The Scottish Parliament
Pàrlamaid na h-Alba

EDUCATION AND CULTURE COMMITTEE

AGENDA

26th Meeting, 2013 (Session 4)

Tuesday 8 October 2013

The Committee will meet at 9.30 am in Committee Room 5.

1. **Decision on taking business in private:** The Committee will decide whether its consideration of draft reports on the Children and Young People (Scotland) Bill and the Draft Budget 2014-15 should be taken in private at future meetings.

2. **Children and Young People (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   Aileen Campbell, Minister for Children and Young People, David Blair, Head of Looked After Children, Phil Raines, Head of Child Protection, and Gordon McNicoll, Divisional Solicitor/Deputy Director, Communities and Education Division, Scottish Government.

3. **Scrutiny of the Draft Budget 2014-15:** The Committee will take evidence on the Scottish Government's Draft Budget 2014-15 from—

   Michael Russell, Cabinet Secretary for Education and Lifelong Learning, Mike Foulis, Director of Children and Families, Andrew Scott, Director of Employability and Skills, and Fiona Robertson, Director of Learning, Scottish Government.

4. **Subordinate legislation:** The Committee will consider the following negative instruments—

   Angus College (Transfer and Closure) (Scotland) Order 2013 SSI 2013/267;
   Banff and Buchan College of Further Education (Transfer and Closure) (Scotland) Order 2013 SSI 2013/268;
   Cumbernauld College (Transfer and Closure) (Scotland) Order 2013 SSI 2013/269;
   John Wheatley College and Stow College (Transfer and Closure) (Scotland) Order 2013 SSI 2013/270.

EC/S4/13/26/A

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The papers for this meeting are as follows—

Agenda item 2

PRIVATE PAPER	EC/S4/13/26/1 (P)
Committee Reports	EC/S4/13/26/2
Supplementary Submissions	EC/S4/13/26/3
Scottish Government correspondence	EC/S4/13/26/4

Agenda item 3

PRIVATE PAPER	EC/S4/13/26/5 (P)
Supplementary Submissions	EC/S4/13/26/6

Agenda item 4

Negative Instruments	EC/S4/13/26/7

Education and Culture Committee

26th Meeting, 2013 (Session 4), Tuesday, 8 October 2013

Children and Young People (Scotland) Bill: Reports from other committees

Reports from other committees

The Finance Committee has reported to the Education and Culture Committee on the Bill's Financial Memorandum. The Delegated Powers and Law Reform (DPLR) Committee has reported on the Bill's delegated powers provisions.

The Local Government and Regeneration Committee took evidence at Stage 1 on the Children and Young People (Scotland) Bill and the Public Bodies (Joint Working) (Scotland) Bill, in relation to the delivery of local government services.

Copies of the committees' reports are attached, as follows—

Members may wish to note the following points from the reports—

Delegated Powers and Law Reform (DPLR) Committee

It is normal practice for the DPLR Committee to send its reports directly to the Scottish Government and, as such, it will receive a separate response to its report prior to the stage 1 debate. However, the Education and Culture Committee may wish to raise any key points with the Minister.

The report highlights a number of concerns about the delegated powers within the Bill—

- The Committee has expressed concern about the lack of a requirement in the Bill on the Scottish Government to publish directions and guidance relating to the named person service (paragraphs 13 to 18), child's plans (paragraphs 19 to 25) and assessment of wellbeing (paragraphs 82 to 87). It has asked the Scottish Government to bring forward amendments at stage 2 to require such publication.

[1] The full Delegated Powers and Law Reform Committee report (which includes the annexes referred to below) is available at the following link:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/68276.aspx

- the Committee has raised concern about the level of procedure attached to provisions concerning eligibility for early learning and childcare (paragraphs 26 to 37), counselling services to parents and others (paragraphs 38 to 45) and kinship care assistance (paragraphs 46 to 54). In each instance orders in relation to these provisions are subject to negative procedure, however the Committee has invited the Scottish Government to consider applying the affirmative procedure given the significance of eligibility for these matters.

- the Committee has raised concerns about delegated powers insofar as they relate to Scotland's Adoption Register. In particular, the Committee has concerns about the lack of clarity and scrutiny to be applied to the Scottish Ministers delegation of its functions in respect of the Register to a registration organisation (paragraphs 55 to 64). More generally, the Committee has expressed concern about the breadth of the powers concerning what information the Register may contain and what it is to be used for (paragraphs 65 to 81).

Local Government and Regeneration Committee

The report highlights a number of areas on which the LGR Committee took evidence. For example, the LGR Committee refers to the role of Community Planning Partnerships (CPPs) and concluded that—

> "45. We heard in evidence how well the North Ayrshire Council CPP works with their integrated children's services partnership.[31] We note that the forthcoming CER Bill will seek to strengthen further the roles and responsibilities of partners in CPPs. **In the meantime we consider it important that the Scottish Government provide clarity around implementation of the Bills and how they fit with the role of CPPs in the new partnerships and arrangements**."

Finance Committee Report

Children and Young People (Scotland) Bill

The Committee reports to the Education and Culture Committee as follows—

INTRODUCTION

1. The Children and Young People (Scotland) Bill ("the Bill") was introduced in the Parliament on 17 April 2013.

2. The Policy Memorandum (PM) states that the Bill's intention is to make Scotland the best place for children to grow up in 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."[2]

3. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill's Financial Memorandum (FM). In doing so, it is required to consider any views submitted to it by the Finance Committee ("the Committee").

4. Rule 9.3.2 of the Standing Orders sets out the requirements for the FM accompanying a Bill. It states that—

> "A Bill shall on introduction be accompanied by a Financial Memorandum which shall set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates."[3]

5. In June 2013, the Committee agreed to seek written evidence on the FM (available at page 36 of the Explanatory Notes) from a range of organisations potentially affected by the Bill.

6. A total of 24 submissions were received and these can be accessed on the Committee's website via the following link: Children and Young People (Scotland) Bill - Written Evidence on FM.

7. At its meeting on 18 September 2013 the Committee took evidence on the FM from three separate panels of witnesses and the Official Report of the evidence session can be found on the Parliament's website here: Finance Committee, Official Report, 18 September 2013

Overview

[2] Children and Young People (Scotland) Bill. Policy Memorandum, paragraph 2
[3] Scottish Parliament. Standing Orders (4th edition, 6th revision, July 2013), Rule 9.3.2.

8. The FM states that the Bill's primary purpose is to "address the challenges faced by children and young people who experience poor outcomes throughout their lives."[4] A table providing an overview of the Bill's provisions can be found on pages 36 - 38 of the FM.

9. The FM states that "there have been methodological challenges in estimating the costs of some provisions," explaining that "these challenges in large part relate to estimating how the preventative approach set out here will result in future avoided costs."[5]

10. The majority of costs are expected to fall on local authorities. Total costs in the first year of implementation of the Bill's provisions are estimated at £79.1m, peaking at £138.9m in 2016-17 then falling back to £108.9m by 2019-20. However, the Government subsequently informed the Committee, in a letter from the Minister for Children and Young People dated 12 September 2013, that it intended to provide funding over and above that indicated in the FM in respect of certain provisions within the Bill.

11. The Bill's estimated costs largely relate to two particular proposals, the provision of a "Named Person" for every child in Scotland and the extension of early learning and childcare provision for three and four year olds and some two year olds. Net savings are also anticipated as a result of proposals relating to kinship care, family therapy and counselling services.

12. In written evidence COSLA stated that the Bill was "a complex piece of legislation with significant implications for local authorities. The accuracy of the Scottish Government's analysis and therefore the funding that would be made available depends on a large number of assumptions that will not be fully tested until the Bill is implemented."[6]

13. COSLA further stated that, in its view, there were "several areas" of the Bill for which the Government's assumptions (and therefore the financial implications for local authorities) were "not robust enough."[7]

14. When asked to explain how it had arrived at its assumptions, the Bill team acknowledged "that the availability of base evidence is quite variable across the range of policy areas covered in the Bill."[8] It explained that it had "tried to get the best estimates that we could and tested them quite extensively"[9] with COSLA and with other stakeholders. However, it also noted that the best available evidence was "patchy in some places and non-existent in others."[10] It therefore stated that those

[4] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 2
[5] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 4
[6] COSLA. Written submission, paragraph 26
[7] COSLA. Written submission, paragraph 4
[8] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2989
[9] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2989
[10] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2993

estimates "could of course be looked at again in the light of further evidence from authorities and health boards as they prepare for and implement the provisions."[11]

15. The Bill team went on to explain that it had tested the assumptions relating to different parts of the Bill in different ways and highlighted that, as it had had to estimate averages over Scotland as a whole, "you would not expect every area to fit in with the national average."[12]

16. COSLA noted that it had received confirmation from the Government that it intended to "fully fund the requirements of the Bill".[13] However, COSLA also pointed out that the Bill's implementation period was expected to stretch beyond the current spending review period and beyond the life of the current parliament stating that "the commitment made by this administration to fully fund the Bill must be honoured in future years by whatever Government is in power and kept under on-going review."[14]

17. When asked by the Committee to confirm that the Government would fully fund the costs of the Bill to local authorities, and whether it would commit to doing so in circumstances where they might exceed those figures in the FM, the Bill Team stated—

> "The Government has promised to fully fund the additional costs. The financial memorandum represents our estimate of additional costs as at earlier this year. Of course, more information will come out, now and as we proceed towards implementation of the measures, and the Government is committed to ensuring that additional costs are properly assessed as they arise and are funded as appropriate."[15]

18. It should be noted that both the Committee and the respondents to its call for evidence were generally supportive of the principles underlying the Bill[16]. Indeed, the Committee's predecessor in the third session stated in its Report on Preventative Spending—

> "The Committee agrees…that the focus for all decision makers, including the Scottish Parliament and the Scottish Government, should be on the more effective implementation of early years policy. The Committee recommends that both the Scottish Government and the Scottish Parliament take the lead in delivering a radical step change in the existing approach to early years intervention."[17]

19. **However, the Committee has a number of concerns in relation to the robustness of the estimates and assumptions upon which the FM is predicated and these are discussed below.**

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[11] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2993
[12] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2989
[13] COSLA. Written submission, paragraph 27
[14] COSLA. Written submission, paragraph 27
[15] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2988
[16] Gavin Brown MSP dissented from this sentence with regard to the Bill's "Named Person" provisions.
[17] Scottish Parliament Finance Committee. 1st Report, 2011 (Session 4), paragraph 36

GETTING IT RIGHT FOR EVERY CHILD (GIRFEC)

Named Person Role

20. The Bill formally creates a "Named Person" for every child in Scotland from birth until they leave school and the PM states that he or she "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."[18]

Costs in Relation to Training

21. In order to deliver the Named Person role, education and health service staff will require training, creating a requirement to backfill staff while this training takes place.

