

CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Children and Young People (Scotland) Bill introduced in the Scottish Parliament on 17 April 2013. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 27–EN.

POLICY OBJECTIVES OF THE BILL

2. It is the aspiration of the Scottish Government for Scotland to be the best place to grow up in. The objective of the Children and Young People (Scotland) Bill is to make real this ambition by putting children and young people at the heart of planning and delivery of services and ensuring their rights are respected across the public sector.

3. Specifically, the Bill aims to:

- Ensure that children's rights properly influence the design and delivery of policies and services by placing new duties on the Scottish Ministers and the public sector and by increasing the powers of Scotland's Commissioner for Children and Young People;
- Improve the way services support children and families by promoting cooperation between services, with the child at the centre;
- Strengthen the role of early years support in children's and families' lives by increasing the amount and flexibility of funded early learning and childcare;
- Ensure better permanence planning for looked after children by improving support for kinship carers, families and care leavers, extending corporate parenting across the public sector, and putting Scotland's National Adoption Register on a statutory footing; and
- Strengthen existing legislation that affects children and young people by making procedural and technical changes in the areas of children's hearings support arrangements, secure accommodation placements, and school closures.

BACKGROUND

4. Scotland is in a defining period, facing unique challenges and opportunities. Our children and young people face new and significant demands both individually and collectively. In the face of such challenges, it is the job of public services to: support children and parents; strengthen resilience; provide opportunities; and encourage and enable children and young people to participate fully, whatever their background and from wherever they come. We should not be content just to address problems or maintain the status quo. Improvement must be at the core of what the Scottish Government and wider public services do. This is not just an issue of prioritising resources, important as that is. It is also about shifting the culture in how children and young people are helped to achieve their potential and how public services and communities can best work to support families.

5. The Scottish Government fully recognises this responsibility, both morally and practically, for it is through the engagement and participation of its children and young people in society that Scotland will flourish and succeed. Inevitably the constraints of the constitution are limiting, preventing the use of powerful tools such as the tax and benefits system. Nevertheless, the Scottish Government must do all it can with the powers available to improve the lives of Scotland's children and young people.

6. On 11 May 2012, the First Minister announced the Scottish Government's intention to introduce a Children and Young People (Scotland) Bill to the Parliament in 2013. 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 with a clear focus on the achievement of outcomes.¹

7. The Scottish Government response to the Christie Commission report explains that its public service reform programme for improving service outcomes for the people of Scotland is based on four pillars:

- A decisive shift towards prevention;
- Greater integration of public services at a local level, driven by better partnership, collaboration and effective local delivery;
- A sharp focus on improving performance, through greater transparency and innovation; and
- Use of digital technology.

8. These pillars are the basis for the Scottish Government's agenda to achieve its stated ambitions for Scotland's children and young people. That agenda includes:

- Re-focusing the delivery and coordination of services to children and young people around their needs and wellbeing, so that care is person-centred, with the child at the centre of service design, planning and delivery;
- A stronger emphasis on supporting children and improving their wellbeing;

¹ Scottish Government, *Commission On The Future Delivery of Public Services* (2011)

- A fundamental shift in philosophy and approach from intervening only once a crisis has happened, to prevention and early intervention where appropriate;
- Providing the right support to parents to enable them to effectively fulfil what is the most challenging role in society and involving them in decisions that affect them and their families;
- Recognising the rights of the child as being of paramount importance to achieving the vision of improving life chances for all children and young people; and
- Empowering practitioners to take decisions and act to improve outcomes.

9. Much progress has been and continues to be made through these and other activities. There is, of course, more to do. Scotland's children and young people continue to face a myriad of challenges:

- There were 2,706 children on the Child Protection Register in Scotland as of July 2011. Scotland has a lower proportion of children on the Child Protection Register than other parts of the UK, but the share of the wider children's population on the Register has not changed greatly over the past decade;²
- In Scotland, in 2011, over 16,000 children were looked after. Although recent years have seen a sustained fall in new referrals into care and an increase in young people leaving care, Scotland has a higher proportion of looked after children than other parts of the UK – and the proportion of “formal” kinship carers continues to grow sharply;³
- Children and young people who need to come into care are more likely to have poorer outcomes than their peers. Health and educational attainment outcomes for most looked after children are significantly worse than for other children and young people;⁴
- On current estimates, between 10,000 and 20,000 children live with at least one parent who is using drugs,⁵ and between 36,000 and 51,000 children are living with parents (or guardians) whose alcohol use is potentially problematic;⁶
- Three-quarters of families experiencing high adversity have low parenting skills;⁷ and
- While child poverty has fallen markedly over the past decade, 170,000 children and young people in Scotland still live below the poverty threshold (17% of all children and young people).⁸ Children and young people who grow up in poor households are

² Scottish Government, *Children's Social Work Statistics Scotland, 2011-12* (2013)

³ Ibid

⁴ Scottish Government, *The Health of Looked After and Accommodated Children and Young People in Scotland - Messages from Research* (2006) and Scottish Government, *Educational Outcomes for Scotland's Looked After Children 2010/11* (2012)

⁵ Scottish Government, *“Looking Beyond Risk” Parental Substance Misuse: Scoping Study* (2006)

⁶ Scottish Government, *Final Business and Regulatory Impact Assessment for Minimum Price Per Unit Of Alcohol As Contained In Alcohol (Minimum Pricing) (Scotland) Bill* (2012)

⁷ Scottish Government, *Growing Up in Scotland: Parenting and Children's Health* (2011)

⁸ Scottish Government, *Poverty and Income Inequality in Scotland: 2010-11* (2012)

more likely to have low self-esteem, play truant, leave home earlier, leave school earlier and with fewer qualifications, and be economically inactive as adults.⁹

10. Of course, children's and young people's future lives are not just shaped by their backgrounds. Nevertheless, the potential impact that a care environment marred by neglect, substance misuse, domestic abuse and poverty can have on a child's development is clear. The scale of these challenges, and the economic and social costs to society, are daunting. They require a focus on early intervention, on tackling these problems at the earliest opportunity, particularly in the first years of a child's life, and where possible, preventing these problems before they arise.

ALTERNATIVE APPROACHES AND THE ROLE OF LEGISLATION

11. The Scottish Government is pursuing a range of policy initiatives and alternative approaches as part of its agenda to improve the lives of children and young people, including:

- The Early Years Collaborative, a multi-agency, local, quality improvement programme delivered at a national scale, and a Practice Development Team have been launched to take forward the vision and priorities of the Early Years Task Force;
- A decisive shift to preventative spending has been made through the creation of an Early Years Change Fund of over £270 million;
- Separate to the legislative provisions, £4.5 million has been invested for 3 years from April 2012 to provide early learning and childcare opportunities for looked after 2 year olds;
- £4.5 million has been contributed to establish the Big Lottery £6 million Communities and Families Fund, aimed at supporting community-based solutions to family support and early learning and childcare;
- A new Third Sector Early Intervention Fund from financial year 2013-14 has been established;
- £18 million is being provided to create high quality, co-ordinated and accessible family support;
- The Family Nurse Partnership, an early intervention programme for first time teenage mothers aimed at improving pregnancy outcomes, child health and development, and parents' economic self-sufficiency, is currently being delivered in six health board areas, with a further area due to begin delivery over the course of 2013;
- The Maternity Services Framework,¹⁰ Maternal and Infant Nutrition Framework¹¹ and Health for All Children Guidance for Scotland¹² are supporting the delivery of efficient, effective and person-centred health services for pregnant women, babies, children and young people;

⁹ Ermisch, J., Francesconi, M. and Pevalin, D., *The Outcomes for Children of Poverty* (2001)

¹⁰ Scottish Government, *A Refreshed Framework for Maternity Care in Scotland, The Maternity Services Action Group* (2011)

¹¹ Scottish Government, *Improving Maternal and Infant Nutrition: A Framework for Action* (2011)

¹² Scottish Government, *Health for All Children: Guidance on Implementation in Scotland* (2011)

- A National Parenting Strategy was published in October 2012, setting out a cohesive and compelling narrative around the value and importance of parenting, and including over 80 commitments to support Scotland’s parents;¹³
- As set out in the “Do the Right Thing” report, a range of measures have been taken forward to ensure that children’s rights continue to be at the forefront of policy and service delivery in Scotland;¹⁴
- The ambitious Curriculum for Excellence programme is on track and is now a reality in Scotland’s early learning and childcare establishments, schools and colleges;¹⁵
- The creation of the Centre for Excellence for Looked After Children in Scotland (CELCIS) has been funded, the remit of which includes the comprehensive redesign of care, focusing on shortening every child’s care journey;
- A Corporate Parenting National Training Programme has been launched to make key decision makers in local authorities and health boards more aware of their role as corporate parents;
- The Looked After Children Strategic Implementation Group (LACSIG) has been set up to identify key “sticking points” in the looked after child’s journey; and
- The first National Advice and Support Service for all kinship carers has been established.

12. While there is no one policy or initiative that can bring about the kind of change required, there is a fundamental role for legislation: to accelerate the progress that has already been made and to ensure a consistent structure within which services operate; to bring about a step-change in the way that all services support children and young people; and to inspire renewed debate and ambition for what Scotland’s children and young people can expect.

The Role of the Children and Young People (Scotland) Bill

13. The Children and Young People (Scotland) Bill (“the Bill”) will:

- Reflect in domestic law the role of the United Nations Convention on the Rights of the Child (UNCRC) in influencing the design and delivery of policies and services by placing duties on the Scottish Ministers and the wider public sector, and strengthening the powers of the Children’s Commissioner to enable investigations to be conducted in relation to individual children and young people;
- Improve the way services work to support children, young people and families by: ensuring there is a single planning approach for children who need additional support from services; creating a single point of contact around every child or young person; ensuring coordinated planning and delivery of services with a focus on outcomes, and providing a holistic and shared understanding of a child’s or young person’s wellbeing;

¹³Scottish Government, *National Parenting Strategy: Making a Positive Difference to Children and Young People through Parenting* (2012)

¹⁴Scottish Government, *Do the Right Thing* (2012)

¹⁵<http://www.scotland.gov.uk/Topics/Education/Schools/curriculum/ACE>

- Strengthen the role of early years support in children's and families' lives by increasing the amount and flexibility of free early learning and childcare from 475 hours a year to a minimum of 600 hours for 3 and 4 year olds, and 2 year olds who are, or have been at any time since turning 2, looked after or subject to a kinship care order;
- Ensure better permanence planning for looked after children by: extending corporate parenting across the public sector; extending support to young people leaving care for longer (up to and including the age of 25); supporting families and the parenting role of kinship carers through new legal entitlements; and putting Scotland's National Adoption Register on a statutory footing; and
- Strengthen existing legislation that affects children and young people by creating a new right to appeal a local authority decision to place a child in secure accommodation, and by making procedural and technical changes in the areas of children's hearings support arrangements and school closures.

