

**Education and Culture Committee
Children and Young People (Scotland) Bill**

Tristram C. Llewellyn Jones

1. I am a civil liberties campaigner and I live in the Isle of Man – a self governing Crown Dependency with a population of circa 85,000 including 17,000 children. I campaign on a range of issues relating to personal privacy and the use of data by public authorities. I am answering this call for written evidence because the '*Getting it Right for Every Child*' – GIRFEC policy contained in the Children and Young People (Scotland) Bill is very similar to the '*Every Child Matters*' (ECM) policy introduced in the Isle of Man several years ago. That policy had adverse consequences for both the local community and children's & families social services.
2. The adverse consequences for the proposed '*Named Person*' with wider statutory powers to share sensitive and personal information are not, I believe, fully appreciated. I will first discuss the adverse consequences of the ECM policy in the Isle of Man on both the local community and children's & families social services. I will then propose that the GIRFEC policy will have the same effect in Scotland.
3. The Isle of Man Government Children Bill 2010 consultation ¹ proposed contentious legislation to introduce a new, much broader, statutory remit to override parental consent to compulsorily intervene in a child's life. The statutory child protection threshold of '*a child is suffering, or likely to suffer, significant harm*' was to be broadened out to include 5 new statutory outcomes: '*Being healthy, Staying Safe, Enjoying and Achieving, Making a positive contribution and Economic well-being*' based on New Labour's ECM policy. Also proposed was a universal database flagging all children not meeting the 5 outcomes together with statutory information sharing information between public authorities. This would allow compulsory intervention for a threshold as low as a concern that a child apparently might not be '*enjoying*' life.
4. After extensively researching the ECM policy I gave 4 public presentations ² in the Isle of Man to stimulate interest in the public consultation and also gave a private presentation to the Minister for Education & Children. There were 76 responses to the consultation and, as a result of public opposition, the Government withdrew the Children Bill ³. The public were concerned with two main issues arising with the ECM policy. Firstly, Government had not justified a case for universal surveillance of children. I.e. evidence was not produced to convince the public that there were systemic problems with local children and families requiring a broad interventionist

1 Children Bill 2010, Isle of Man Government, February 2012
www.gov.im/lib/docs/education/consultations/childrenbill.pdf

2 'Should They Tell You How to Raise Your Child', Positive Action Group, Isle of Man, March 2010
http://positiveactiongroup.org/index.php?option=com_attachments&task=download&id=42

3 Children's bill axed after public opposition, BBC News, 28 April 2011
<http://www.bbc.co.uk/news/world-europe-isle-of-man-13229074>

policy. Secondly, the public were concerned about harmful intrusion into family life that might result from the policy.

5. Despite withdrawing the Children Bill, the Government proceeded with the ECM policy⁴. Analysis of Government documentation and Tynwald records shows how the policy caused over referral to children's social services, staff turnover and increased expenditure.
6. First indications that ECM was causing problems were in July 2011 when the Government had to ask the Tynwald for £498,000 additional funding for a further 10 children's social workers. The Minister stated ⁵ that due to new policies '*workloads for new cases and for support to the Courts have risen by approximately 500% in the last year*'. Fierce debate ensued in Tynwald ⁶ and a back bench politician complained of the '*damage inflicted on the lives of a number of children and families during the time the (children's social) service has been dysfunctional*'. He raised concern about the '*massive increase in referrals*' to children's social services.
7. Tynwald was told that ⁷ referrals to children social services had increased as follows:

<u>Description</u>	<u>Increase</u>
A log of a concern re a child or children from an agency or member of the public	20%
A contact resulting in a referral to Social Services	497%
A referral warranting a more detailed investigation	1560%
An Initial Assessment warranting a more detailed investigation	560%

8. And referrals were elevated to enquiries for 2010/11 as follows⁸ :

<u>Description</u>	<u>Number</u>
Referrals to children's social care	959
Child abuse enquiries	263
Child identified as being in need	210
Entries on the child protection register	60
False referrals (959-(210+60))	689

9. The statistics are startling because there are just under 1000 children born per year in the Isle of Man. So, with circa 959 referrals to children's social services per year, it is likely that most children will be the subject of a referral before they are 18 – with at least 70% of the referrals being utterly unnecessary. In plain terms, nearly three

4 Service integration reaches the Isle of Man, Children & Young People 'Now' , 19 December 2007

<http://www.cypnow.co.uk/cyp/news/1041153/service-integration-reaches-isle-man>

Simon Griffin, director of social policy in the island's Department of Home Affairs, said: "We've lifted all the principles of the Every Child Matters agenda and are now drawing up a children's plan and forming working groups to work out how best to integrate our services."