22. In order to estimate training costs, the FM assumes that the Named Person role for school age children would be undertaken by senior staff within schools (although the Bill itself does not specify that this should be the case). This assumption has implications for the backfilling costs as senior staff have lower frontline teaching commitments. The FM estimates that the total cost of providing *teaching* backfill for two days' of training to all Head Teachers, Deputy Head Teachers and Principal Teachers in Scotland would total £398,097.

23. The FM states that health boards would incur "similar costs"[19] to those incurred by local authorities for school-age children for children aged between 0 and 5. It estimates that the development of training materials would cost approximately £300,000 in 2014-15 and that backfill costs covering two days' training for all midwives, health visitors and public health nurses would result in a total cost of £1,088,949 (based on an estimated average hourly rate of £19.04).

24. In written evidence, the RCN suggested that staff other than those listed in the FM would also require training, stating that "the figures must reflect the needs of the wider team of staff nurses, nursery nurses, health care support workers and administrative staff who will also require protected time for training."[20] Similarly, the City of Edinburgh Council stated that it "would expect staff other than teachers to also require training which will incur additional costs."[21]

25. The FM assumes that the costs detailed above relating to training for both local authority and health board staff would be one-off costs falling in 2015-16. Whilst it acknowledges that such training would also be required in future years, it states that "going forward this training will then form part of standard Continued Professional Development (CPD), and be absorbed as part of the on-going training requirements of these organisations."[22]

26. However, some respondents questioned this assumption in written evidence with COSLA, for example, stating that "the suggestion that the on-going training can

[18] Children and Young People (Scotland) Bill. Policy Memorandum, paragraph 68
[19] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 58
[20] Royal College of Nursing Scotland. Written submission, paragraph 4
[21] City of Edinburgh Council. Written submission, paragraph 25
[22] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 48

be absorbed into CPD is unrealistic"[23] as it would displace other training on CPD days and require additional time.

27. In oral evidence, the City of Edinburgh Council stated—

> "The one training issue that arises for the council is that funding to train the named person on GIRFEC is focused purely on education staff and, in addition, is not recurring; there is an assumption that it will be absorbed into overall continuous professional development activity across the council after the first year."[24]

28. The RCN stated that "NHS Education for Scotland needs to come up with a proper costed education and training strategy, which might last a number of years."[25]

29. NHS Lothian stated "the big issue for us is backfill, which has a cost implication, for freeing up staff to undertake the training, especially as we do not have the people to backfill with. Again, it is not just about the money, but about having capacity within the system."[26]

30. When asked whether the FM's assumption that the costs of training backfill within the NHS was likely to be subsumed after one year, NHS Lothian responded—

> "there will always be on-going training costs, as we have staff turnover. Perhaps the training will not be as intensive as the initial training, depending on how the bill pans out and what is required. We try to build training costs into our workforce planning as part of NHS Lothian's financial plan, but I do not think that the training costs will go away. We will always have to do multi-agency training, and I think that it will be in a menu of wider training."[27]

31. Commenting on the evidence, the Bill Team explained its assumption was that a specific roll-out of training would be required in the first year. It then stated, "for every year thereafter, we assume that - and we have tested this with a number of stakeholders - it will be integrated into existing continuing professional development, as is the case with training for additional support for learning needs under the Education (Additional Support for Learning) (Scotland) Act 2004."[28]

32. The Bill Team went on to describe how it expected that existing CPD courses for education staff would need to change in order to integrate the way in which the Named Person should work rather than the training being undertaken in addition to their existing CPD. (3002) It also commented with regard to NHS staff, "it is not as though a lot of this is new; there should already be a significant awareness of GIRFEC and its issues."[29]

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[23] COSLA. Written submission, paragraph 6
[24] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2967
[25] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2974
[26] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2974
[27] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2985
[28] Scottish Parliament Finance Committee. *Official Report, 18 September 2013,* Col 3001
[29] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2997

33. When questioned about evidence submitted to the lead committee by the Association of Headteachers and Deputes in Scotland which stated "we are unconvinced that the training costs identified are adequate for successful implementation of this legislation,"[30] the Bill Team suggested that it would "go back to people who had implemented GIRFEC" noting that the City of Edinburgh Council had implemented the approach and "did not seem to have issues about a recurring significant additional cost".[31] It went on to suggest "I imagine that a national body is required to reflect the diversity of views that come forward, some of which are from folk who do not necessarily know how the GIRFEC training will be put into practice. Other views come from people who have had experience in implementing GIRFEC, so they can say how it works."[32]

34. **The Committee notes that there were a number of concerns from witnesses with regard to the training costs in relation to the formal creation of "Named Persons". The Committee invites the lead committee to raise the following issues with the Cabinet Secretary—**

- **That staff other than those listed in the FM may require training and costs have not been provided for this;**
- **To provide details of the consultation with stakeholders on integrating training within existing CPD courses;**
- **COSLA's view that the suggestion that on-going training can be absorbed into CPD is unrealistic;**
- **Whether, given the evidence received by the Finance Committee, the Government remains content that the training costs identified in the FM are adequate.**

Costs for Local Authorities in Relation to the Delivery of Named Person Duties

35. With regard to local authorities, the FM notes that "there will be costs in carrying out these duties as part of a system change."[33] It assumes that additional costs would be non-recurring (once the system has "bedded in"), suggesting that the additional hours would be accommodated through efficiency savings. It predicts that such costs would be incurred by schools in relation to an estimated 10% of children and young people who would require additional support from local authority services over and above that already provided (estimated at an additional 3.5 hours per year).

36. The FM estimates that this would amount to a total additional cost in teacher staffing time in the first year of £7,814,691 before giving examples of the efficiencies and benefits that have arisen from the adaptation of the GIRFEC approach by certain local authorities, including Highland and Fife in paragraphs 53 - 54. The Committee notes, however, that the FM does not provide any details of the financial savings arising from these efficiencies.

[30] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 3004
[31] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 3005
[32] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 3005
[33] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 51

37. The costings are based on the assumption that 10% of school age children would require an additional 3.5 hours of support per year. It should be noted that the costings would vary considerably should the actual number of hours differ from the 3.5 hours assumed. The FM does not appear to provide any indication of the margins of uncertainty in respect of these estimates as required by Rule 9.3.2 of the Standing Orders (although in relation to some other provisions within the Bill, ranges of costs based on alternative assumptions have been provided).

38. The costs noted above are only applied in 2016-17, as it is assumed that they would be off-set by savings resulting from the early intervention approach in subsequent years. The FM cites evidence from the Highland Pathfinder evaluation which found tangible benefits as a result of the GIRFEC approach. However, these appear to relate to the GIRFEC approach as a whole, rather than to the Named Person role specifically. Also, they are not presented in financial terms, so it is difficult to assess how they might compare to the costs presented for the Named Person role. A number of local authorities questioned this assumption in written evidence with Scottish Borders Council, for example, stating that in its view—

> "additional funding to support the Named Person needs to be available for more than one fiscal year. The Highland Pathfinder showed it took several years to implement the cultural changes required within and across organisations in order to implement GIRFEC. Scottish Borders Council believes funding requires to be available over three consecutive years starting in 2014/15 to ensure the successful establishment of the Named Person role."[34]

39. Similarly, COSLA commented that: "the assumption…that some form of system change will accommodate these costs for years 2 onwards is speculative and basically assumes that £7.8m can be saved from elsewhere in the system to accommodate this".[35] It further stated that it was "not the experience of some local authorities that implementing GIRFEC is reducing the number of meetings or administration."[36]

40. In response to questioning on this point the Bill Team stated that COSLA had admitted in evidence to the Education and Culture Committee "that the area is difficult and complex, so there is no suggestion that there is an alternate methodology or better way of doing it - COSLA recognises that there is a lot of uncertainty."[37]

41. The Bill Team then pointed towards its work with areas that have already been implementing GIRFEC such as Highland Council. It noted the evidence from City of Edinburgh Council which was broadly in agreement with it and stated that it had tested its estimates with other local authorities including Fife, Angus and South Ayrshire. It further pointed out that written evidence had been received from Falkirk, Fife and South Ayrshire Councils and contended that none of them had "necessarily

[34] Scottish Borders Council. Written submission, paragraph 7
[35] COSLA. Written submission, paragraph 7
[36] COSLA. Written submission, paragraph 8
[37] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 3003

contested the underlying assumption about the way in which the savings kick in relatively quickly."[38]

42. Whilst the City of Edinburgh Council had explained in oral evidence that, as it had already largely implemented the Named Person provisions, it did not consider it a major issue, it expressed "some concern"[39] that the funding was not recurring.