14. The Bill is, therefore, fully complementary to other Scottish Government policy and legislation aimed at improving the outcomes for Scotland's population. In particular, the Bill shares with the proposed Bill on the integration of health and social care the underpinning principles of person-centred care and the coordination of services around the needs of individuals. These principles are apparent in the content of both Bills.

Benefits of the Children and Young People (Scotland) Bill

15. The scientific evidence is clear that the foundations for a successful society can be built in early childhood.¹⁶ The brains of children develop at an astonishing rate before birth and in the first few months of life. If their experiences are supportive and consistent in response to the child's expressed needs, the child learns that the world is a safe, nurturing place with opportunities to learn and grow. If, on the other hand, the child experiences inconsistency of response to its signals for attention, the brain develops in a different way that sacrifices growth in centres associated with learning, memory and judgement in favour of those involved in the responses to threat.

16. Children who experience poor, unstable care environments often face greater challenges in later life as a result. As the Chief Medical Officer for Scotland stated in his 2006 Annual Report:

“Insecurely attached infants are at greater risk of problems in emotional development, and children with very poor attachment experiences are at greatest risk of failure to thrive in early years and behaviour problems, lowered self-esteem and schooling difficulties in childhood and adolescence.”¹⁷

¹⁶ Schweinhart, L. et al, *Lifetime Effects: The High/Scope Perry Preschool Study through Age 40* (2005)

¹⁷ Scottish Government, *Health in Scotland 2006: Annual Report of the Chief Medical Officer* (2007)

17. Adverse events in childhood have also been associated with higher risks of alcohol and drug misuse and teenage pregnancy among children and young people in later life.¹⁸

18. In the United States, one 2007 study has estimated the annual costs of child abuse and neglect – both in terms of direct costs in supporting victims and the longer term economic costs – at \$103.8 billion (approximately £66.2 billion).¹⁹

19. Poor parenting and other forms of adversity in early life lead to poor outcomes. There is a wealth of evidence emerging – through the Effective Provision of Pre-school Education programme, Triple P (Positive Parenting Programme), Incredible Years, and Family Nurse Partnership – that demonstrates the effectiveness of interventions supporting children in the earliest years.

20. Intervening early not only improves outcomes for individuals, their families and communities, but can save the costs of expensive interventions in health, social care, justice and welfare over several decades. The Scottish Government examined the costs of failing to make the right interventions in the early years of a child’s life in a 2010 study, “The Financial Impact of Early Years Interventions in Scotland”.²⁰ The report highlighted the significant costs of failing to act to prevent problems emerging and worsening for children at developmental risk.

21. Thus, preventative action is vital to achieve improved social outcomes for children and young people, and will also result in considerable financial savings in the medium to long term. Evidence shows that early intervention and prevention can help break recurring cycles of poor social outcomes, and can prevent extensive and expensive responses from public services at a later stage.

22. The Bill is founded upon this preventative approach. By increasing the provision of high quality early learning and childcare, ensuring more effective delivery of services to support children, young people and their families, placing children’s rights at the centre of those services and their design, improving family support at an earlier stage and enhancing permanence planning for looked after children, the Bill seeks to address the damaging problems that may affect the wellbeing and outcomes of Scotland’s children and young people.

23. The potential benefits of the provisions of the Bill are further detailed in the “Policy Objectives: Specific Provisions” section of this document.

CONSULTATION

24. On 4 July 2012, the Scottish Government published a consultation document which invited views on key areas of proposed reform. A formal, 12 week public consultation was undertaken from 4 July to 25 September 2012, and 300 responses were received from a wide

¹⁸ Dube, S. et al, “Adverse Childhood Experiences and Personal Alcohol Abuse as an Adult” *Addictive Behaviours* (2002); Dube, S. et al “Childhood Abuse, Neglect and Household Dysfunction and the Risk of Illicit Drug Use” *Pediatrics* (2003); Hillis, S. et al “Adverse Childhood Experiences and Sexual Risk Behaviours In Women”, *Family Planning Perspectives* (2001)

¹⁹ Wang, C.T. and Holton, J., “Total estimated cost of child abuse and neglect in the United States”, *Prevent Child Abuse America* (September 2007)

²⁰ Scottish Government, *The Financial Impact of Early Years Interventions in Scotland* (2010)

range of stakeholders from public, private and third sector organisations, and individuals. Non-confidential consultation responses were published on 30 October on the Scottish Government website.²¹ The Scottish Government commissioned the independent consultancy organisation The Research Shop to undertake a formal analysis of consultation responses, and this was published on 4 December 2012.²²

25. In parallel with the consultation exercise, the Scottish Government also conducted a large-scale series of national engagement events to discuss the proposal for reform with a wide range of stakeholders. These events were held in Dundee, Edinburgh, Glasgow and Inverness over the summer of 2012, and were attended by over 800 people from the third, public and private sectors. The majority of these individuals identified as being from either a social work (23%), voluntary (21%) or education (16%) background. A series of questions on the Children and Young People (Scotland) Bill were posed to all attendees, and their views were captured quantitatively through electronic voting and qualitatively through extensive table discussions.

26. In addition to the national engagement events, further engagement meetings were held during Bill development involving over 150 stakeholder groups/organisations from the third, public and private sectors.

27. It was essential that the views of children and young people were represented in the consultation process, and to that end, engagement activity was commissioned with children and young people from across Scotland. Several nurseries were commissioned to conduct informal engagement around the Bill to ensure that 3 and 4 year olds were able to participate in the process. For school-age children, the Children's Parliament was commissioned to engage on the Bill through two-day workshops at six primary schools throughout Scotland, and over 100 children were involved in these activities.

28. Young Scot and the Scottish Youth Parliament were commissioned to engage with young people aged 12 to 26. These two organisations jointly undertook a mass engagement exercise over the summer of 2012, which consisted of:

- An online and offline survey seeking the young people's quantitative opinions on proposals in the consultation document; and
- Seven dialogue groups involving young people with diverse backgrounds and experiences, facilitated to gauge views in a qualitative manner through in-depth discussion of the Bill proposals.

Over 1,400 young people responded to the survey, and over 50 young people participated in the dialogue groups.

29. Materials and engagement tools designed by the Children's Parliament and Young Scot/Scottish Youth Parliament were made available to others wishing to carry out engagement with children and young people. Largely through the use of these materials, around 900 children and young people were involved in engagement activities facilitated by other organisations. In

²¹ Scottish Government, *Non-Confidential Responses to Children and Young People Bill* (2012)

<http://www.scotland.gov.uk/Publications/2012/10/5874/downloads>

²² Scottish Government, *Analysis of Responses to the Children and Young People Bill Consultation* (2012)

total, over 2,400 children and young people from the ages of 3 to 26 and from a diverse range of backgrounds were involved in the consultation process.

30. Useful information about parents' views on services and childcare was gleaned from the significant engagement activity undertaken with parents during the development of the Scottish Government's National Parenting Strategy. In addition, the Scottish Government worked with ParentLine Scotland to seek parents' views on Bill proposals specifically.

Outcome of Consultation and Engagement

31. The analysis of consultation responses indicated that stakeholders were broadly supportive of the Bill proposals:

- 70% of those who provided a view considered that the proposals would improve transparency and scrutiny of the steps being taken by the Scottish Ministers and relevant public bodies to ensure the progressive realisation of children's rights;
- 84% of those who commented supported the proposed definition of the wellbeing of a child or young person;
- 80% of those who provided a view supported the proposal to place a duty on public bodies to work together to jointly design, plan and deliver policies and services focused on improving children's wellbeing, and 70% agreed that reporting arrangements should be put in place which make a direct link for the public between local services and outcomes for children and young people;
- 72% of respondents who provided a view supported the Named Person role;
- 76% of those who commented agreed that a single planning approach would help improve outcomes for children;
- 76% of those who addressed the topic agreed that the Scottish Government should increase the number of hours of funded early learning and childcare, and 83% agreed that flexibility of provision should be increased; and
- 88% of those who provided a view agreed that care-leavers should be able to request assistance from their local authority up to and including the age of 25 (instead of 21 as now) and 88% agreed that it would be helpful to define corporate parenting and to clarify the public bodies to which this definition applies.

32. Feedback from all the extensive engagement undertaken alongside the consultation was similarly supportive and broadly positive about the Scottish Government's aspirations and the intentions behind the Bills proposals. Attention was focused largely on how the proposals would work in practice rather than on matters of principle.

33. The main issues emerging from the consultation and engagement activity in this regard were:

- Concern from some stakeholders about the effectiveness of the kinship care order as originally proposed to bring benefit to kinship carers and the children in their care and thus achieve the policy intention;

- A strong feeling that providing care leavers a right to request assistance from local authorities would not necessarily mean that support would actually be provided, and that a duty on local authorities to provide support may be more effective;
- Concern from key stakeholders about the proposed prescriptive approach of requiring local authorities to consult on and offer the same minimum set of options to achieve consistent flexibility of early learning and childcare provision; and
- Concern that the existing legal framework for information sharing with regard to the Named Person is insufficient to enable the role to function as envisaged and would not provide professionals with confidence when making decisions as to when information should be shared.

34. These concerns were addressed in the Scottish Government's response to the findings of the consultation, which was published on 22 March 2013.²³ This details the intention to proceed largely as originally proposed, but also sets out the way a small number of proposals have been adapted to:

- Build on existing legislation to deliver the benefits of the kinship care order more effectively;
- Introduce a duty on local authorities to assess whether a care leaver up to and including the age of 25 who has requested assistance has eligible needs, and, if they do, to provide that assistance if it cannot be met from elsewhere;
- Provide local authorities more flexibility to determine choices and options for patterns of delivery of a minimum of 600 hours early learning and childcare as part of local strategies developed in response to local consultation with parents; and
- Provide more clarity on how the role of Named Person will operate with regard to information sharing, by placing duties on the public bodies working with children and on Named Persons.