5 Children's and Families - Social Care Press Release, Isle of Man Government, July 2011

<http://www.gov.im/Infocentre/ViewNews.gov?page=lib/news/socialcare/childrenandfamil1.xml&menuid=10160>

6 Tynwald Hansard, 11th July 2011, line 6085

<http://www.tynwald.org.im/business/hansard/20002020/th110712.pdf>

7 Department for Social Care, Isle of Man Government, Information in support of the case for additional resources for Children & Families Services, 29 June 2011

8 Tynwald Hansard, Written answer 37, 'Children and Families Social' 16 October 2012

<http://cots6.tynwald.org.im:47851/business/OPHansardIndex1114/1107.pdf#search=social>

quarters of all children will be the subject of intrusive enquires by social services at some stage in their childhood. This hugely intrusive policy is a direct consequence of over broad referral criteria.

10. A further adverse consequence of ECM is the high turnover of social workers. Such a high rate of referral caused the system to become overloaded. Recent statistics⁹ show that, in addition to recruiting ten extra social workers to handle extra case loads, children's social services then spent £2,027,538 employing a further 51 locum social workers after ECM was introduced. 28 of these locums failed to complete their employment. Such a high turnover of staff does indicate a problem within the system. Quite simply, the over referral to children's social services has stretched the service to the point that it cannot now be managed effectively.
11. The overload of children's social services is one side of the problem. But the effect of such intrusive intervention on families and children also has to be considered. Evidence presented to the Westminster Education Committee¹⁰ cited a range of adverse consequences and public health issues resulting from over involvement with children's social services. These include including fear of accessing medical care, distrust of health visitors, concealment of post natal illness, more marital separations and breakdowns and lack of help for those in need. The point being that parents, entirely understandably, fear needless involvement with children's social services and, consequently, avoid contact with public authorities.
12. The central point of my argument is this. GIRFEC and ECM are very similar in ethos. Both are founded on statutory outcomes for children with wider powers for public authorities to share sensitive and personal information without parental consent. In the case of GIRFEC it is not '5 outcomes' but '8 outcomes': '*Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible & Included.*' But the proposed GIRFEC statutory outcomes are even broader than the ECM outcomes and are designed to create the lowest possible threshold for intervention.
13. GIRFEC makes further deep inroads into the sanctity of family life. For example, the National Risk Framework¹¹ says a child is at risk if he/she is under 5 years, has more than 3 siblings, is adopted or a step-child, has a 'difficult temperament', parents are contesting contact, does not speak English, has a parent aged under 21, or a parent whose partner is not a biological parent, is a child that lacks trust towards 'workers' or shows culturally inappropriate behaviours. These risk indicators are over broad. I would question how, for example, a statutory definition of '*difficult temperament*' might be legally constructed.

9 Tynwald Hansard, Written answer 27, 18 June 2013

<http://www.tynwald.org.im/business/hansard/20002020/Written%20Answers%20June13.pdf>

10 The Child Protection System in England, Written evidence submitted by the Association for Improvements in the Maternity Services (AIMS), November 2011

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmeduc/writev/1514/cp29.htm>

11 National Risk Framework to Support the Assessment of Children and Young People, Scottish Government, <http://www.scotland.gov.uk/Publications/2012/11/7143/9>

14. Just as the Isle of Man lacked a remit for the ECM policy I ask what is the pressing need for the GIRFEC programme. Great play is made of the United Nations Convention on the Rights of the Child¹². But the UNCRC is about the child's right to have universal services available. But only in the sense that the State is obliged to create those services so they *are* available. There is no obligation to *enforce* those services under the Convention. And universal services cannot be enforced because that would breach Article 8 of the Convention which enshrines the right to respect for private and family life.
15. Furthermore, the proposal that Scottish parents require a more intrusive intervention policy than the rest of the UK is flawed. The Office for National Statistics *'Measuring National Well-being Programme'*¹³, found that *'nine in ten children said that they were relatively happy with their lives overall and only 4% reported being relatively unhappy. Children were most positive about their friends (96% relatively happy) and family (95% relatively happy) and least positive about their appearance (75% relatively happy).'*
16. If 96% of children in the UK are relatively happy then what is the justification for GIRFEC? Where is the pressing need, or convincing evidence, showing that Scottish parenting is so poor that Scotland requires such intrusive measures? Do Scottish parents love their children less than English, Welsh or Irish parents?
17. National child protection statistics are also worth comparing. They average 38 children per 10,000 on the child protection register in England¹⁴, 35 per 10,000 in the Isle of Man but only 27 per 10,000 in Scotland¹⁵. Thus, on the core issue of children at risk, Scottish children are already better provided for by their families.
18. In accordance with ECM dogma the core advice¹⁶ to public authorities in the Isle of Man is *'The rule must always be 'If in doubt – refer' to Social Services.'* Thus the onus is on staff in public authorities to reduce their individual liability by elevating any concern to further enquiry. Similar dogma underlines the concept of the GIRFEC *Named Person*. Clause 24 (4) (a) of the Children and Young People (Scotland) Bill provides for information to be shared with the Named Person about the *'well-being'* of a child. *'Well-being'* is a universal concept aligned with the *'8 outcomes'* of the GIRFEC policy. Thus the onus will be on public authorities to over refer children to the Named Person.
19. Broadly, the settled position in Britain is that the threshold for compulsory intervention, and breach of family privacy, is when a child is at risk of, or suffering