43. When asked whether it would be willing to review its estimates in the face of opinions contesting its estimates, the Bill Team explained that it had to—

> "draw the estimates that we have made from a logical basis. If councils are able to put forward a series of arguments that clearly undermine that basis, as opposed to just saying "We don't agree"[40] - I think they have to say something a lot more substantive than that - we will want to look back at the assumptions.
>
> A number of the areas are difficult to estimate, so we certainly remain open to having such discussions. We would want to test all suggestions with people who have real experience in implementing GIRFEC, as opposed to people who have a speculative - if I may put it that way - concern about what things might be like in their area and what they think implementation might involve."[41]

44. It expanded on this point, stating—

> "We would not want to change assumptions on financial assessments on the basis of submissions without a good deal of appropriate evidence to demonstrate where the costs are rising…The Government has said that it will fund fully the cost to local authorities. That will have to be kept under review as we implement the provisions. We should get a lot more information as we get closer to the implementation of the bill, not just through the GIRFEC implementation programme board but through developing the regulations. It is a constantly changing picture. Funding decisions will obviously have to depend on the information that is available at the time. That information will move us on from the point at which the financial memorandum was produced."[42]

45. **The Committee is concerned that the FM does not provide any details at paragraphs 53 and 54 of the financial savings from the benefits of implementing GIRFEC and invites the lead committee to seek this information from Ministers.**

46. **The Committee is surprised that the FM anticipates local authority costs relating to the "Named Person" provisions to be incurred for one year only and that no net costs are predicted from the second year after implementation onwards, and invites the lead committee to raise this with Ministers.**

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[38] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 3003
[39] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2949
[40] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 3004
[41] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 3004
[42] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 3004

47. **The Committee notes that these efficiency savings would appear to relate to the implementation of GIRFEC as a whole and invites the lead committee to seek clarification as to what savings have been realised specifically in relation to the Named Person role.**

48. **The Committee is also concerned that no margins of uncertainty appear to have been provided for the assumption that 10% of children and young people would require additional support of 3.5 hours per year and invites the lead committee to seek this information from Ministers.**

Costs for Health Boards in Relation to the Delivery of Named Persons Duties

49. With regard to the NHS, the FM states that the functions of a Named Person "will require some additional activity for midwives, health visitors and public health nurses."[43] The estimates as to how much additional time would be required are based on the assumption that 80% of children would require "marginal support", 2% would have complex needs and would already be receiving significant support (thereby incurring no additional costs in relation to the named person), with 18% having emerging or significant needs resulting in an additional 10 hours support per child per year, reducing to between three and eight hours as the system beds in. These costings assume that the preventative approach will result in reducing resource requirements over time (falling from £16.3m in 2016-17 to £10.8m by 2019-20). In the case of the NHS, the costs are assumed to be ongoing (in contrast to the approach taken for local authority costs) as they are not expected to be fully offset by efficiency savings.

50. The FM also estimates that a further £1,949,519 would be required during the first year only for "additional administrative support" costs arising to local authorities from the "handling of any additional information sharing between the Named Person and other practitioners...as well as administration relating to the Child's Plan"[44]. As noted by the RCN in written evidence, the FM adopts a different approach with regard to NHS staff, whom it does not consider would require additional administrative support.

51. In written evidence, NHS Lothian stated that it estimated that the actual cost of the Named Person service would be greater than was stated in the FM. It also suggested that additional recruitment would be required in order to fully deliver the role and that the assumed hourly rate of £19.04 for midwives and health visitors on which the estimated costs were based was an underestimate which should be "more in the region of £21 per hour."[45]

52. The RCN expressed concerns relating to the FM's expected rapid reduction in additional hours required to address the needs of children with emerging or significant concerns, stating "if the approach is effective there may be a small reduction over time, but currently health visitors have no capacity to engage

[43] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 59
[44] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 55
[45] NHS Lothian. Written submission, paragraph 28

effectively with families and communities in a way that models the preventative approach."[46]

53. In oral evidence, the RCN expanded on this point, stating that it was—

> "based on an assumption that by 2018-19 some children will be being born into families with whom the named person is familiar, which will lead to a significant reduction in additional work. We think that that considerably overstates the efficiencies that will be achieved in that way. Another assumption is that less time will be spent dealing with families who are in crisis. It is a huge assumption that within two years there will be far fewer families in crisis. There will be families in crisis for many years to come."[47]

54. Whilst NHS Lothian expressed confidence that the approach would achieve savings, it stated that "they are more likely to occur in services for later in the life course. To truly change the culture and achieve the savings later in the life course, we think that we need to invest more heavily in midwifery services and health visitor services."[48]

55. NHS Lothian went on to suggest that the estimated savings set out in the FM might be realised over a longer time scale stating, "perhaps in 10 to 15 years, when we have been really effective with our early intervention and with our adult programmes to address substance misuse et cetera, we will see a changing picture, and health visitors will need to do less. However, the assumption is a bit flawed and the more we have discussed it following the publication of the policy memorandum, the more we have picked up that view from our peers throughout Scotland."[49]

56. When questioned by the Committee on its predictions that the costs to the NHS of working with the 20% of children with significant issues would reduce from £10.2m in 2016-17 to £5.3m in 2018-19, the Bill Team explained its belief that "that will be a reflection of the impact of early intervention and the intensive work that will be put in at the start of the roll-out of the named person role. For example, the zero to one-year-olds will receive quite intensive support in 2016-17, but we estimate that by 2019-20 they will not require as much intensive support. That is reflected in the tapering of the costs."[50]

57. In response to further questioning on this point from the Committee, the Bill team defended its predictions, explaining that as the figures contained in the FM related to additional hours spent with such children, it "would expect that to bear some fruit in the following year…as those kids become one-year olds."[51] When asked why it anticipated a reduction in the amount of time that would require to be spent with new-borns in this category, from an average of ten to eight hours within two years of implementation, it explained that its expectation was that, as the role

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[46] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2981
[47] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2983
[48] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2970
[49] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2982
[50] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2998
[51] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2991

"gets bedded-in over time" and as midwifes have a more active role pre-birth, savings would develop and such "intensive involvement"[52] would no longer be required.

58. The Bill Team went on to explain that "the impact of getting in early is in ensuring that the problems - this is the whole principle of having the named person - that people would not necessarily have spotted previously can be recognised and addressed quickly. We would expect that impact to be reflected pretty immediately. On average, we would expect to see benefits for those kids in successive years as they get older."[53]

59. Pointing towards the evidence from the Highland pathfinder initiative, the Bill Team stated "We tested our assumptions in areas that have gone very far forward with GIRFEC, such as Highland, which has developed it in pathfinder. We believe that our assumptions are reasonable. We tested them with managers who are responsible for taking forward the implementation of GIRFEC across NHS boards. The feedback that we got from them is that they are not unreasonable assumptions."[54]

60. When asked for further examples of bodies on which its estimates were based, the Bill Team referred to NHS managers with responsibility for the implementation of GIRFEC. It went on to acknowledge, in response to the point that evidence from the NHS witnesses appeared to contradict this position, that there would be contrary views on what was a complex issue before stating—

> "I come back to talking about the basis on which we drew the estimates, which was largely the experience of those areas that have pioneered GIRFEC, and assumptions on the way in which early intervention would kick in. I have not heard evidence today that specifically challenges that; the earlier witnesses just said that they would see gains being developed during seven or 15 years, which was one of the expressions used earlier. I would find that surprising for an individual child's life. We tested those assumptions out with a specific group that was responsible for implementing GIRFEC. That is the basis on which we have derived those costs."[55]

61. NHS Lothian stated in oral evidence that in order for its health visitors to truly capture the needs of individual families, "it will require a significant amount of their time; we estimate about five hours per family".[56] It went on to express concerns that it was not sufficiently staffed to meet current demand and predicted , "we think that we will, as we improve our intervention in early years, require more staff in order to be more effective in that intervention."[57] Referring to investment in aspects of the health visitor system, it went on to state that "even that additionality will not be

[52] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2991
[53] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2999
[54] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2999
[55] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 3001
[56] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2969
[57] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2970

enough to enable full implementation of the named person approach in the timeline that is envisaged."[58]

62. Highlighting the importance of adequate resourcing in order to achieve the Bill's aims, the RCN stated in oral evidence—

> "Proper resourcing is absolutely essential because if we are raising expectations with families to the effect that they will have the support of a named midwife, health visitor or teacher, we have to put in place the resources to support the professionals who deliver that service, or we are setting them up to fail. That is why the resources behind the bill are so important."[59]

63. When questioned on this point, the Bill team explained that, as health boards will be at different stages of implementation—

> "it is difficult to be able to say exactly how health boards will move forward on this, the areas where significant expansion might be needed in the number of health visitors and the areas where, because they have already implemented the named person service to a significant extent, changeover might not be as major an issue as it will be for others."[60]