35. Further information on these alternative approaches can be found in the "Policy Objectives: Specific Provisions" section.

Consultation on Additional Provisions

36. A small number of policy issues emerged subsequent to the launch of the consultation. These require additional provisions in the Bill that were not part of the formal consultation. However, views have been sought on these additional provisions, as set out below.

Children's hearings

37. Officials have held informal discussions with the main national volunteers' representative groups, with the Convention of Scottish Local Authorities (COSLA) and with Children's Hearings Scotland (CHS) since mid-2012, in order to monitor the issues affecting implementation of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"). In December 2012, the Scottish Government circulated a policy paper to key hearings system partners—

²³ Scottish Government, *The Scottish Government Response To "A Scotland for Children: Consultation on a Children and Young People Bill"* (2013)

children's panel chairs, Children's Panel Advisory Committees (CPACs), safeguarders, the Scottish Children's Reporter Administration (SCRA), CHS, COSLA and others – seeking views on proposals to make two changes to the 2011 Act through the Bill. These changes would: allow the National Convener to determine the number and location of Area Support Teams (“ASTs”) in consultation with local authorities and thereby remove the obligation to obtain consent from each authority before establishing ASTs; and place a duty on local authorities to provide such administrative assistance to ASTs as the National Convener considers appropriate. That informal consultation closed in January 2013.

38. A total of 27 responses were received, comprising five organisations, 11 groups and 11 individuals who work within the hearings system. A small majority of respondents favoured the proposals to amend the 2011 Act. The new powers were welcomed as a means of helping to ensure consistent support for panel members moving forward and a way of avoiding long, drawn-out discussions on AST structures in future. However, there was a feeling amongst some respondents that before any changes are made, ASTs must be given a chance to work following implementation of the 2011 Act in 2013. There was also a concern amongst some respondents, in particular COSLA, that the National Convener should not have the power to decide AST structures or to decide what constitutes “appropriate” local authority administrative support to ASTs. Having considered these responses, the Scottish Government has decided to bring forward provisions in sections 69 and 70 to the Bill to introduce the proposed changes.

Amendment to the Criminal Procedure (Scotland) Act 1995

39. The amendment to the Criminal Procedure (Scotland) Act 1995 (“the CPSA”) in section 71 to the Bill will provide a new right to appeal a local authority decision to place a child in secure accommodation following an order made by the sheriff to detain the child in residential accommodation. Substantial thought was given by stakeholders to the role of secure care as part of the Securing Our Future Initiative process and joint views were expressed and recommendations were agreed. The secure accommodation provisions in the 2011 Act give effect to some of those recommendations, and were the subject of debate during passage of the Bill through the Scottish Parliament. The amendment to the CPSA is simply intended to ensure that children who are placed in secure accommodation following an order being made under section 44 to that Act will have the same appeal rights as children who are placed in secure accommodation under the provisions of the 2011 Act. As only a small number of orders are actually made under section 44 of the CPSA, it is not considered that there will be significant resource implications, or that the change will be contentious among stakeholders.

Amendment to the Schools (Consultation) (Scotland) Act 2010

40. The amendment to the Schools (Consultation) (Scotland) Act 2010 (“the 2010 Act”) in section 72 derives from the extensive consultation process that the Commission on the Delivery of Rural Education carried out during 2011 and 2012 as part of its remit to examine and report on all aspects of education in rural areas - including to review the application of the 2010 Act; its final report is expected shortly. The Commission was established by the Scottish Government and COSLA and includes representatives from a wide range of interests. It gathered evidence in a number of ways, including a Call for Evidence which invited written responses from organisations and individuals with an interest in rural education, and through a programme of school visits and public meetings in the 12 local authorities with the greatest number of rural

schools. The amendment to the 2010 Act in section 72 of the Bill anticipates a recommendation of the Commission.

POLICY OBJECTIVES: SPECIFIC PROVISIONS

Sections 1 – 4: The Rights of Children and Young People

41. The UNCRC was adopted by the General Assembly of the United Nations in 1989. It sets out the basic human rights of children, and consists of 54 Articles which encompass civil, political, economic, social and cultural rights. These Articles form a framework against which to evaluate legislation, policy and decision-making structures.

42. The UK Government ratified the Convention on 16 December 1991, with several declarations and reservations, and made its first report to the Committee on the Rights of the Child in January 1995.

43. The Scottish Ministers have made a clear commitment to recognising, respecting and promoting children's rights in Scotland. The UNCRC already underpins the key legislation governing children's services, including the Children (Scotland) Act 1995 ("the 1995 Act"). It has shaped many of the policies which affect children's and young people's lives, many of which are described in the Scottish Government's progress report "Do the Right Thing". The Scottish Government believes that legislative steps are essential in order to ensure that the Convention continues to influence legislation, policy and practice in the future.

Duties on the Scottish Ministers to further, promote and raise awareness of the UNCRC

44. The Bill explicitly recognises the Scottish Ministers' responsibility to review their approach to implementing the UNCRC and to implement policies which they believe will support the effective realisation of children's rights where possible. It achieves this by placing a duty on the Scottish Ministers to: keep under consideration whether there are any steps which might secure better effect of the rights set out in the UNCRC; and to take any steps they believe to be appropriate in consequence of that consideration.

45. The Scottish Ministers view the Bill as an important opportunity to make rights more "real" for children and young people in Scotland. This means empowering children themselves to exercise their rights. It also means highlighting the important role that professionals and communities must play in making this happen.

46. In order to achieve this change, there must be a greater understanding of the rights that children and young people have and how important they are for improving their lives. The Bill requires the Scottish Ministers to promote and raise awareness and understanding of the rights of children and young people. The Scottish Ministers are already subject to such a requirement implicitly by way of the UNCRC itself. However, statutory provision will make this explicit.

A reporting duty on the Scottish Ministers and the wider public sector

47. Understanding and knowing more about rights is one important step. It is just as important that the key bodies involved in protecting and promoting rights properly understand

the impact that their work is having. For that reason, the Bill place duties on the Scottish Ministers and public authorities (listed in schedule 1 to the Bill) to report on the measures they have taken which further the rights set out in the UNCRC. It is the responsibility of the Scottish Ministers and those public bodies respectively to identify the measures on which they will report.

48. Reports by the Scottish Ministers and the listed public bodies will be published on a three yearly basis. This timeframe will allow time for sufficient progress to be made between reports whilst also ensuring the availability of relevant material regarding the approaches being taken across Scotland. Reports prepared by the Scottish Ministers must be laid before the Scottish Parliament and published. Where a listed public body is required to contribute to the development of a children's services integrated plan, the Scottish Ministers would encourage them to use this process as the mechanism for satisfying their reporting duty.

New powers for Scotland's Commissioner for Children and Young People

49. The role of Scotland's Commissioner for Children and Young People ("the Commissioner") in embedding children's rights is critical. As seen most recently in the "Big Blether",²⁴ the Commissioner has a powerful public role in eliciting and representing children's interests, drawing attention to their rights and pointing out where bodies are failing to implement them fully. The Scottish Ministers believe that the Commissioner's ability to deliver these aims could be strengthened further; therefore, the Bill will extend the powers of that office in order that the Commissioner may undertake investigations on behalf of individual children. This will be achieved through an amendment to the Commissioner for Children and Young People (Scotland) Act 2003 Act. The change will have the effect of 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.

50. Any investigation will focus on whether a service provider has had regard to the rights, views and interests of the child and can involve recommendations being made. Where recommendations are made, the Bill requires a service provider to respond to the Commissioner on the matters raised where such a response is requested. The Commissioner may also choose to lay before the Parliament the report of any investigation.

Benefits

51. The duty on the Scottish Ministers to keep under consideration and take appropriate steps will have the effect of recognising an existing international obligation on the part of the Scottish Ministers to implement the UNCRC. Furthermore, it will allow for increased scrutiny of how that international obligation is being satisfied. Finally, it will require that all future Scottish Governments adopt such an approach to UNCRC implementation, providing a safeguard in domestic law which ensures that the UNCRC will continue to influence decisions on public policy in the future.

52. Much like the duty to take appropriate steps, the duty on the Scottish Ministers to promote awareness and understanding will recognise an existing international obligation. It will allow for increased scrutiny of how that obligation is being taken forward and it will provide a

²⁴ <http://www.sccyp.org.uk/what-were-doing/a-right-blether/background-evaluation>

mechanism in domestic law for ensuring that future Scottish Governments continue to take steps to promote awareness and understanding where appropriate. More generally, improved knowledge of the UNCRC is likely to result in an increase in its influence on the individual decisions being made by practitioners and decision makers working with and for children and young people.

53. The reporting duty on the Scottish Ministers and other public bodies is designed to support individual organisations in measuring the progress they are making with UNCRC implementation and to highlight potential areas where further activity might be necessary. The increased availability of public information at both local and national level will also increase transparency around UNCRC implementation, supporting the Scottish Government, the Parliament and the Commissioner to hold to account those who play a key role in making rights “real” for children in Scotland.

54. The Bill provides a new mechanism for raising and resolving concerns regarding the rights of individual children. The nature of the Commissioner’s work means it is highly likely that any investigation process will be more accessible and child friendly than a judicial process – a point raised consistently by stakeholders. The recommendations coming from investigations may also result in improved practice within organisations, ensuring that children in similar situations in future do not encounter the same issues. Finally, the findings of investigations are likely to inform the range of other research and policy activity which is taken forward by the Commissioner, strengthening its ability to effectively promote children’s rights more generally.

Sections 7 – 41, 73 – 74: Getting It Right for Every Child

55. The Scottish Government believes that consistent and full implementation of the Getting it right for every child (GIRFEC) approach across Scotland will improve the wellbeing and life chances of Scotland’s children and young people. GIRFEC is the Scottish Government’s programme for changing service delivery. It is a person-centred approach that builds on the strengths of children, young people and their families to address concerns and improve wellbeing. It supports a single system of service planning and delivery across children’s services. GIRFEC is rooted in cooperation between services with the child at the centre, encourages streamlining and collaboration, and prevents services working in isolation from each other. The GIRFEC approach ensures that children, young people and their families receive the holistic services they need and provides professionals working in children’s services, and adult services where they are working with parents or carers, with the understanding and the mechanisms they need to deliver these services.