12 UNCRC – the foundation for Getting it Right for Every Child', Scottish Government, March 2013

13 Most children are happy, particularly with their family and friends ,

Part of Measuring National Well-being, Children's well-being Release, Office of National Statistics, 26 April 2013

14 Characteristics of Children in Need, Department for Education, 30 October 2012

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/167406/sfr27-2012v4.pdf.

15 Children's Social Work Statistics Scotland, 2011-12 , National Statistics Publication for Scotland , 19 March 2013

16 Inter Agency Child Protection Procedures, Isle of Man Safeguarding Children Board, 23 April 2010, page 13 para 1.16
www.gov.im/lib/docs/socialcare/.../scbinteragencychildprotection.pdf

from, significant harm. Policing that necessary threshold, on its own, is fraught with difficulty. But if that threshold is broadened out to '*well-being*' then achieving justice will be practically impossible. An assessment of '*well-being*' could be no more than a subjective view of individual parenting style. How, for example, is it proposed to police a family subject to investigation because someone thinks their child has a '*difficult temperament*'? How can parents trust a system that authorises discrete reports when someone thinks a child is being '*clingy*'? ¹⁷ And what happens to families who decide that the help arranged by the Named Person is completely inappropriate for their child? What are their rights under the proposed legislation?

20. There is also the question as to whether compulsory assessments of a child's '*well-being*' are legal under the Human Rights and Data Protection Acts. The recent Haringey case law Judgement ¹⁸ found that Article 8 was breached when a public authority commenced investigations into a family before the '*significant harm*' threshold had been reached. This means that compulsory '*well-being*' assessments are also a breach of Article 8.
21. The Data Protection Directive is a reserved matter for Westminster under the Scotland Act 1998. It therefore follows that the UK Parliament would need to fundamentally change Data Protection law in order for Scotland to proceed with the information sharing provisions in the Children and Young People (Scotland) Bill. The Bill therefore engages interests outside Scotland – hence this submission from the Isle of Man.
22. The cost of the GIRFEC policy will also be an issue. When Isle of Man children's social care broadened their investigations from the '*significant harm*' threshold to the ECM '*5 outcomes*' the requirement for social workers to handle the volume of referrals rose dramatically at an additional cost, over 2 years, of over £2 million. 70% of this cost is spent on false referrals.
23. Therefore, before commissioning in law the GIRFEC policy and the statutory provision for every child to have a Named Person, the Isle of Man experience should be considered. It should be possible to estimate the extra cost to the public purse of the demands on public authorities in Scotland of all the needless referrals and inquiries that will result from the policy. More difficult to estimate, but no less important, are the public health costs of families who will avoid services for fear of intrusive interventions.
24. But what is not financially quantifiable, and is even more important, is the social and emotional cost to Scottish families of being under the microscope of a universal surveillance policy. The over broad referral criteria in the Bill, with consequent

17 Education & Culture Committee, Scottish Parliament, 25th June 2013, Column 2659

'... if the childminder had concerns that the child seemed clingy, ... they would just make an observation about how the child appeared to them and possibly to those in the population at large who knew the child well enough.'

18 England and Wales High Court (Administrative Court) Decisions, AB & Anor, R (on the application of) v The London Borough of Haringey [2013] EWHC 416 (Admin) (13 March 2013)
<http://www.bailii.org/ew/cases/EWHC/Admin/2013/416.html>

widespread breach of family privacy, will in itself, cause distress and upset to the very children the legislation proposes to help.

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