64. The Bill team further stated that the Government was "engaging with stakeholders to get a sense of the issues or problems that might be emerging" and that it had set up a programme board to monitor implementation and feed back information, including "where the problems are emerging and, indeed, what the resource implications are going to be."[61]

65. **The Committee is concerned about the extent of the disparity between the evidence from health bodies and the Bill team in relation to the estimated costs and savings to health boards arising from the delivery of the Named Person role. In particular, the Committee invites the lead committee to seek the following information from Ministers—**

- **The view of NHS Lothian that the assumed hourly rate for midwives and health visitors should be in the region of £21 per hour;**

- **A detailed explanation as to why the time horizons for the savings to be made from preventative measures are much shorter in the FM than that predicted by many of the health professionals who gave evidence to the Committee;**

- **A detailed breakdown of the financial savings which have been made by those NHS bodies who have begun to implement GIRFEC and against which the bill team tested the assumptions in the FM;**

[58] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2972
[59] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2978
[60] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2998
[61] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2997

- **Details of the extent to which the Named Person role is already being implemented in different areas and how/whether this will be taken into account in the funding provided for implementation.**

EARLY LEARNING/CHILDCARE

66. The most costly of the Bill's proposals are the plans relating to early learning and childcare. The Bill proposes to increase the statutory provision of pre-school education from the current 475 hours per year to 600 hours per year for 3 and 4 year olds and for 2 year olds who are (or have been since turning 2) looked after or subject to a kinship care order. The estimated costs, which fall solely to local authorities, peak at £108.1m in 2016-17, falling back to £96.2m in 2018-19.

67. On 12 September 2013, the Minister for Children and Young People wrote to the Convener of the Finance Committee outlining plans to increase funding in respect of the extension of early learning and childcare provision. The letter set out plans to increase funding by £4.2m per year. The additional funding relates to the costs of providing early learning/childcare to two year olds who are looked after or subject to a kinship care order (additional £3.4m), and to the costs of uprating payments to partner providers (additional £0.8m). However, details of how the revised figures related to the original calculations set out in the FM or why this additional funding is required were not provided.

68. All costs in the FM relate to estimated additional costs over and above the costs currently incurred by local authorities in the delivery of 475 hours of pre-school provision. This section of the FM specifically states that all costs are shown at 2011-12 prices. As the basis for costs elsewhere in the FM is not explicitly stated it is unclear whether this approach has been taken consistently across all aspects of the FM.

69. The FM states that "local authorities will have full flexibility to develop and re-configure services and provision to meet local needs and circumstances" and that the range of approaches will be "reflected in incrementally increasing revenue costs, front loaded in the first three years with capital to adapt or expand accommodation in response to local consultations." It goes on to state that "the main additional costs arising…will be staff costs"[62]. Once the capital costs end in 2017-18, staff costs account for around three-quarters of the total costs.

70. The FM states that "working closely with COSLA and individual local authorities, the additional staff costs associated with a range of patterns of delivery have been estimated."[63] It goes on to note, however, that "the incremental increase in flexibility is more complex to estimate than just additional hours" and points out "that models of flexibility used have been indicative examples developed by local authorities in advance of consultation with local populations"[64] before stating that it had had "sought to mitigate this uncertainty by working closely with COSLA and

[62] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 73
[63] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 76
[64] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 76

others on their models and estimates of anticipated costs, and by building in an incremental approach which allows re-configuration of services in response to consultation which is planned and manageable."[65]

71. The FM further states that "these models are only examples and, therefore, costs are indicative," as "the final models developed by local authorities will vary according to locally identified need and cannot be anticipated in advance of consultation."[66] However, it does not provide details of the basis for the costings presented or present any alternative scenarios. It does state, however, that five different models "were analysed for staff implications and costs"[67] although limited detail is provided on these models other than to say that local authorities were asked to cost five different options (reflecting the options set out in the consultation paper, *A Scotland for Children*, paragraph 101). East Renfrewshire Council acknowledged that "it was inevitably going to be a difficult exercise to cost"[68] but also noted that "Given the range of models, it would have been thought that a range of costs per year would also have been determined".[69]

72. Staff costs increase over time and this appears to be the reflection of an "incremental"[70] approach as more costly, flexible models are introduced over time (or a combination of model is offered). However, it is not clear from the FM what assumptions have been made in respect of implementation, or what effect different implementation options might have on the costs. It is unclear whether the modelling takes into account population projections over the period concerned.

73. In its written submission, GIRFEMCP commented that: "Midlothian Council is in the process of carrying out an options appraisal, including costing, for the increase in early learning and childcare hours and these estimates come in significantly below the figures in the FM (once they have been extrapolated using the population aged under five in Midlothian as a proportion of the Scottish population)."[71] Scottish Borders Council "anticipated that the figures quoted in the FM (based on this council's proportionate share of the national Grant Aided Expenditure) will be sufficient to cover additional costs", but noted that it had "not agreed their delivery model so it is difficult to give a definitive response at this stage".[72] The City of Edinburgh Council stated that the costs for early learning/childcare were "accurately reflected based on our understanding of the requirements of the legislation"[73], whilst COSLA also noted that: "local authorities have indicated that they are broadly happy that they are an accurate assessment of implementation costs"[74] but cautioned that any requirement for greater flexibility for parents could have implications for delivery costs.

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[65] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 75
[66] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 76
[67] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 76
[68] East Renfrewshire Council. Written submission, paragraph 13
[69] East Renfrewshire Council. Written submission, paragraph 7
[70] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 76
[71] Getting it Right for Every Midlothian Child Partnership. Written submission, paragraph 8
[72] Scottish Borders Council. Written submission, paragraph 4
[73] City of Edinburgh Council. Written submission, paragraph 9
[74] COSLA. Written submission, paragraph 11

Partner Provider Uprating

74. The FM notes that "broadly, local authorities secure around 40% of provision through independent, private and third sector partners"[75] and anticipates similar levels of usage in the future. It goes on to estimate the hourly costs for such facilities to be £4.09 per hour per child although this does not appear to reflect actual payments to providers at present and the FM refers to a lack of consistency of approach across local authorities. The £4.09 figure is based on a recommended floor level for payments to providers set in 2007, uprated to reflect inflation over the period since 2007. However, the NDNA noted in its written submission that its most recent survey of nurseries had found that: "the mean hourly rate nurseries receive for funded pre-school places from their local authority is £3.28."[76]

75. In oral evidence the NDNA stated—

> "the cost of the service is £4.09 an hour for the 500 hours. Edinburgh is currently being given £3.26 an hour for the 500 hours. Glasgow, which now contractually has to provide 600 hours, receives £2.72 per child. The figure of £4.09 has evidently been based on the advisory floor, which ceased to exist several years ago, with an inflationary link added into it."[77]

76. Pointing towards increased overheads the NDNA went on to express concerns that these levels of funding would impact on the sustainability of some businesses within the sector. This point had been acknowledged in the FM which stated that the NDNA "and some partner providers have raised the issue of unsustainable funding levels for the majority of partner providers placements, especially if the patterns of placements change to full or half days".[78]

77. In a letter from the Minister for Children and Young People to the Convener of the Finance Committee on 12 September 2013, the Scottish Government set out its intention to provide £2m rather than £1.2m in respect of the costs of partner provider uprating (Scottish Government, 2013). This appears to reflect a change in assumptions about the levels of payments to partner providers currently in place, although no further details were provided. It is unclear how the Scottish Government would intend to ensure that this additional funding is passed on to partner providers.

78. In response to questioning on this point, the NDNA welcomed the increase but suggested that the Government should take steps to ensure that any additional funding to local authorities in respect of partner provision is distributed to partner providers, suggesting that the reintroduction of the advisory floor would be the recommended way of achieving this. However, it went on to clarify in response to further questioning, that it did not advocate the reintroduction of an advisory floor of £4.09 but that a figure of £4.51 (uprated annually in line with inflation) would be more reasonable on condition that the funds were "delivered to partner providers equally and fairly."[79]

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[75] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 82
[76] National Day Nurseries Association. Written submission, paragraph 10
[77] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2954
[78] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 82
[79] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2963

79. The Bill team, however, explained that the Bill contained no mechanism to ring-fence funding to ensure it was passed on to partner providers by local authorities stating, that at present, "Government policy is not to dictate to local authorities how they should spend their money but to provide money within the overall envelope of their single outcome agreement."[80] In response to further questioning on this theme it stated that "it is a matter for local authorities between them to arrange for the provision of early learning and childcare, so it is not something that we are getting involved in."[81]

80. When asked to expand on this the Bill team explained that the Government was "putting an obligation on local authorities to ensure that there is provision" for 600 hours of early learning/childcare stating "it is up to local authorities to decide how they will deliver on that obligation, but we expect them to deliver on it properly and we will provide the funding to help them to do that."[82] It also pointed out that a duty would be placed on local authorities to report on how they had delivered all their children's services.