56. The Bill will ensure that:

- A holistic definition of wellbeing underpins the various duties in the Bill and, through specific amendments of other legislation, to existing duties on public bodies when considering the planning and coordination of services in respect of children and young people;
- Public bodies work together to plan and deliver their services so that they advance the wellbeing of children and young people, and that they report on what this means for children and young people in their area through a common set of high level outcomes for them;

- Children and young people from birth up to 18 (or beyond if they are still at school) have a Named Person and that relevant public bodies cooperate with the Named Person by sharing relevant information with the Named Person where there is a risk of the wellbeing of a child or young person being impaired; and
- A Child's Plan is produced for every child who needs one, set in a single planning process to help those children and young people who need additional support or where the involvement of a range of services is required.

57. As the Bill contains key provisions to implement GIRFEC consistently across Scotland, the benefits of the provisions are considered collectively.

Definition of wellbeing

58. "Wellbeing" is a term commonly used about an individual's development. It can mean different things, ranging from mental health to a wider vision of happiness. The term is used in the UNCRC, and by UNICEF when reporting on children's issues. It captures the idea that a child's or young person's condition depends on a range of different factors. Wellbeing reflects the fact that different aspects of a child's and young person's quality of life will affect what they can achieve as they grow and develop and how well they are able to address any difficulties they may encounter. The better a child's wellbeing, the better their outcomes will be. Wellbeing is not just about a child's and young person's economic status, health or educational attainment: it is also about how they take responsibility for their actions, their inclusion in the wider community and whether their views and voices are respected and heard.

59. In Scotland, under the GIRFEC approach, wellbeing is defined through eight Wellbeing Indicators, often known by the acronym, "SHANARRI": Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included. These capture the full range of factors that affect a child's and young person's life and reflect the Scottish Government's view that it is essential for services to take a holistic approach.

60. The Bill provides for a number of duties that seek to safeguard, support and promote the wellbeing of children and young people. To ensure that these duties take a holistic view of what a child or young person needs, the Bill provides for a holistic definition of wellbeing by reference to SHANARRI (section 74).

Duties on public bodies to plan and deliver services to improve outcomes for children and young people

61. Children and young people need services that are not simply coordinated, but share this holistic approach towards wellbeing and early intervention. What they deserve are services – across all parts of Scotland – that routinely and consistently consider the spectrum of their needs. It should become the basic design principle in how the public sector supports all children and young people and their families including, where appropriate and necessary, the provision of consistent, high quality and coordinated advice and information.

62. In recent years there has been increasing integration in the way public bodies develop, plan and operate services in support of children and young people. Existing legislation already embeds the importance of joint working and cooperation across specific services. Consequently,

cooperation is linked to the responsibilities of these bodies in delivering those functions rather than considering how all relevant public services can support the whole wellbeing of children and young people in an area. Lack of clarity about who may be asked to do what can compound practical difficulties in cooperation.

63. The Bill sets out duties on local authorities and health boards, with the assistance of other public bodies and relevant third sector organisations, to work together to jointly plan and deliver their services to ensure that they focus on improving children's and young people's wellbeing in their area. This will be done through the preparation on a three yearly basis of a children's services plan. The intended effect will be 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. It will also mean that the roles of frontline staff, who work most closely with children and young people and their families, will be set in a clear context of improving wellbeing.

A duty on public bodies to report on outcomes for children and young people

64. There are currently no requirements for public bodies to report collectively on how the lives of children and young people are improving. Existing legislation only places specific duties on certain individual bodies to report on the contributions of a particular service or specific elements of a child's or young person's wellbeing.

65. In order to give the public, and particularly children and young people, a full picture how their wellbeing is being promoted, supported and safeguarded at a local level, the Bill places a duty on local authorities and health boards to report on a one yearly basis on the extent to which they have achieved the aims of the children's services plan to improve the wellbeing of the children and young people in their local government area. There will be a requirement for other service providers to participate in this reporting process. This will enhance the implementation of GIRFEC and make a direct, accountable link for the public between local services and outcomes for children and young people.

The Named Person

66. Where children and young people face issues that are not easily addressed by the practitioners with whom they and their families are in regular contact, it is not always clear who they can turn to for help.

67. The GIRFEC approach aims to have in place a network of support to safeguard, promote and support wellbeing so that children and young people get the right help at the right time. This network will always include family and/or carers, and it will include a role that the Bill puts into legislation: the Named Person.

68. The Named Person will usually be a practitioner from a health board or an education authority, and someone whose job will mean they are already working with the child. They can monitor what children and young people need, within the context of their professional responsibilities, link with the relevant services that can help them, and be a single point of contact for services that children and families can use, if they wish. The Named Person is in a position to intervene early to prevent difficulties escalating. The role offers a way for children

and young people to make sense of a complicated service environment as well as a way to prevent any problems or challenges they are facing in their lives remaining unaddressed due to professional service boundaries. Their job is to understand what children and young people need and quickly make the connection to those services that can help when extra help is needed.

69. Some parts of Scotland already have the Named Person role in place, but this role has not been implemented systematically across the whole country or across all universal services. This has resulted in inconsistent and patchy implementation of the GIRFEC approach, with different experiences for children and families dependant on where they live. Legislating for the role of Named Person will underpin the national approach and help ensure that children and their families can expect services to work with them in a structured and consistent way, regardless of where they live. When information is to be shared within and across boundaries, then it needs to be directed to the right person with the minimum of delay. This will lead to better coordination of existing services, as well as quicker identification of unmet needs.

70. The Bill aims to ensure that every child in Scotland has a Named Person. It will do this by placing duties on different bodies for ensuring the Named Person is in place at different stages in a child's and young person's life:

- From birth up to school age or when the child starts school, health boards will be responsible for ensuring all children have a Named Person and for the carrying out of the duties of the Named Person set out in the Bill; and
- From school age up until 18 or beyond if the child is still at school, local authorities or managers and proprietors of independent and grant-aided schools will be responsible for the Named Person and the accompanying duties. A young person who is in secure accommodation is also to have Named Persons provided for them by the managers of the establishment in which they are kept.

71. The Bill makes provision to ensure that certain groups of children and young people, with a less typical pattern of involvement with health or educational services, are provided with a Named Person. These include:

- Children and young persons in gypsy/traveller communities;
- Home educated children;
- Children and young persons who attend school outside Scotland;
- Children and young people with interrupted learning (i.e. those who are unable to maintain a regular pattern of school attendance, or require a period of time out with their normal learning setting, due to a range of factors including, family lifestyle, health issues or risk factors related to their behaviour); and
- Young people who leave school before the age of 18.

72. The Bill also includes provisions to ensure:

- Children, young people and families always know about the role of the Named Person and how to contact them; and

- Other relevant public authorities can identify the Named Person for a particular child or young person quickly.

73. In addition to the duty on specific public authorities to put the Named Person in place, the Bill provides for a more wide-ranging duty on all relevant public authorities to cooperate with the Named Person in the conduct of their duties. This will be of particular importance in the following areas.

- Information sharing. The role of the Named Person will depend on the successful sharing of information between relevant public authorities where there are concerns about the wellbeing of individual children and young people;
- Planning. In developing a Child's Plan or coordinating support for individual children and young people, the Named Person will require significant cooperation from a range of services; and
- The role of public authorities. Concerns about individual children and young people may often not come from children's services, but from any of the public authorities listed in schedule 2 to the Bill. The duty to cooperate with the Named Person will extend across all services provided by the relevant public bodies, so that they understand their duty to share concerns with the Named Person, and other services as appropriate, about risks to the wellbeing of children and young people.

74. Where a relevant authority (or any person which can provide a Named Person, but is not providing a Named Person for the child or young person who the information is about) has information which it considers may be relevant to the exercise of the Named Person functions, the Bill ensures that the information will be passed to the Named Person unless doing so would prejudice the conduct of any criminal investigation or the prosecution of any offence.

Alternative Approaches

75. The proposal to provide a Named Person for every child and young person was strongly supported by stakeholders, both through the public consultation and the engagement undertaken. However, concern was expressed about the existing legal framework for information sharing. This was felt to be confusing and potentially insufficient to enable the role of the Named Person to operate as well as anticipated. In particular, there were concerns regarding the sharing of information about children where consent is not given, both between others and the Named Person, and the Named Person and other professionals. It was felt that this could lead to professionals being unsure as to when information should be shared.

76. Currently, information about a child may be shared where the child is at a significant risk of harm. However, the role of the Named Person is based on the idea that information on less critical concerns about a child's wellbeing must be shared if a full picture of their wellbeing is to be put together and if action is to be taken to prevent these concerns developing into more serious issues. Without the necessary power to share that kind of information, the Named Person will not be able to act as effectively as is intended. This was a point raised consistently by practitioners and professionals.

77. Specific provisions in the Bill, therefore, set out arrangements on information sharing, to give professionals and Named Persons the power to share information about those concerns. Duties will be placed on public bodies working with children and adults to share a concern they have about the child's wellbeing with the Named Person, if it is necessary to safeguard, support and promote the wellbeing of the child, and on the Named Person to share with other relevant public bodies information appropriate to addressing relevant concerns.

The Child's Plan

78. Assessment and planning are part of the everyday processes practitioners in health, education, social work and third sector organisations employ to help children and their families. Practitioners work with children and families to ensure they are linked to the most appropriate help to meet their needs. Other services, such as the police, will share relevant information that they have to assist others working with the child and family in understanding what is going on in a child's life in order for appropriate help to be organised.

79. However, where children and young people are involved with different services, they will be part of different planning systems. This can be bewildering to the children, young people and their families, particularly when the planning for these services is not joined up and they are repeatedly asked for the same information by different services. There is a risk that children and young people will experience a public sector that operates in an uncoordinated way towards responding to their needs.

