. The Scottish Government Financial Review of kinship care expects to report by the end of 2013. We will consider its findings in due course. **The Government should ensure the findings can be easily integrated into the regulations being developed under the Bill.**

213. **We invite the Scottish Government to provide details of the action it is taking to ensure that payments under the kinship care order will be disregarded as income in terms of the benefits system. We would be concerned if such support was not disregarded in this way and urge the Scottish Government to work closely with the relevant UK Government departments on the development of the regulations under this Part, to ensure clarity about what kinship carers can and cannot expect to receive.**

²⁵⁰ COSLA. Written submission.

²⁵¹ Scottish Government. Supplementary written submission.

Part 11 – Adoption register

214. The Bill will put Scotland’s Adoption Register²⁵² on a statutory footing and give the Scottish Ministers responsibility for making arrangements for establishing and maintaining the Register. The Bill will require local authorities and registered adoption services to provide specified information for the Register so that there is a list of prospective adopters and children in respect of whom no match has been found.²⁵³

215. The Policy Memorandum states this will increase the number of adoptions²⁵⁴. Scottish Government officials said some adoption agencies were reluctant to refer²⁵⁵ their prospective adopters to the existing (non-statutory) Register, despite not being able to match them with any children locally. The Government stated that it envisaged “the statutory requirement on adoption agencies to use the Register will address this issue and increase the Register’s effectiveness”²⁵⁶.

216. The organisations that responded on this Part supported a national register, although several questioned it being compulsory. For example, the British Association for Adoption and Fostering (BAAF), which is currently responsible for administering the existing non-statutory Register, did not consider it necessary to require mandatory referral of children to the Register, “as the current system operates satisfactorily without compulsion”²⁵⁷.

217. The Association of Directors of Social Work (ADSW) preferred the use of “clear timescales and options”²⁵⁸ rather than the compulsory approach taken in the Bill. However, the ADSW Sub-Group on Adoption and Fostering acknowledged there could be a need for compulsion if guidance failed to increase referrals and use of the Register.²⁵⁹ COSLA also hesitated to support the proposal in the Bill and suggested that moving to a national adoption register through compulsion for local authorities “should only be considered where there is complete confidence that it is in the interests of children to do this”²⁶⁰.

218. In addition, BAAF highlighted its concern about a technical provision, which would prohibit an adoption agency from disclosing information about a child who it considered ought to be placed for adoption, without the express consent of the child’s parent or guardian. BAAF felt this would “make referral to the Register much more difficult” and suggested adoption was possible against the wishes of parents where the court is satisfied their consent should be dispensed with. BAAF argued that, if consent was to be required before a child could be referred to the

²⁵² Scotland’s Adoption Register: <http://www.scotlandsadoptionregister.org.uk/>

²⁵³ Financial Memorandum, paragraph 153

²⁵⁴ Policy Memorandum, paragraph 135

²⁵⁵ The Financial Memorandum states that two thirds of local authorities and three registered adoption services use the existing non-statutory Register.

²⁵⁶ Scottish Government. Written submission.

²⁵⁷ British Association for Adoption and Fostering. Written submission.

²⁵⁸ Association of Directors of Social Work. Written submission.

²⁵⁹ Association of Directors of Social Work Sub-Group on Adoption and Fostering. Written submission.

²⁶⁰ COSLA. Written submission.

Register, this would mean “an essentially administrative part of the pre-court procedure will be more restrictive than adoption court proceedings themselves”²⁶¹.

Conclusions

219. We support the aim of enabling more children, particularly those who are looked after, to be matched with suitable adopted families without having to experience delays. We consider the compulsory nature of the Register will mean the remainder of local authorities and adoption agencies will join the Register, thereby increasing the chances of a suitable match.

220. However, we note the concerns raised in evidence by, for example, the British Association for Adoption and Fostering and invite the Scottish Government to respond to these points.

Part 12 – Other reforms

221. The Bill includes a number of smaller, less contentious issues that did not receive much, if any, comment in the evidence we received. A brief outline of those that received most interest is included below.

Children’s hearings

222. The Bill proposes changes to the establishment and administration of Area Support Teams (ASTs)²⁶². It seeks to replace the existing obligation on the National Convener of Children’s Hearings Scotland (CHS) – to require the consent of each constituent local authority before making changes to the future configuration of ASTs – with a requirement to consult. The Policy Memorandum states this change will result in a “simpler, more streamlined process, which is quicker, more efficient and nationally consistent”²⁶³. Secondly, the Bill places a duty on local authorities to provide ASTs with administrative support. This will ensure the provision of support is “more standardised across the country”²⁶⁴.

223. COSLA highlighted concern that these changes raised “an issue of principle about the head of a national body potentially acting against a decision of a democratically elected authority”²⁶⁵.

224. CHS supported the proposals and stated it “recognised the crucial role played by local authorities in supporting panel members and within the Children’s Hearings System”²⁶⁶. The Scottish Children’s Reporter Administration agreed and also emphasised that it would remain important for the Convener of CHS to seek to engage with local authorities and “wherever possible, to get their agreement”²⁶⁷.

²⁶¹ British Association for Adoption and Fostering, supplementary comments provided to the Committee Clerk

²⁶² An Area Support Team carries out functions on behalf of the National Convener to support members of the Children’s Panel who sit on children’s hearings in their area.

²⁶³ Policy Memorandum, paragraph 138

²⁶⁴ Policy Memorandum, paragraph 140

²⁶⁵ COSLA. Written submission.

²⁶⁶ Children’s Hearings Scotland. Written submission.

²⁶⁷ Scottish Children’s Reporter Administration. Written submission.

Conclusion

225. On balance, we believe the proposals have the potential to streamline the establishment and administration of Area Support Teams (ASTs) and put the interests of children first, and note the requirement to consult on changes to ASTs.

Schools consultation

226. The Bill makes a minor change to the administrative process when a school closure proposal is made under the Schools (Consultation) Act 2010.²⁶⁸

227. However, the Scottish Government intends to lodge a number of amendments to this section at Stage 2.²⁶⁹ In a letter to us, the Cabinet Secretary for Education and Lifelong Learning said the purpose of the amendments is to implement recommendations from the Commission on the Delivery of Rural Education and the findings of the Court of Session in a judicial review concerning school closures in Comhairle nan Eilean Siar.

228. The amendments will relate to the following six topics—

- presumption against closure
- providing financial information in closure proposals
- clarifying and expanding Education Scotland's role
- the basis for determining school closure proposals
- establishing an independent referral mechanism
- a five-year moratorium on repeating a school closure proposal

229. In order to inform our scrutiny of these matters, we will take evidence from key stakeholders before Stage 2 begins.

CONCLUSION

Overall conclusion on the Bill

230. We support the general principles of the Children and Young People (Scotland) Bill.²⁷⁰

²⁶⁸ Policy Memorandum, paragraph 146

²⁶⁹ Correspondence from Michael Russell MSP, Cabinet Secretary for Education and Lifelong Learning (27 September 2013).

²⁷⁰ Liz Smith MSP dissented from this paragraph insofar as it includes Part 4, Provision of Named Persons.

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