81. **The Committee would welcome further details from the Government on the rationale underlying the increased funding for partner provider uprating as announced on 12 September 2013 and whether any of the assumptions underlying the FM have been altered in order to arrive at the new figure.**

82. **The Committee is surprised that the funding for uprating partner provider payments is based on the level of an advisory floor from 2007 updated in line with inflation rather than the actual amounts paid by local authorities to partner providers. The NDNA has provided figures which suggest that the nurseries are paid an average of £3.28 rather than £4.09 and that Glasgow pays only £2.72 per hour.**

83. **The Committee invites the lead committee to ask why the 2007 figure is being used to allocate additional funding and whether this means that the Government now supports an advisory floor of £4.09 per hour. Further, the Committee invites the lead committee to question whether the funding being provided is sufficient to enable local authorities to pay this rate and whether this rate is considered to be sustainable.**

84. **The Committee invites the lead committee to ask Ministers whether the funding for partner provider payments will be reduced in future years if some local authorities continue to pay considerably less than £4.09 per hour.**

85. **The Committee recommends that the Government requires local authorities to report annually on spending in relation to pre-school provision, in order that it can ensure that the anticipated levels of investment are being achieved. This should include details of expenditure on partner providers, including hourly rates paid. This information should be published.**

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[80] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2992
[81] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2998
[82] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2992

Additional provision for looked after/kinship care 2 year olds

86. The FM provides for an additional £1.1m per year to fund the extra provision for two year olds who are looked after or in kinship care. The Minister for Children and Young People subsequently wrote to the Committee stating:

> "Following helpful discussions with COSLA we have decided to increase the amount allocated to local government for this priority area by £3.4 million to a total of £4.5 million. This is to reflect the importance we place on the early learning and childcare agenda and to integrate monies previously provided to support looked after 2 year olds via the Early Years Change Fund."[83]

87. Whilst welcoming this increase funding in oral evidence, GIRFEMCP suggested that it was "quite concerning", stating "if one element of costs can go up fourfold after they have been thought about more, can other elements of costs do the same? If they could, the shortfall would be significant."[84]

88. When asked to clarify the reasons for this increase, the Bill team explained that the original estimate related to additional hours for looked-after two-year-olds whilst the figure in the letter related to "the overall funding position for looked-after two-year-olds in its entirety." It went on to explain that—

> "At the moment, there is an element of funding that flows to local government through the early years change fund. In arriving at the figure of £4.5 million, ministers sought to address overall costing issues with the provision for looked-after two-year-olds in its entirety, rather than the additional hours that are set out in the financial memorandum."[85]

89. **The Committee invites the lead committee to seek clarification as to why the £3.4m which appears to have been previously allocated to local authorities through the Early Years Change Fund is now being added to the £1.1m provided for in the FM.**

90. **The Committee also invites the lead committee to seek clarification as to whether the £3.4m represents additional funding, or just a realignment of existing funding.**

91. **The Committee would welcome further detail from the Government on the rationale underlying the increased funding for two years olds as announced on 12 September 2013, and clarification of whether any of the assumptions underlying the FM have been revised in order to arrive at the new figure.**

Capital costs

92. The FM states that "capital costs will be required to adapt existing provision for additional hours and associated accommodation needs" and that its "estimates are

[83] Minister for Children and Young People
[84] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2956
[85] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2989

based on Scottish Futures Trust metrics for primary schools" specifying "an allowance of 7.5 square metres per child at a cost of £2,350 per square metre."[86]

93. In written evidence, East Renfrewshire Council commented, "There is not much detail on how the total capital of £30m per year for 2014-2017 has been determined"[87] and that "the starting point for each authority will be different based on existing capacity, potential development, availability of partnership provider places and model of delivery to implement the flexible 600 hours of provision agreed with stakeholders. It is therefore difficult to ascertain at a local level if the allocation of this will be sufficient to meet local needs."[88]

94. When asked to expand upon how the predicted costs had been arrived at, the Bill team stated "we do not have a baseline survey of what infrastructure is currently in place; nor do we know how local authorities will decide to increase capacity" (i.e. whether this would be done through new build or by extending existing buildings). (3006) As its assumptions had not been based on "a thorough and detailed assessment", the Bill team accepted that "this is one area in which the estimate represents a best guess."[89]

95. **The Committee notes that the FM states that while the estimate is necessarily limited "it has been tested with a number of local authorities."[90] The Committee invites the lead committee to seek further details as to how this estimate has been tested.**

LOOKED AFTER CHILDREN

Extending throughcare and aftercare support

96. The Bill makes provision for local authorities to provide financial support and assistance to eligible care leavers up to and including the age of 25 (rising from the current cut-off age of 21). The FM estimates that the extension of throughcare and aftercare support will result in additional costs to local authorities of £3,871,515 in 2015-16, rising to £4,033,640 in 2016-17 and 2017-18 before falling to £1,777,046 from 2018-19. The numbers eligible (and the resulting costs) decline after the initial increase reflecting the change in eligibility rules.

97. The FM provides a detailed explanation of the methodology used to arrive at these estimates which is based on a number of key assumptions as follows—

- 65% of care leavers aged 19-25 will be granted support.
- Average support costs are £2,100 a year per young person.
- The average cost of dealing with an application is £1,042.
- One-off support of £2,000 will be available to 25% of applicants

98. These assumptions form the basis for the estimated costs. No analysis is presented to indicate the effect that alternative assumptions would have on the

[86] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 83
[87] East Renfrewshire Council. Written submission, paragraph 10
[88] East Renfrewshire Council. Written submission, paragraph 10
[89] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 3006
[90] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 83

costs, despite a number of references to limited data availability. COSLA has raised concerns over the accuracy of the estimates, commenting—

> "COSLA has less certainty over the accuracy of the costings of this aspect of the Bill due to the difficulties for local authorities in estimating the financial impact. In particular, we are not convinced that the Scottish Government have accurately assessed the average annual cost of support, estimated at £3142 per young person in the FM…from experience a figure nearer £6,000 per person is considered more realistic by some local authorities."[91]

99. West Dunbartonshire Council also commented in its written submission that the FM's assumptions relating to throughcare and aftercare were—

> "speculative and generate an indicative demand that reduces by 1,000 cases by 2019/20. There is clearly a risk that this reduction in demand won't occur and therefore the costs to local authorities are under-costed. In addition the assumption that the increase in successful applicants will increase to 65% is not evidenced and there is a risk that the success rate could be higher than this – again resulting in costs to local authorities."[92]

100. Whilst the City of Edinburgh Council's written evidence stated—

> "In relation to throughcare and aftercare the estimates of the numbers taking advantage of the legislation and the number that would cease to receive support as their age increased also differed, with the Council believing the numbers taking advantage to be higher and the number ceasing to be lower."[93]

101. In oral evidence, the City of Edinburgh Council welcomed the provisions but stated that, whilst it would not quibble with the FM's estimates of the specific costs relating to aftercare, "we think from our experience that more young people would take up the opportunities than the financial memorandum estimates."[94]

102. It went on to state "if training, the kinship care measures and throughcare and aftercare are not properly funded, the risk is that money will be diverted from earlier intervention into supporting the other aspects of the bill and, actually, it will become counterproductive. That is my greatest concern."[95]

103. Falkirk Council suggested that the FM's estimated costs relating to aftercare were "unrealistic"[96] in its experience and underestimated the likely costs to it of providing such support.

104. The Committee also questioned witnesses on the estimated average cost of processing and assessing throughcare and aftercare applications. The FM estimates

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[91] COSLA. Written submission, paragraph 16
[92] West Dunbartonshire Council. Written submission, paragraph 5
[93] City of Edinburgh Council. Written submission, paragraph 20
[94] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2960
[95] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2967
[96] Falkirk Council. Written submission, paragraph 4

this to be £1,042 (almost exactly half of the average estimated costs for the provision of aftercare support of £2,100 per individual per year) and states that this estimate is "based on average caseloads and average worker salaries"[97] without providing any further information.

105. The City of Edinburgh Council explained that care leavers would undergo an iterative process of assessments but stated that "the way in which those figures are separated out does not make a lot of sense to me either."[98] GIRFEMCP also expressed uncertainty about the basis for this figure, which, it stated "seems very high"[99], before speculating that it might refer to the cost of the throughcare and aftercare teams divided by the number of young people whom they support.

106. The Bill team explained in oral evidence that regulations setting out the types and timescales of support available along with its eligibility criteria had yet to be developed but that the process of developing them would provide an opportunity for local government and other key stakeholders to provide continuing feedback to the Government.

107. **The Committee invites the lead committee to raise the following issues with the Minister—**

- **The view of some local authorities that the demand for throughcare and aftercare support is likely to be higher than indicated in the FM;**
- **Why the administrative costs are nearly half of the support costs;**
- **On what basis the costings for support were arrived at given the lack of detail in the Bill regarding the type and timescale of support to be provided.**

Kinship Care

108. The FM predicts that the provisions in relation to kinship care will lead to a reduced dependency on formal care (with less formal care providing a less costly model) resulting in estimated gross savings of between £8 and £20m by 2019-20. Transitional costs of £2.6m in 2015-16 are included in the estimates but ongoing costs are not provided as any such costs are assumed to be offset by savings. GIRFEMCP questioned this assumption in its written submission noting that "in some cases the FM offsets…savings in the short term, where in fact it may be many years, and in some cases a generation or longer, before the provision of, and funding for, some services can be reduced."[100]

109. The FM states that the associated costs "can be broken down into different categories; the cost of formal carers obtaining a kinship care order, the cost of

[97] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 101
[98] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2961
[99] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2961
[100] Getting it Right for Every Midlothian Child Partnership. Written submission, paragraph 10

informal carers obtaining a kinship care order; the transitional costs for local authorities; and the avoided costs of formal care."[101]

110. The FM predicts that from 2017-18 between 6% and 11% of formal carers would apply for kinship care orders. It states that these estimates are based on numbers already applying for section 11 orders under the Children (Scotland) Act 1995 and "assumptions tested with some local authorities."[102]

111. COSLA, however, stated that "there is a concern…that this new order will not be embraced by families and therefore not free up monies as assumed. The potential loss of income to families during this period of economic pressure may well play a significant part in decision making by families considering this option."[103]

112. The City of Edinburgh Council also cast doubt on the assumption that many families who currently have a child who is looked after by kinship carers would wish to seek a new kinship care order, stating—

> "That order has to be made attractive to families, but there is no evidence at the moment that it will be particularly attractive to them. We do not think that there is robust evidence that families will move from a position in which their child is looked after and they get a set of resources to support that situation, to the new kinship care order. The underlying financial assumptions in the modelling are not consistent with the experience of the City of Edinburgh Council."[104]

113. The FM also predicts that between 1.5% and 3.5% of current informal carers would apply for kinship care orders, thereby becoming eligible for a range of support at the expense of the local authority.