80. The Bill seeks to address this by ensuring these processes are coordinated. Section 31 of the Bill will ensure that a Child's Plan is created for every child and young person who requires one. Not every child or young person needs a plan. Most will see their wellbeing needs addressed through the services provided generally to all children and young people. But where there is concern that a young person's wellbeing will be adversely affected without a targeted intervention then a Child's Plan will be prepared. The Child's Plan will set out an overview of the young person's needs, the actions which require to be provided to meet the assessed needs, who will undertake those actions, and the desired outcomes. Whilst there will be a requirement for the Child's Plan to be kept under review, it is expected that review and monitoring of the Plan will be largely driven by the child's needs. In other words, the timing will be dependent on the nature and intensity of needs and risks: the more severe, the more frequent the monitoring and review.

81. These responsibilities are aligned with those for ensuring that the child or young person has a Named Person. Health boards and local authorities have responsibility for producing a Child's Plan within their own agency when necessary, or to transfer responsibility should the plan need to be coordinated by another agency because the child's predominant needs no longer lie within their service. Other public bodies will have a duty to cooperate as required in the production of a Child's Plan and its maintenance.

82. In introducing a statutory requirement for a Child's Plan, the intention is not to alter the specific statutory duties placed on agencies for particular purposes such as preparing a Co-ordinated Support Plan or a plan for a child who is looked after. These other plans should be considered as contributing to a broader framework of support for the wellbeing of the individual child or young person.

Benefits

83. By setting out a holistic definition of wellbeing, the Bill will create a common understanding of the needs of children or young people between services and professionals, and consequently foster a collective responsibility to ensure these needs are being met. This will further underline the fact that a child's or young person's wellbeing needs are better met by services working together rather than individual services working in isolation.

84. When practitioners working with children, young people and their families come across something that lies outside their responsibility and ability, it is not always simple for them to identify who they should speak to, and how the issue should be addressed. Every inquiry into a child's death in the UK over the last 20 years, including the 2002 "Report of the Child Protection Audit and Review",²⁵ across Scotland has demonstrated clearly that effective sharing of information within and between agencies is fundamental to improving the protection of children and young people. All have shown that some services had elements of information but none had the full picture. In all cases, early indications of a threat to wellbeing were missed, or not responded to at the earliest opportunity.

85. If a practitioner as Named Person understands their own role and responsibilities and the roles and responsibilities of other practitioners and services, as well as the language of wellbeing, they will be confident in acting early on concerns about a child and responding quickly when a child needs help. Understanding the role and responsibilities of the Named Person will lend confidence to practitioners from other services to share information with the Named Person, when a child needs help to promote their wellbeing and they are unable to provide that help themselves. Practitioners from all services should feel confident that sharing information to secure services in support of improved wellbeing is a positive choice for most families.

86. The role of the Named Person was a key element in the success of the Highland Pathfinder Project, which involved Highland Council and partners across the Highland area supporting the development of the GIRFEC approach.

87. The single planning approach was also introduced in the Highland Pathfinder, with a Child's Plan that brought together the key information about a child's or young person's development, the activities to support that development, and the individuals responsible for delivering those activities. There is strong evidence from an independent evaluation that this approach produces better outcomes, reduces bureaucracy, releases resources to concentrate on the most vulnerable children and increases trust within and across agencies and with children and their families.²⁶ There is also evidence that through the reduction in, amongst other things, duplication, it releases resources that can be diverted to focus on early intervention and prevention. Most importantly, the child and family have a better understanding of what is to be done by whom, when and for what purpose; what the responsibilities are of each of the partners to the plan (including their own); and what the desired outcome is for the child.

²⁵ Scottish Government, *Report of the Child Protection Audit and Review* (2002)

²⁶ Scottish Government, *Changing Professional Practice and Culture to Get it Right for Every Child* (2009)

88. Based on the independent evaluation of the GIRFEC approach, a number of performance improvements were identified:

- The changes implemented in Highland meant that concerns about children were dealt with differently; for example, greater use of enhanced support through universal services or immediate involvement by social work if their needs were complex. As a result, the numbers of referrals of non-offence concerns about children made by the police to the Children's Reporter fell by 70%. This trend has been reported in other areas such as Fife and Forth Valley where the GIRFEC approach has also been introduced;
- Highland Council and its partners reported an initial 50% reduction in the number of children and young people placed on the Child Protection Register. This is subject to ongoing review;
- The approach led to a reduction in time needed for meetings, a reduction in social work caseload and a decrease in total administrative activity;
- Social workers, with reduced caseloads were able to work with the most vulnerable children with the most complex needs and were able to spend more face to face time with children and their families;
- There was an improvement in the quality of information that was shared within and across agencies, and the speed with which it was shared meant that children's needs were identified at an earlier stage and fewer subsequent requests for information;
- Of the 100 children sampled in the evaluation, two thirds showed improved outcomes, even where complex need was evident; and
- There was evidence that families liked the process as they understood better what was happening and the role of everyone involved, including their own.

89. By creating a single system of service planning and delivery across children's services, setting out a clear and holistic definition of wellbeing by which a child's needs should be assessed, and requiring specified public authorities to collectively report on their progress in improving outcomes, the potential benefits of the GIRFEC approach will be available across Scotland.

Sections 42 – 49: Early Learning and Childcare

90. The Scottish Government is committed to improving and increasing high quality, flexible and integrated early learning and childcare which is accessible and affordable for all, matching the best in Europe. The term "early learning and childcare" emphasises the holistic and seamless provision of nurture, care and development of social, emotional, physical and cognitive skills, abilities and wellbeing. The learning journey begins from birth and is influenced before that. It is essential that the promotion of experiences and interactions, important for the learning and development of wellbeing in young children, is delivered consistently through formal early learning and childcare wherever and however this is delivered; and that patterns of delivery support parents and families with work and economic security.

91. Currently, parents are juggling a range of childcare arrangements around a default pattern of 2.5 hours pre-school per day for 3 and 4 year olds, embedded within the school education

system of school days and term times; and, childcare is often seen as something less valuable than pre-school experiences. Parents have identified the need for free pre-school education hours to be more flexible and potentially extended for those who need it;²⁷ and that they require help with costs, longer nursery hours and nursery placements that are more flexible and suit working hours.²⁸

92. The Scottish Government wants to increase the universal provision of early learning and childcare to improve outcomes for children, in particular those from disadvantaged backgrounds; to support parents to work, provide economic security for their families and routes out of unemployment and poverty; and to support parents with the costs of early learning and childcare.

Increasing the amount and flexibility of funded early learning and childcare to meet local need

93. Through the Bill, the Scottish Government seeks to improve and increase early learning and childcare for all, with an initial focus on the most vulnerable, by:

- Increasing the amount of funded early learning and childcare from 475 hours to a minimum of 600 hours for 3 and 4 year olds;
- Guaranteeing a minimum provision for any 2 year old who is, or has been at any time since turning 2, looked after or subject to a kinship care order;
- Improving the flexibility of provision in response to identified local need and the development of local strategies to reconfigure provision to increase options and choices for parents; and
- Setting the stage for more fundamental consideration of how to provide high quality early learning and childcare that meets the needs of all children, families, parents and employers in the future.

94. Specifically, the Bill places duties on local authorities to:

- Secure a minimum provision of 600 hours per annum early learning and childcare for 3 and 4 year olds and 2 year olds who are, or have been at any time since turning 2, looked after or subject to a kinship care order;
- Provide alternative arrangements in relation to the child's education and care for a 2 year old who is looked after where this better safeguards or promotes the child's wellbeing; record the outcome of their assessment and identification of alternative arrangements in the Child's Plan (Part 5 of the Bill); and continue to provide alternative arrangements for a 2 year old who ceases to become looked after, with agreement of a parent;
- Consult with locally representative populations of parents of children under school age every 2 years to identify what patterns of hours best suit parental early learning and childcare needs; and to respond to the views expressed through published local plans to re-configure services over time to meet those needs; and

²⁷ Scottish Government, *Perspectives on Early Years Services: Qualitative Research with Service Users* (2008)

²⁸ Scottish Government, *Bringing Up Children: Your Views* (2012)

- Deliver those hours within broad parameters of no less than 2.5 hours a day; no more than 8 hours a day; and over no less than 38 weeks a year which are not confined to term time; and have regard to the desirability of ensuring that the method of delivery is flexible enough to allow parents an appropriate degree of choice when deciding to access the service.

95. Local authorities will, therefore, be obliged to provide flexible patterns of early learning and childcare within a minimum framework which will meet local need as identified by consultation and published plans or local strategies.

Benefits

96. There is a wide range of evidence indicating the potential benefits of this increase in the amount and quality of funded early learning and childcare:

- While all social groups benefit from high quality pre-school provision, children from the poorest families gain most from universal provision;²⁹
- The benefits of high quality early learning provision persist at age 14, with particular benefit for children whose families had a poor early years home learning environment;³⁰
- 15 year olds who attended pre-school education perform better than those who do not, even after accounting for their socio-economic backgrounds;³¹
- Among 5 year olds, non-parental childcare in the early years is generally beneficial to cognitive development and a child's vocabulary;³²
- Long-lasting effects from pre-school education lead to better cognitive scores at age 7 and 16;³³
- The more mental stimulation a child gets around the age of 4, the more developed the parts of their brains dedicated to language and cognition will be in the decades ahead.³⁴

97. There is also a strong evidence base to link the availability of affordable and accessible childcare to the employment opportunities parents can access.³⁵ Research indicates that of those mothers who chose to stay at home after the birth of their baby, 59% (equating to 1.2 million women across the UK) did so because of the high cost of childcare.³⁶ There are also potential

²⁹ Mostafa, T. and Green, A., *Measuring the Impact of Universal Pre-School Education and Care on Literacy Performance Scores*. Institute of Education (2012)

³⁰ Sylva, K., Melhuish, E., Sammons, P., Siraj-Blatchford, I., and Taggart, B., *Effective Pre-school, Primary and Secondary Education 3-14 Project (EPPSE 3-14) Report from the Key Stage 3 Phase: Influences on Students' Development From Age 11*. Institute of Education (2012)

³¹ OECD (2009)

³² Scottish Government, *Growing Up in Scotland: The Impact of Children's Early Activities on Cognitive Development* (2009)

³³ Goodman, A., and Sianesi, B., *Early Education and Children's Outcomes: How Long Do the Impacts Last?* Institute for Fiscal Studies (2005)

³⁴ Avants, B., Betancourt, L., Gianetti, J., Lawson, G., Gee, J., Farah, M. and Hurt, H., *Early Childhood Home Environment Predicts Frontal and Temporal Cortical Thickness in the Young Adult Brain*. University of Pennsylvania (2012)

³⁵ The Resolution Foundation, *Counting the Cost of Childcare* (2012) and The Resolution Foundation, *The Price of Motherhood: Women and Part Time Work* (2012)

³⁶ Mintel Research, "1.2 million mums stay at home due to high childcare costs", *Mintel Oxygen Reports* (2012)

benefits for parents seeking to balance work and childcare; and for those parents who are most economically vulnerable.