114. In oral evidence the City of Edinburgh Council stated that in its view—

> "the assumptions of potential savings…are exaggerated. We also think that there are potential additional costs, because the estimate in the memorandum that only between 1.5 and 3.5 per cent of informal kinship carers will come forward for the new kinship care order is an underestimate…Basically, our conclusion is that there is a great deal of financial risk for local authorities. Certainly, the City of Edinburgh Council does not believe that that element of the bill is funded, given the proposals as they stand. I know that it is the Government's intent to fully fund the bill but, in respect of kinship care, we do not think that that will be the case."[105]

115. The Council went on to comment that, as far as it could tell, the FM's estimate that between 1.5% and 3.5% of informal kinship carers might come forward to be assessed for a formal order "has just come out of the air."[106] In its view, many more

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[101] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 117
[102] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 119
[103] COSLA. Written submission, paragraph 22
[104] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Cols 2947-2948
[105] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2947
[106] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2951

families were likely to come forward for an assessment as it could entitle them to future financial support. GIRFEMCP supported this assessment stating that "the figure for kinship carers could be many times what is estimated, depending on the circumstances."[107]

116. Acknowledging that it was impossible for exact figures to be provided in the FM, GIRFEMCP also suggested that more than 3.5% might come forward and stated—

> "The point is that there is a significant risk that the costs will increase beyond what is included in the memorandum and beyond any funding that is provided. How will those costs be met? Will there be an on-going review by the Scottish Government of the costs inherent in the bill, with changes in the funding as we move forward? Alternatively, will the charges be fixed early on, with authorities being told, "That is the settlement" and that they will have to provide for any additional costs?"[108]

117. With regard to its estimates of the numbers it expected to apply for formal kinship care orders, the Bill team stated "it would seem reasonable, given that we are looking at something that is a variation of an existing instrument - a section 11 order - to look at how section 11 orders have been taken up to date. We can derive estimates from that about the number of kinship carers and informal carers who will come forward. The estimates suggest that the numbers are, relatively speaking, quite low."[109]

118. In relation to the avoided costs resulting from the overall package of kinship care measures, a number of councils expressed concerns relating to the assumptions made in the FM. Falkirk Council noted that: "there is no substance behind the estimated avoided costs [from diverting children from formal kinship care] and the margin for error is significant".[110] The City of Edinburgh Council noted that—

> "There was also a significant difference in the assumptions of value of savings, or avoided costs that would be delivered to the Council as a result of the new legislation. The difference was due to a view, by the Council, that the stated aim of the legislation itself would not lead to the reduction of Looked After Children entering kinship care and therefore the level of savings is significantly over estimated."[111]

119. When asked whether the FM's estimate that avoided future costs for 2015-16 would be between £3.5 and £15m, the City of Edinburgh Council replied "I think that even the lower estimate is potentially exaggerated. The difficulty is that the estimates are not based on any firm evidence."[112]

120. When asked to expand upon its suggestion that savings related to kinship care were exaggerated in the FM, it explained that "it is very difficult to make these kinds

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[107] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2951
[108] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2966
[109] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2966
[110] Falkirk Council. Written submission, paragraph 5
[111] City of Edinburgh Council. Written submission, paragraph 4
[112] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2952

of future estimates. We are being asked to accept that the kinship care element of the bill is fully funded on the basis of speculative savings - and they are completely speculative savings - so the bill is not fully funded in that respect"[113]

121. It went on to explain that—

> "the council does not believe that the number of looked-after children entering kinship placements will reduce by the levels that are estimated. That is because the modelling that has been done in the financial memorandum is based on the increase in the number of looked-after children in kinship placements between 2007 and 2011 across the country, which grew by 87 per cent. In the City of Edinburgh Council area, the equivalent growth was only 29 per cent, so, projecting ahead, there is not the same growth for us to make that saving from - it is just not there. That is the biggest number."[114]

122. Edinburgh Council also pointed out that many of the details of how kinship care orders would work remained to be set out in secondary legislation and that it therefore did "not know what will be available to families, how the orders will operate and what expectations there will be on local authorities around how long families should get support for, the nature of the support and what it might cost."[115]

123. In response to questioning on this point, the Bill team stated that "the process of developing those regulations will enable feedback to be made, and that feedback will continue as the relevant teams in the Scottish Government work with stakeholders in implementing them."[116]

124. The Bill team acknowledged the challenges it had faced stating, "there is no real precedent for kinship care, so we are having to give our best guess and make assumptions in working out when the savings kick in". It went on to state, however, that it "stood by the logic and proxies" from which its estimates had been drawn, explaining that it operated on "the very simple principle that if you can get one child out of kinship care for one year, you can save about £9,000."[117]

125. **The Committee is again concerned about the significant disparity between the estimates provided in the FM and the views of local authorities.**

126. **The Committee recommends that the lead committee invites the Government to provide further detailed costings of the estimated avoided costs from the diversion of children from formal kinship care.**

CONCLUSION

127. **The Committee has a number of concerns in relation to some of the costings within this FM and notes that there is a lack of evidence to support the figures provided for some aspects of the Bill. In particular, the Committee**

[113] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2950
[114] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Cols 2950-51
[115] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2952
[116] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2997
[117] Scottish Parliament Finance Committee. *Official Report, 18 September 2013*, Col 2995

makes the general point that the Government needs to develop a more robust methodology for forecasting potential savings from preventative policy initiatives. There is also a need to develop measures to ensure that the actual savings are effectively monitored and reported. The Committee intends to raise this issue as part of its budget scrutiny.

128. **The Committee recommends that the actual spending and savings arising from this Bill are reported on annually as part of the draft budget.**

Local Government and Regeneration Committee Report

Children and Young People (Scotland) Bill

INTRODUCTION

The Committee reports to the Education and Culture Committee and the Health and Sport Committee as follows—

1. The Local Government and Regeneration Committee agreed to take evidence at Stage 1 on the Children and Young People (Scotland) Bill and the Public Bodies (Joint Working) (Scotland) Bill in relation to the delivery of local government services. Both bills include proposals for joint working between local government and public bodies. Our main focus of interest in the Bills is the proposals for integrating and sharing public services. The proposals for the integration of public services are inextricably linked to issues covered in recent and ongoing inquiry work, particularly the public service reform inquiry.

COMMITTEE INTEREST

Introduction

2. The Children and Young People (Scotland) Bill ("the CYP Bill"), aims to put children and young people at the heart of planning and delivery of services and ensure that their rights are respected across the public sector. Part 3 of the CYP Bill aims to improve the way in which services support children and families by promoting cooperation between planning children's services, placing the child at the centre of this process.

3. The Public Bodies (Joint Working) (Scotland) Bill ("the PBJW Bill"), provides the framework which will support improvement of the quality and consistency of health and social care services through the integrated delivery of health and social care in Scotland. This framework permits integration of other local authority services with health services.

4. Our interested is in how the Bills, with related key aims, complement each other and work together to help deliver and support the Public Service Reform agenda.

Approach

5. We agreed to consider those parts of the Bills relevant to its remit. We did not issue its own call for evidence but included questions in the Health and Sport Committee call for evidence, as lead committee for the PBJW Bill. For the CYP Bill, we considered evidence submissions received by the Education and Culture Committee, the lead committee for this Bill.

6. We targeted specific organisations to supply written evidence given the Bills may have an impact on them. Written submissions were received from—

- Association on Directors of Education in Scotland;

- Argyll and Bute Council;
- Audit Scotland on behalf of the Auditor General for Scotland and the Accounts Commission;
- Coalition of Care and Support Providers (CCPS);
- Children in Scotland;
- Childrens Hearings Scotland;
- COSLA;
- GPs at the Deep End;
- Housing Coordinating Group;
- Midlothian Community Planning Partnership;
- NHS Ayrshire and Arran;
- Police Scotland;
- Royal College of General Practitioners;
- Scottish Fire and Rescue Service (SFRS);
- UNICEF UK, and
- West Lothian Community Planning Partnership.

7. We took oral evidence from relevant witnesses in a single evidence session on Wednesday 4 September 2013—

- NHS Ayrshire and Arran;
- GPs at the Deep End;
- East Ayrshire Council;
- North Ayrshire Council, and
- Housing Coordinating Group.

8. Finally, we then took oral evidence from the Cabinet Secretary for Health and Wellbeing, Alex Neil MSP ("the Cabinet Secretary") and the Minister for Children and Young People, Aileen Campbell MSP ("the Minister") jointly, on both Bills.

9. Our findings and recommendations are reported to the respective lead committees, and to the Parliament, in this memorandum.

FINDINGS AND RECOMMENDATIONS

Is there a consistency of approach across legislation?