98. Investment in early learning and childcare also has key economic benefits:

- Provision of subsidised early learning and childcare increases female labour force participation and along with supply-side investment in the sector, promotes jobs growth, which in turn supplements income tax receipts for governments and alleviates pensions shortfalls for women. Several studies have estimated a positive net benefit in this regard;³⁷
- Where subsidised childcare removes barriers to employment, it can help lift families out of poverty and help parents gain further skills, enhancing their employability and future earnings, as well as economy-wide productivity;
- Such policies that promote motherhood and work, such as subsidised childcare, have positive and lasting impacts on country fertility rates, which in turn assure the availability of a future workforce and the financing of future services;³⁸ and
- By serving a redistributive function, universal early learning and childcare mitigates the impacts of early economic and social disadvantage and promotes longer term economic benefits which are shared by all of society. The returns to such investments among vulnerable groups are well documented and stem from children's improved cognitive and non-cognitive skills, which in turn feed through to improved educational, social and employment outcomes, reduced dependence on the state and reduced criminal behaviour.³⁹

99. By increasing the provision of early learning and childcare and developing provision better suited to families' needs, the Bill aims to make a significant impact on these critical years of a child's development; to remove barriers to work; and to improve economic outcomes for families and wider economic growth.

Alternative Approaches

100. The current system is embedded within the school education system, with less recognition of the wider needs of working parents, and of young children who receive other formal early learning and childcare. The consultation included a proposal to achieve more flexibility of provision in response to parent need by requiring local authorities to consult on and offer the same set of minimum options or patterns of provision. It was felt that this would guarantee consistency across different local authority areas.

101. While there was wide support for increased hours and flexibility, the consultation process identified concerns around how this flexibility would be achieved and delivered. The main arguments made against the proposal were that an overarching plan would: prevent flexibility in response to the local needs of parents; fail to take into account the local circumstances of each local authority (including issues around rurality); and stifle local creativity. One recurring

³⁷ Institute for Public Policy Research, *Making the Case for Universal Childcare* (2011)

³⁸ OECD, *Doing Better for Families* (2011)

³⁹ Reynolds, A.J. et al., "Long-term Effects of an Early Childhood Intervention on Educational Achievement and Juvenile Arrest: A 15-Year Follow-Up of Low-income Children in Public Schools." *The Journal of the American Medical Association* (2001)

suggestion from respondents both in favour of and against the proposal for a common set of options was that local authorities should work within a minimum framework, but thereafter have scope to tailor provision to meet local needs.

102. Taking these views into account, the original proposal has been amended to allow for local approaches to consulting, planning and managing local delivery of flexible options and choices for parents over time. This will ensure that provision is better suited to families' needs while providing flexibility in response to local variation.

Sections 50 – 68: Getting It Right for Looked After Children

103. Scotland's care system provides different options for children and young people in difficult family circumstances, but the options, and the system as a whole, needs to change if it is to do justice to a child's and young person's overall wellbeing. The Scottish Government believes Scotland needs a care system that provides effective, rapid support for children and young people, centred on their long-term as well as their short-term needs and focused on securing healthy, caring permanence. The Bill, therefore, provides for the following reforms:

- Creating a statutory regime of corporate parenting;
- Extending the age to which care leavers can receive support from their local authority from 21 up to and including 25;
- Supporting the parenting role of kinship carers through new legal entitlements and ensuring families in the early stages of distress can receive appropriate counselling; and
- Placing Scotland's Adoption Register on a statutory footing and making its use by adoption agencies compulsory.

Defining corporate parenting and the public bodies to which this applies

104. "Corporate parenting" means the formal and local partnerships needed between all local authority departments and services, and associated agencies, which are responsible for working together to meet the needs of looked after children and young people and care-leavers. Guidance on corporate parenting is set out in "These Are Our Bairns: A Guide for Community Planning Partnerships on Being a Good Corporate Parent".⁴⁰

105. Despite efforts to increase awareness of the concept among care sector leaders and practitioners, corporate parenting is implemented inconsistently across Scotland. There is a lack of shared understanding about the definition of corporate parenting, a lack of clarity about how the concept translates to professionals working within, for example health, housing and education, and a lack of clarity around powers to ensure partners are working together.

106. Section 52 of the Bill sets out a definition of corporate parenting responsibilities (and accompanying duties to plan and report in relation to those responsibilities) that captures a move away from "corporate" thinking to acting more like a "parent" would. Schedule 3 lists the

⁴⁰ Scottish Government, *These Are Our Bairns: A Guide for Community Planning Partnerships on Being a Good Corporate Parent* (2008)

Scottish Ministers, local authorities and a range of other public bodies as being “corporate parents”. The Bill places a duty on corporate parents to collaborate with each other when exercising their corporate parenting responsibilities in relation to looked after children and young people and care leavers. The policy objective is to ensure that all looked after children and young people receive high quality corporate parenting and access to the same level of services and opportunities as a child would have if they were not looked after.

Benefits

107. There is a perception that local authorities and bodies responsible for the provision of services to looked after children and young people and care leavers view their responsibilities more as “corporate” responsibilities rather than as “parenting”. This was highlighted through the experiences of looked after children and young people described in “These Are Our Bairns”. As already noted, children and young people who need to come into care are more likely to have poorer outcomes than their peers. By setting out the definition of corporate parenting and to which bodies it applies, the Bill will ensure that these children and young people experience services that consistently are positive, outcomes-focused and aspirational.

Extending the age to which care leavers can receive support from their local authority

108. Local authorities currently have a statutory duty to prepare young people for when they will stop being looked after (known as “throughcare”) and to provide advice, guidance and assistance for young people who have ceased to be looked after (or “aftercare”) over school age up to 18, and a power to do so up to 21.

109. The current cut-off age of 21 for leaving care support is out of step with ordinary families, who provide support to their children throughout their early adult lives. It is clear that in typical families, support is provided beyond the age of 21: data from the Labour Force Survey for the UK, for example, suggests that at age 22 half of young men (53%) and 43% of young women live with their parents and by age 25 just over a third of young men (36%) and nearly a fifth of young women (18%) still live with their parents.⁴¹ The transition to independence is one where young care leavers are particularly vulnerable and councils, as their corporate parents, need to ensure that the right supports are in place.

110. Section 60 of the Bill amends the 1995 Act to provide young care leavers with the opportunity to continue to receive local authority support up to and including the age of 25. Care leavers will have a right to request advice, guidance and assistance from a local authority, and the local authority will then be under a duty to conduct an assessment of the needs of that care leaver. If the care leaver is found to have “eligible needs”, then the local authority must provide support to meet those needs. “Eligible needs” will be specified in an order to be made by Scottish Ministers, however, it is anticipated that those needs will be those essential to daily living. This change will not affect a young person’s right to opt out of receiving support if they do not want it.

⁴¹ Office for National Statistics, *Young Adults Living with Parents in the UK 2011* (2012)

Benefits

111. Young people who have been looked after may face particular challenges compared with other young people in terms of employment, education, training and housing. In 2010/11, on leaving school, 64% of looked after children were in a positive destination (education, employment or training) compared to 89% of all school leavers. After six months, for looked after children the figure had fallen by 9 points to 55%, compared to just a 2 point drop for all care leavers to 87%.⁴² Looking at all looked after children eligible for aftercare services in 2011 (aged 15-21) just over a third of those whose economic activity status was known were in education, employment or training.⁴³ In addition, care leavers are disproportionately represented in statistics on socially excluded youth, even though they account for less than 1% of the population.⁴⁴

112. This is also borne out in qualitative evidence from care leavers themselves about the challenges they face, including more emotional challenges, greater financial worries, a lack of family and friendship networks, greater challenges around employment and further education and the challenges arising from a very wide range of, often unstable, accommodation types where young people might live when they leave care.⁴⁵ The transition to independence is one where young people are particularly vulnerable and councils, as their corporate parents, need to ensure that the right supports are in place. Through the provision of support to an age that is reflective of ordinary families, care leavers will be assisted in making a successful transition to independent living when they are ready to do so.

Alternative Approaches

113. The consultation paper proposed an amendment of the 1995 Act to extend the right of young people leaving care to request help from a local authority, and the opportunity to provide financial assistance to young people leaving care, up to the age of 25. There was strong support for this proposal. However, a number of stakeholders noted that a right to request support would not oblige the local authority to actually provide it, and, therefore, may not be very beneficial to the young person.

114. Thirty-four respondents from eight different sectors (including 23 third sector respondents) stated that although young people had a right to request assistance, unless local authorities had a “duty” and not merely a “power” to provide assistance this may not come to fruition.

115. In direct response to the views put forward by stakeholders, the original proposal has been amended in the Bill from a right of care leavers to request support to a duty on local authority to assess the needs of a young person who requests support and, should their needs be eligible, to provide it.

⁴² Scottish Government, *Educational Outcomes for Scotland's Looked After Children 2010/11* (2012)

⁴³ Scottish Government *Children's Social Work Statistics Scotland, No 1: 2012 Edition* (2012)

⁴⁴ The Institute for Research and Innovation in Social Services, *Redesigning Support for Care Leavers* (2012)

⁴⁵ For example, The Debate Project, *“Life after Care” Conference 2009: Young People's Views on Leaving Care* (2009)

Supporting kinship carers and families in the early stages of distress

116. As of 31 July 2011 there were 3,917 children living in formal kinship care - a rise of 87% since 2007.⁴⁶ A widespread criticism by kinship carers of existing residence and parental responsibilities and right orders has been that they offer no certainty of support. This can act as a disincentive to families from moving proactively to prevent a child from becoming looked after, or from cooperating fully in enabling the removal of such status.

117. Through the kinship care order, the Bill makes provision for additional support to be provided to kinship carers, in recognition of their parenting role, the bond between the child and carer and the different expectations in relation to, and circumstances experienced by, kinship carers, as opposed to other types of carers. The rationale for legislative change is to encourage more individuals to become kinship carers for those children who do not require regular supervision or corporate parenting and whose long term wellbeing is best served by being cared for in such a way.

118. Under the Bill, a kinship care order is any order made under section 11(1) of the 1995 Act that grants parental rights and responsibilities to a qualifying person or a residence order which has the effect that the child lives with (or is to live with) a qualifying person. By placing a duty on local authorities, the Bill ensures that those who apply for, consider applying for, have obtained, or are subject to a kinship care order will be entitled to assistance if the relevant eligibility test is met. This will also apply to eligible children who have reached the age of 16, but who were subject to a kinship care order immediately prior to turning this age. The type of assistance will be prescribed by the Scottish Ministers in secondary legislation.

119. Through the Bill, all 2 year olds who are or have been subject to a kinship care order at any time since turning 2 will be eligible for early learning and childcare as set out in Part 6. In addition, secondary legislation will make provision for supporting those kinship carers who wish to apply for a kinship care order and those who require advice or assistance from their local authority in relation to that application.

120. The Scottish Ministers intend to provide for specific support through secondary legislation in the form of a package of entitlements. In most cases, determining the risk to a child of becoming looked after will happen through a form of parenting capacity assessment by the local authority. The package of entitlements is focused on overcoming key issues that left unresolved can disrupt care placements and increase such a risk. To achieve this policy aim the final package of entitlements might need to be adjusted following further discussion with local authorities and kinship carers.

121. For certain types of support (e.g. financial support) local authorities may be able to take account of the means of the carer in determining what support is needed. This will be important in cases where it is agreed that a carer should continue to receive allowances when a child in their care ceases to be looked after. For example, a carer would seek financial support from the UK Benefits system in the normal way before any agreed top-up allowance by the local authority. (The Bill does not alter carers' existing entitlements to allowances – these are the subject of a separate review by the Scottish Government.)

⁴⁶ Scottish Government, *Children's Social Work Statistics, No.1: 2012 Edition* (2012)

122. The right to transitional support attempts to address a potential concern among those kinship carers who can provide long term care for a child currently looked after, that they will still be able to access support currently provided by the authority if a child leaves care onto a kinship care order. Secondary legislation may specify that an authority must explain to a carer what support will be provided before they commit to an order, and for how long. As the intention of the kinship care order is to promote strong families, the assumption would be that support would last no longer than three years in most circumstances.

123. The Bill also introduces a duty on local authorities to ensure that families in the early stages of distress who seek help are provided with appropriate forms of counselling (for example, family group conferencing or support with substance misuse). This will be available where a child's wellbeing would be at risk of being impaired - in particular where the child is at risk of becoming looked after - and is intended to act as an early and effective support mechanism; and, where appropriate, it can be used to promote the role of a kinship carer. An important feature of this entitlement to counselling is that families must be willing to engage with their issues and motivated to take control over the challenges they face.

124. Discretion will be afforded through secondary legislation to local authorities to determine the best form of therapeutic intervention for the circumstances of the family. Local authorities' duties in this regard could be met through "passporting" to a pre-existing service (including those funded by other bodies).

125. By offering clearer support to eligible kinship carers, the Bill will encourage kinship carers to apply for parental responsibilities and rights where the child would otherwise be at risk of becoming unnecessarily looked after or remaining in care. It will, therefore, help to slow the rapid growth in children becoming formally looked after children, and contribute meaningfully to a more focused, therapeutic and cost effective care system.

Benefits

126. Kinship carers are fulfilling the role of a parent; providing children with warm and loving relationships and enabling them to remain part of a family unit. Kinship care, therefore, provides continuity for children not only in their family unit but also in their communities, allows for the preservation of links to their parents and minimises disruption in their lives and reinforces children's sense of identity and self-esteem.

127. Emerging evidence also indicates that in many cases children and young people who have been looked after in a kinship care arrangement do better at school and have better life outcomes than their peers in more formal care arrangements. By supporting kinship carers and ensuring alternatives to formal care, children and young people will be more likely to avoid the loss of continuity and associated poorer outcomes that come with the impermanent early care that can occur by being formally looked after.

Alternative Approaches.

128. To achieve the aims of the Bill in relation to kinship care, the consultation paper originally proposed creating a new court order aimed at kinship carers which, if granted, would have transferred parental responsibilities and rights to them. It would also have acted as a

vehicle to provide additional support to kinship carers in order to build the family's capacity to resolve the issues that could lead to a child coming into formal care. It would have offered a right to assessment of need of the child and a duty on the local authority to provide for that need.

129. While generally agreeing with the aims of the policy intention, many stakeholders questioned the specific means of delivering it. In particular, local authorities and some kinship carers suggested that: 1) in order to deliver this policy intention, existing legislation should be built upon to minimise any complexity or potential duplication; and 2) much more specificity was required about any additional support kinship carers would receive, in order to make the provisions genuinely effective.

130. The original proposal has, therefore, been altered in the Bill so that the kinship care order will build on existing legislation and provide specific new legal entitlements to additional support that should help wider families tackle issues that, if left unchecked, could lead to a child becoming looked after.

Putting Scotland's National Adoption Register on a statutory footing

131. The care system should meet the needs of all children who require it, and the earlier a stable placement is found for a looked after child, the better their life chances. Increasing the proportion of children leaving care to stable and secure placements will lead to a decrease in the number of children entering care each year.

132. There is clear evidence that timescales for making decisions about a looked after child's permanent future home can take too long. A report by the Scottish Children's Reporter Administration showed that it takes on average over two years to secure an adoption from first involvement with state services, and in extreme cases, has taken up to 10 years.⁴⁷ The report, demonstrated that some of the processes and decisions requiring to be made could be completed more efficiently if clearer support and guidance was provided, and the systems in place focused on the needs of the child and not the needs of the system. It also found that children in care were experiencing more placements as a result of poor care planning.

133. Scotland's National Adoption Register (the Register) is a non-statutory service which was set up in 2011 and is designed to increase the numbers of adoptions and to speed up the adoption process for children, once adoption is identified as the best way to secure a permanent home. The British Association of Adoption and Fostering in Scotland runs and maintains the service. The Register is already used by a number of adoption agencies and is used to match children with families on a national basis (rather than the current, more localised arrangements) and its aim is to increase, diversify and speed up adoptions for children for whom adoption is the best option for a permanent home.

134. The Scottish Government is committed to increasing the number of adoptions from care and keeping placements to a minimum. The Bill will put the Register on a statutory footing and will require all adoption agencies to provide the Scottish Ministers (who will have legal responsibility for establishing and maintaining the register) with information in relation to

⁴⁷ The Scottish Children's Reporter Administration, *Care and Permanence Planning for Looked After Children in Scotland* (2011)

children who ought to be placed for adoption and prospective approved adoptive parents, as prescribed by the Scottish Ministers in regulations. It also establishes an offence of disclosing any information derived from the register otherwise than in accordance with regulations.

Benefits

135. As well as increasing the number of adoptions, the change will lift expectations in the looked after children sector for children who could be adopted but traditionally are viewed as “hard to place”; in particular black and ethnic minority children, children with disabilities, older children and sibling groups. It will also: significantly improve the evidence base for policy making; enable the sector to target prospective adopters effectively; and ensure that all adoption agencies are required to provide information to the Scottish Ministers for the register on an ongoing basis.

136. Early evidence from the Register indicates that some families who have been involved in one of the Register’s services, Adoption Exchange Days, have been willing to “stretch” their capacity approval after being exposed to children available for adoption. Many adopters reported that they would have found it beneficial to attend an event prior to approval as they would have been more realistic regarding the age range and level of need of the children they could consider. This is a key part of the behavioural change sought by adopters given the current mismatch between approved adopters and available children. In 2010/11, 294 children were adopted from care in Scotland compared with 199 the year before.⁴⁸ The total number of matches achieved as a result of work by the Register to date is 31, a third of which happened after the recent Adoption Exchange Days in September 2012. It is envisaged that having the Adoption Register in statute will result in more children and prospective adoptive parents being referred to the Register (as all adoption agencies will be required to provide the relevant information to the Register) and subsequently more prospective adoptive parents and adoptive children attending such days.

Section 69 – 70: Children’s Hearings

137. The Children’s Hearings System is Scotland’s unique, integrated approach to child care and justice that has operated successfully since 1971. The 2011 Act and wider reforms are an improvement programme built on the current system’s strengths. Further improvements to the system will be achieved through the Bill by amendments to paragraphs 12, 13 and 14 of schedule 1 to the 2011 Act.

Relieving the National Convener of the obligation to obtain consent from each authority before establishing ASTs

138. By amending the 2011 Act, the Bill will relieve the National Convener of Children’s Hearings Scotland of the obligation to obtain the consent of each constituent authority before establishing or making changes to the future configuration of ASTs. The current obligation will be replaced by a requirement to consult with each constituent local authority. The initial process of the establishment of ASTs in support of the timely implementation of the 2011 Act has proven inconsistent across the country and delayed in certain areas, mainly as a consequence of the

⁴⁸ Scottish Government, *Children’s Social Work Statistics, No.1: 2012 Edition* (2012). This figure is not inclusive of adoptions in Glasgow.

varied ways in which local authorities have interacted with the process. This has proved problematic for the National Convener/CHS with the result being uncertainty and hiatus for children's panel and CPAC volunteers and designated AST members throughout the initial establishment phase. Therefore, replacing the requirement for consent with a requirement to consult should result in a simpler, more streamlined process which is quicker, more efficient and nationally consistent.

139. The process change will have no bearing on the initial AST establishment activity, but will bring certainty to the review of ASTs and partnership agreements. The first fundamental review will likely take place after the first phase of operation of these non-statutory agreements (4 years from implementation in June 2013). The provisions enable the National Convener to set in hand a sensible planned review process at that point, and also to adapt quickly to any emerging resource or relationship issues between multi-authority ASTs or within single-authority ASTs in the intervening period. The National Convener can then bring forward proposals to secure the necessary support for AST volunteers in a transparent and public manner. The stability of support arrangements is central to the National Convener delivering their mission of consistent excellence in administrative support and, through that, in children's panel practice. The National Convener's principal focus is on the needs of Children's Panel and AST volunteers. The Bill seeks to ensure consistent and stable oversight and supervision of children's panel volunteers, thereby contributing to a more independent Tribunal, with consistent support nationally designed but locally delivered.