10. Our recent inquiry into Public Services Reform in Scotland[118] had a strong focus on partnership, joint working and shared services in line with the Christie Commission recommendations. A significant part of that work was looking at Community Planning Partnerships ("CPPs") which are a key delivery agent in driving forward public service reform. During that inquiry we were informed that

[118] Local Government and Regeneration Committee, 9th Report 2013: *Public Services Reform and Local Government: Strand 3 - Developing New Ways of Delivering Services* SP Paper 370 (Published 26 June 2013): http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/56442.aspx [Retrieved 19 Sept 2013].

the forthcoming Community Empowerment and Renewal Bill ("CER Bill") will include provisions strengthening relationships and responsibilities of partners in CPPs in order to improve accountability and ultimately enhance joint working.

11. We expect to be the lead committee for consideration of the forthcoming CER Bill and have noted that the provisions requiring joint or integrated working in the PBJW Bill and the CYP Bill are inextricably linked. They all share the overarching purpose of public sector reform.

12. Evidence taken by us generally acknowledges the desirability of better integration of services while ensuring that the approaches taken to integration across the public sector remain compatible. Evidence highlighted actions that need to be undertaken to ensure that links and relationships between the new partnerships, CPPs and Single Outcome Agreements work.

13. Consultation responses on Part 3 of the CYP Bill referred to the need for a linkage to other legislation, in particular the PBJW Bill, the forthcoming CER Bill and recent legislation on self-directed support. There was concern that between the CYP Bill and the PBJW Bill, two processes for service planning were being established. The Royal College of Nursing suggested that this showed 'little strategic thinking'[119]. Disability groups highlighted their particular concern for well integrated systems of service provision across age groups, policy areas and geographical areas.

14. Both the Cabinet Secretary and the Minster in evidence stated similar aims for their Bills, principally 'improving outcomes for service user' while recognising that the approach taken differed. The Bills, we were told, "complement one another"[120] and "will streamline structures and make it easier to see the focus for partnership working"[121].

15. The Cabinet Secretary in evidence told us that—

> "…the umbrella for all of this is the Government's guiding principles and strategic objectives, which include not only community empowerment and renewal but public sector reform, to ensure that better-quality services are delivered more cost effectively and timeously; patient-centred healthcare and social care; and, indeed, person-centred education. Those underlying principles are not restricted to my bill, Aileen Campbell's bill or Derek Mackay's community empowerment bill; they are universal and part and parcel of our broad principled agenda for changing Scotland for the better."[122]

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[119] Royal College of Nursing written submission to the Education and Culture Committee on the Children and Young People (Scotland) Bill (Submission 83): http://www.scottish.parliament.uk/S4_EducationandCultureCommittee/Children%20and%20Young%20People%20(Scotland)%20Bill/RoyalCollegeofNursingScotland.pdf [Retrieved 19 Sept 2013].

[120] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2526.

[121] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2526.

[122] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2535.

16. COSLA noted clear links between the PBJW and the integration of adult health and social care services and suggested that it was possible "some local partnerships may wish to consider the inclusion of children's services in those arrangements."[123]

17. We support the drive for public services reform and recognise the desirability of taking a flexible approach, endeavouring to identify an approach which fits the particular policy.

18. Argyll and Bute Council noted—

> "…implementation of joint working will require a major culture change for both the Local Authority and our NHS colleagues, there will need to be changes in behaviours and attitudes and a willingness to overcome obstacles, driven by strong and enthusiastic leadership. We need to improve on staff and community involvement and overcome risk aversion to achieve truly customer-led service delivery. We also face financial and logistical challenges, particularly given the rurality of our environment; however it is clear that unless we achieve both economies of scale and economies of skill, through this opportunity for joint working, we will not be able to meet the demographic-demand challenges of the future."

19. **We agree with the sentiments expressed in that comment. We would like to see a mechanism put in place to monitor and review the approaches taken to ensure that lessons can be learned across portfolios and best practice identified across the boards**. We note the submission by Audit Scotland which states that "it is essential that services are able to work well together to respond to needs whilst making the best use of existing resources and delivering high quality services."[124]

20. In the following section we consider specific system issues raised in evidence.

System issues

21. A number of 'system' issues were raised in evidence which were categorised by one witness as "strategic planning systems".[125] These included the necessity for processes to communicate well with each other and about duplication of statutory frameworks requiring multiple plans for children.[126]

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[123] COSLA written submission: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/COSLA_CYPPBJW.pdf [Retrieved 19 Sept 2013].

[124] Audit Scotland written submission to the Health and Sport on the Public Bodies (Joint Working)(Scotland) Bill, p41 (Submission PBJW0066): http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Public%20Bodies%20Joint%20Working%20Scotland%20Bill/PBJW0066_-_Audit_Scotland.pdf [Retrieved 19 Sept 2013].

[125] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2505.

[126] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2514.

22. We heard from NHS Ayrshire and Arran that—

> "A significant amount of work needs to be done to resolve the systems that we have and to ensure that we are working to a common system and a common language. In Ayrshire and Arran we have AYRshare; we hope that that will take us some way down that road, but there is still a need for the organisations that we work with—education, social work and health—to have their own systems underneath all of that. That is an industry in itself and they all have different reporting mechanisms that work within that."[127]

23. In our recent work we have increasingly been hearing about benefits accruing from co-location of buildings and people. East Ayrshire indicated that "co-location of certain services has been a really positive move".[128] Although it was made clear that while co-location is helpful, the key is improved information sharing. This is true for both electronic communications, but better yet, and more simple, by professionals talking to one another. Co-location can of course assist this process, but is not a prerequisite for conversations and information sharing to take place.

24. Written evidence from GP's at the Deep End noted that—

> "Our faith in the instrumental efficacy of technology and proliferation of process-orientated tasks should not displace what is essential to effective integration working practices, namely sustained professional relationships that are built on mutuality and trust."[129]

25. Collaboration between GPs and other partners exists on many different levels. Working collaboratively promotes a collective determination to reach objectives where sharing information and experiences contributes to a more detailed local knowledge of individual patients and their families. This is vital to planning effective support services for patients, addressing their unmet health needs and anticipating when they will need to access specialized services.[130]

26. The Cabinet Secretary indicated that he "would not like to prescribe that co-location is always a prerequisite to approving any delivery plan" before adding that "in the examples that I have seen, co-location is definitely very advantageous."[131]

27. **We welcome all moves towards co-location of services recognising local solutions are required to meet local needs. We agree with the evidence of NHS Ayrshire and Arran that—**

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[127] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Cols 2514-15.
[128] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2504.
[129] GPs at the Deep End written submission:

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/GPs_at_the_Deep_End.pdf [Retrieved 19 Sept 2013].

[130] Ibid.
[131] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2530.

> **"good communication and professionals talking to professionals to ensure that we are talking the same language and that we understand the issues will be critical to the whole process**."[132]

The role of GPs

28. The evidence we received from GPs at the Deep End highlighted the central and critical role that doctors can, and do, have with those affected by these Bills—

> "General practice is the main public service that is in regular contact with virtually the whole of the general population, with substantial cumulative knowledge and experience of people's problems and consistently reported high levels of public trust. These intrinsic features make General Practices the natural hubs around which integrated care should be based, with groups of General Practices supported, within the context of local service planning, to deliver integrated care in partnership with secondary care, area-based NHS services, social work and community organisations."[133]

29. In evidence the Cabinet Secretary was keen to stress the role that the health sector will play under the PBJW Bill and referenced work that had been commissioned by government to look at where the public health function would sit in future. **We encourage this approach and urge that the role of GPs as key partners is embedded into development, planning and delivery under both Bills**.[134]

Role for the Housing Sector [Public Bodies (Joint Working) (Scotland) Bill]

30. In evidence to us the Housing Coordinating Group made an eloquent plea for greater recognition and inclusion on the face of the PBJW Bill as a partner within integrated authorities. Suggesting that the success of the new integrated authorities—

> "'…will largely depend on effective joint strategic commissioning to which the housing sector can make a crucial contribution. The current arrangements for involving the housing sector have not produced a consistent nor adequate approach and the Bill, as it stands, could result in an 'integrated authority' deciding not to involve the housing sector as a partner. To ensure that housing issues, and the housing sector, form an integral part of contributing to the delivery of national outcomes, the HCG urges that the contribution of the housing sector be recognised within the

[132] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2518.

[133] GPs at the Deep End written submission:

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/GPs_at_the_Deep_End.pdf [Retrieved 19 Sept 2013].

[134] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2527.

> legislation, urging the new 'integrated authorities' to involve their strategic housing partners."[135]

31. Going on to say that—

> "Housing providers offer varying levels of care and/or support to vulnerable adults and older people, and have long been committed to working with colleagues in health and social care to enable people to continue living in the community rather than institutional settings. There are examples where this has happened already and the Bill could promote this approach more widely across the country. The housing sector has much to contribute to this agenda."[136]

32. The Housing Coordinating Group expressed concerns that they may not be involved by new integrated authorities at the strategic level stating that "proper engagement with the housing sector in both planning and delivery will be required."[137]

33. The Cabinet Secretary agreed it was essential that the housing sector be involved, noting that there is a stream of work ongoing—

> "…to best ensure that the housing function is involved at grass-roots level in the partnerships. It may not necessarily be the case that housing bodies are separately represented on partnership boards, but I think that the most important element is what happens in the localities underneath the partnership board area. That is where the close working relationship between health, social work and housing is vital."[138]

34. The Minister also emphasised the specific requirement to consult social landlords at section 10 of the CYP Bill when preparing a children's plan.[139]

35. **We agree that the housing sector need not be represented on partnership boards in all cases, but would expect that in situations when housing is likely to be central to the delivery of successful partnership working, they are involved at board level**.