Requiring local authorities to provide ASTs with administrative support

140. A further amendment to schedule 1 to the 2011 Act will require local authorities to provide ASTs (whose function is to select members of the children's hearings) with such administrative support as the National Convener considers appropriate. Administrative support will include staff, property or other services which the National Convener considers are required to facilitate the carrying out by an AST of its functions. At present authorities may choose how much or how little support to provide to ASTs (if any) via non-statutory partnership agreements, as they are under no statutory duty to provide it. The amendment will, therefore, impose such a duty on local authorities and will ensure that the provision of support will be more standardised across the country.

Reversing unintended repeals by the Children's Hearings (Scotland) Act 2011

141. The Bill also corrects an unintended repeal of section 44 of the 1995 Act. Schedule 6 to the 2011 Act repeals section 44 of the 1995 Act in its entirety. Section 44 is the provision which sets out the prohibition of publication of proceedings at children's hearings. Whilst there is a broadly equivalent replacement provision made in section 182 (publishing restrictions) of the 2011 Act, it does not cover exclusion order hearings which continue under section 76 of the 1995 Act. Under schedule 4 to the Bill, the repeal of section 44 is reversed and the section is then amended so that going forward it will apply only to exclusion order proceedings which continue under section 76 of the 1995 Act.

Benefits

142. Bringing greater stability and certainty in relation to the establishment of ASTs and requiring local authorities to provide them with administrative support will improve their ability

to carry out their functions of selecting children's hearing members equipped to make effective, evidence based decisions for children and young people. This should result in a more nationally consistent process which will as stated above, assist the efficiency and operation of the children's hearing system overall.

Section 71: Amendments to the Criminal Procedure (Scotland) Act 1995

A right to appeal a local authority decision to place a child in secure accommodation

143. In terms of the 2011 Act, a secure accommodation authorisation (SAA) enables a child to be placed and kept in secure accommodation within a specified residential establishment. An SAA is made by a children's hearing and may only be made in conjunction with a relevant order, such as a compulsory supervision order. Section 162 of the 2011 Act provides a right of appeal to the sheriff against a decision made by the chief social work officer of a local authority to either implement the SAA, not to implement the SAA, or to remove the child from secure accommodation.

144. Section 44 of the CPSA provides that a sheriff may grant an order detaining a child in residential accommodation by the appropriate local authority in such place as the local authority may, from time to time consider appropriate, if a child appears before the sheriff in summary proceedings and pleads guilty to, or is found guilty of an offence to which the section applies. Section 44(5) provides that the Scottish Ministers may by regulation make such provision as they consider necessary as regards the detention of such a child in secure accommodation. Therefore, section 44(5) envisages that a local authority may decide that the child should be placed in secure accommodation. In terms of the Secure Accommodation (Scotland) Regulations 1996, a local authority may place the child in secure only if specific criteria are met. Although there is a review process provided for in these regulations in relation to this decision, there is no appeal route back to the sheriff. The amendment to the CPSA in the Bill will provide such an appeal route.

Benefits

145. The provision in the Bill will have a positive impact in that it will ensure that children who are placed in secure accommodation under section 44 of the CPSA will be subject to the same protections as children who are placed in secure accommodation under the provisions of the 2011 Act when it comes into operation in June 2013.

Section 72: Amendment to the Schools (Consultation) (Scotland) Act 2010

Increasing the time available for the Scottish Ministers to issue a call-in notice

146. The amendment to the 2010 Act set out in section 72 makes a minor change to the administrative process provided for by that Act when a school closure proposal is made. The amendment will increase the time available for the Scottish Ministers to issue a call-in notice from six to eight weeks. Because Scottish Ministers are under a duty to take account of any relevant representations made to them within the first three weeks of this period, the effect is to increase the time available to the Scottish Ministers to consider these representations from three to five weeks.

Benefits

147. The small extension to the period for the Scottish Ministers to consider whether or not to call-in a closure proposal will be of benefit to communities and education authorities by allowing more thorough consideration of representations thus reducing the likelihood of decisions being called-in unnecessarily. This change is not expected to have any financial impact.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal Opportunities

148. An Equality Impact Assessment (EQIA) has been carried out and will be published on the Scottish Government website. The Scottish Government considered the potential impacts, both positive and negative, across the protected characteristics required for EQIAs.

149. To develop and inform the EQIA, on 3 September 2012 the Scottish Government held a workshop to discuss the impact of the Bill on equalities issues. Stakeholders from organisations including Stonewall Scotland, Scottish Refugee Council, CEMVO Scotland, Roshni and Inclusion Scotland were in attendance. Separate meetings were held with two faith groups (CARE for Scotland and the Humanist Society Scotland) and with LGBT Youth Scotland. Views were also obtained from the Director of the Scottish Travellers Education Programme.

150. The EQIA concluded that the Bill's provisions are neither directly or indirectly discriminatory on the basis of age, disability, race, religion or belief, sex, sexual orientation or gender reassignment. It also found that there are a number of potential benefits to the proposals and positive impacts on individual groups that share a protected characteristic, and these include:

- The promotion of children's wellbeing, and how actions and activities may improve their wellbeing should better engage all parents;
- Young children, including 2 year olds who are looked after or subject to a kinship care order, or have been at any time since turning 2, will benefit from additional hours of early learning and childcare;
- The increased flexibility of how early learning and childcare is provided will bring particular benefits for women as the primary carers, specifically in terms of cost and accessibility of childcare which can often act as a barrier to return to work;
- The proposals will be the key to furthering and promoting knowledge of rights for children and young people under the age of 18;
- The proposals will help diversify the age of children being adopted through putting Scotland's National Adoption Register on a statutory footing;
- There will be promotion of equality for young people leaving care by extending the age of support from 21 to 25 years of age; and
- The GIRFEC approach should be a positive tool in achieving equality of treatment, opportunity and, crucially, of outcomes.

151. The Scottish Government does not propose making significant changes to the policy as a result of the assessment, because the evidence and data gathered indicate that the Bill will have an overall positive impact on all children and young people and on equality issues.

152. Gaps were identified in the current evidence base around the effects of the Bill on groups that share certain characteristics. In particular, our research and consultation identified gaps in our knowledge around gender reassignment and the experiences of transgender children and parents. The consultation process reinforced the need to make appropriate arrangements for the Named Person for gypsy/traveller children. Work with equality organisations also highlighted a perceived lack of a “rights” culture in specific minority ethnic communities. These issues will be taken into account as we continue to create diverse ways of raising awareness of children’s rights among different communities.

Human Rights

153. The amendments in the Bill to the 2011 Act and to the CPSA potentially raise issues with regard to Article 6 of the European Convention on Human Rights. However, it is considered that in the former case, the amendments have no impact on the children’s hearings themselves and in the latter, the amendment makes secure accommodation authorisations more Article 6 compliant. Therefore, neither breach Article 6.

154. The information sharing provisions in relation to the Named Person and Scotland’s Adoption Register potentially engage Article 8, but it is considered that they are compliant as they have a legitimate aim, they are proportionate and have appropriate safeguards in place. The widening of access to early learning and childcare for certain 2 year olds potentially engages Article 8, Article 2 of the First Protocol and Article 14, but again the measures in the Bill are a proportionate means of achieving the legitimate aim of improving outcomes for the most vulnerable or disadvantaged children and ensuring those children are properly looked after. Therefore, the Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights.

155. Consideration has been given as to whether the Bill’s provisions on data sharing raise any issues in relation to the European Convention on Human Rights, and particularly in relation to the Article 8 right to respect for private and family life. To the extent that the policy will engage this right, the Scottish Government is satisfied that it pursues a legitimate aim which is necessary in a democratic society and that the means chosen to achieve the aim are proportionate.

156. The Scottish Government has also considered if privacy implications would arise as a result of the Bill, specifically in relation to data-sharing, and to that end has completed a Privacy Impact Assessment (PIA). The PIA is a living document that will be revisited and reviewed throughout the life of the Bill. There is currently no evidence that any aspect of the Bill should be reconsidered as a result of privacy concerns.

157. It is anticipated that any potential risks can be satisfactorily addressed through adherence to best practice advice from appropriate bodies such as the Information Commissioner and through statutory guidance.

158. As part of the assessment process a number of workshops were held with representative groups of children and young people. One group consisting of current and former looked after children voiced particularly strong support for the proposed improvements on information sharing, the role of the Named Person and a single planning system. These children and young people were able to relate the Bill's provisions to aspects to their own life journey, and how they could have benefited had these provisions been in place.

Island Communities

159. The Bill will apply to all communities across Scotland, including island communities. Comhairle nan Eilean Siar and Shetland Island Council both submitted formal consultation responses, and Scottish Government officials held positive discussions with officials from Comhairle nan Eilean Siar via videoconference. No differential impact on island communities was identified.

Local Government

160. The Bill will directly impact on local authorities in discharging their duties, and this effect is already set out in this Policy Memorandum and in the other Accompanying Documents to the Bill.

161. Thirty local authorities submitted formal responses to the consultation on the Bill proposals. Significant numbers of local government professionals attended the national engagement events, with 23% (the highest) identified as being from a social work background, and 16% from an education background.

162. Engagement has been undertaken with COSLA, the Association of Directors of Social Work (ADSW) and the Association of Directors of Education (ADES), both on a Ministerial, official and informal level. These organisations and specific local authorities have been extensively engaged during development of the provisions of the Bill and the production of the Financial Memorandum.

Sustainable Development and Environmental Issues

163. It is considered that the Bill is likely to have minimal effect in relation to the environment and, as such, is exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005. A pre-screening report has been completed. This confirmed that the Bill will have minimal or no impact on the environment and consequently that a full Strategic Environmental Assessment did not need to be undertaken. The pre-screening report is published on the Scottish Government website under case number PRE\00468.

This document relates to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL

POLICY MEMORANDUM

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