Measuring outcomes, costs and benefits

36. Both Bills seek to set in place policies which have the aim of improving outcomes for users, carers and their families. The PBJW Bill seeks to plan and

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[135] Housing Coordinating Group written submission: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/Housing_Coordinating_Group.pdf [Retrieved 19 Sept 2013].
[136] Housing Coordinating Group written submission: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/Housing_Coordinating_Group.pdf [Retrieved 19 Sept 2013].
[137] Ibid.
[138] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2524.
[139] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2524.

deliver quality and sustainable care services. Similarly the CYP Bill through early intervention and preventative spend is also intended to produce benefits both in the short and also increasingly the long term.

37. This has challenges in measuring outcomes and benefits as Jim Carle eloquently described—

> "Public organisations are quite used to looking for short-term gains over one, two or three years, but we are not used to looking at someone who will be born today and the benefits for them or the reduction in their uptake of services in later life."[140]

38. Children in Scotland suggested "that current performance and reporting requirements are linked to earlier, specific policies and strategies and they may not reflect the shift of focus towards prevention, early intervention and the early years."[141]

39. Audit Scotland in their submission on behalf of the Auditor General for Scotland and the Accounts Commission suggested that looking ahead—

> "Any outcome measures must be transparently reported and available to the public and this information should be used to drive improvement. National measures are useful but partners also need a mechanism for ensuring local needs and priorities are met and for measuring the difference that specific services are making to the individual."[142]

40. We explored how outcomes and benefits can be measured. Witnesses agreed that numbers are available but that they focus on costs, are generally short term measuring the impacts of existing services. It is "harder to look at less tangible issues such as wellbeing in communities and longitudinal things" [143]

41. The Cabinet Secretary in response noted that outcomes are not on the face of the PBJW Bill for two reasons—

> "One is that outcomes change. The outcomes that you would set today would be very different from the outcomes that you would have set, say, five years ago. I suspect that they would also be very different from what they would be in five or 10 years' time as service provision changes—how we do things in these fields changes continually. Therefore, if you put the outcomes in the bill, you would need to introduce primary legislation every

[140] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2500.
[141] Children in Scotland written submission, paragraph 21: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/ChildreninScotland1.pdf [Retrieved 19 Sept 2013].
[142] Audit Scotland submission on behalf of the Auditor General for Scotland and the Accounts Commission, paragraph 17: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/Audit_Scotland.pdf [Retrieved 19 Sept 2013].
[143] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2508.

> time you wanted to amend them. The national outcomes will be set out in secondary legislation."[144]

42. **We are content that outcomes should not be placed on the face of either Bill for the reasons given. We draw the Scottish Government's attention to the Audit Scotland submission and we will, as part of our ongoing work in scrutinising benchmarking by local authorities, look closely at the measures introduced and crucially how they are used to learn from others and improve performance**.

The role of CPPs

43. Since we published our original report on Public Services Reform[145] the Scottish Government have advised that community planning has been significantly strengthened. Recent review work by the Accounts Commission for Scotland and Auditor General for Scotland, together with internal quality assurance processes, have identified a range of key strengths as well as some key areas for development which chime with some of our findings.[146]

44. CPPs will have key roles to play if the overarching aims of these Bills are to be realised. We note the views of Audit Scotland, on behalf of the Auditor General for Scotland and the Accounts Commission for Scotland in their submission that—

> "There is a need for a clear articulation of how these new arrangements fit with CPPs given the significant leadership and co-ordinating role for local public services that the Scottish Government/COSLA see for CPPs in their Statement of Ambition for Community Planning and Single Outcome Agreements."[147]

45. We heard in evidence how well the North Ayrshire Council CPP works with their integrated children's services partnership.[148] We note that the forthcoming CER Bill will seek to strengthen further the roles and responsibilities of partners in CPPs. **In the meantime we consider it important that the Scottish Government provide clarity around implementation of the Bills and how they fit with the role of CPPs in the new partnerships and arrangements**.

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[144] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2533.
[145] Local Government and Regeneration Committee, 8th Report 2012: *Public Services Reform and Local Government: Strand 1 – Partnerships and Outcomes* SP Paper 170 (Published 22 June 2012): http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/52672.aspx [Retrieved 19 Sept 2013].
[146] Scottish Government response to the Local Government and Regeneration Committee three strand inquiry on Public Services Reform and Local Government in Scotland (published 12 September 2013): http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/Local_Government_and_Regeneration_Committee_-_PSR_report_-_SG_response.pdf [Retrieved 19 Sept 2013].
[147] Audit Scotland submission on behalf of the Auditor General for Scotland and the Accounts Commission, page 2: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/Audit_Scotland.pdf [Retrieved 19 Sept 2013].
[148] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2501.

Consultation with service users and role of third sector

46. In our recent work we have taken a close interest in the extent to which service users are consulted and the methods used to engage them. We have been critical of engagement practices, in particular tendencies towards doing things to people as opposed to undertaking meaningful consultation. We note that neither Bill requires consultation at the level of individual service users although we were told by the Cabinet Secretary that for the PBJW Bill—

> "The planning and delivery principles in the bill encapsulate the Christie commission's principles by putting the person at the centre of service planning and delivery and require a focus on prevention and anticipatory care planning."[149]

47. We acknowledge that both Bills require levels of consultation and were pleased to be told that "it is essential that we have real engagement with local communities" [150] and of the need "for communities to inform professional practice".[151]

48. The Minister indicated that guidance will make the role of the child and family "explicitly clear".[152]

49. The Cabinet Secretary responded to criticisms we received from the third sector, for example the Coalition of Care and Support Providers in Scotland, about the lack of community involvement in the PBJW Bill at the planning, design and delivery stages. He indicated that he envisaged the third and independent sector being represented on boards in every case. Adding that involvement in service redesign and consultation exercises "will be required".[153]

50. **We note the determination of the Scottish Government to involve service users and the third sector at every stage, we recognise this need not be set out on the face of the Bills and expect guidance to make the roles of all parties clear. We are interested in what role the National Community Planning Group will have in the preparation of guidance**.

Transition arrangements for children to adult services

51. Consultation responses on the CYP Bill from both Capability Scotland and For Scotland's Disabled Children highlighted the need for good planning when young people move from children's services to adult services, or move between local authority boundaries. Young disabled people will use services planned under the CYP Bill and under the PBJW Bill.

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[149] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2521.
[150] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2505.
[151] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2510.
[152] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2525.
[153] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2529.

52. We asked the Minister how the quite different mechanisms for integrating services will improve children's transition to adult services. In response she suggested that the transition will in future be "far smoother" adding—

> "I believe that there are two big differences between dealing with children and dealing with adults. First, there is the very crucial role that the education system plays with children and for which there is no equivalent for adults, particularly older people. Secondly, children by definition do not legally have the capacity to make decisions for themselves. However, adults do and I note that there are special arrangements for adults with incapacity. The fact that these two bills cross-reference each other means that we are singing from the same hymn sheet—and that is very important." [154]

Named Person provision [Children and Young People (Scotland) Bill]

53. Although not a matter falling within our remit, we received evidence in relation to Part 4 of the CYP Bill, the Named Persons provision. **We draw to the attention of the Education and Culture Committee the exchanges which took place on the Named Persons provision at our meeting on 4 September**.[155] **In particular we highlight the concerns raised around time, burdens and resources on both health and education professionals in undertaking this role as well as questions around continuity of provision. We also draw attention to the outstanding issue of who should be the named person for children being home educated**.

54. In drawing this to attention we are not expressing any view on the substantive issue.

[154] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Col 2534.
[155] Local Government and Regeneration Committee, *Official Report,* 4 Sept 2013 Cols 2511, 2513, 2517 and 2523.

Delegated Powers and Law Reform Committee Report

Children and Young People (Scotland) Bill

1. At its meetings on 10 September and 1 October 2013 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Children and Young People (Scotland) Bill at stage 1 ("the Bill")[156]. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill ("the DPM")[157].

OVERVIEW OF BILL

3. This Bill was introduced by the Scottish Government on 17 April 2013. The Education and Culture Committee is the lead Committee.

4. In broad outline, the Bill concerns the rights and wellbeing of children and young people, and the duties of public authorities to support children, young people and their families. It places duties on the Scottish Ministers and other public authorities in line with the requirements of the United Nations Convention on the Rights of the Child, and amends the powers of the Children's Commissioner to enable investigations to be conducted in relation to individual children and young people.

5. The Bill also makes provision about the way public services work to support children and young people, by providing for a single planning approach for children who need additional support from services ("child's plans") and creating a single point of contact around every child or young person (the "named person service"). It also requires authorities which provide children's services to have a coordinated approach to planning and delivery of those services, and makes provision about the approach to assessing the wellbeing of children and young people.

6. The Bill also extends the duties of local authorities to provide early learning and childcare for pre-school age children and extends the support available to looked after children and young people leaving care. It makes provision for counselling services and other forms of assistance to be made available to parents and kinship carers, and creates a statutory adoption register for Scotland.

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[156] Children and Young People (Scotland) Bill [as introduced] available here: http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20(Scotland)%20Bill/b27s4-introd.pdf

[157] Children and Young People (Scotland) Bill Delegated Powers Memorandum available here: http://www.scottish.parliament.uk/S4_Bills/CYPB_-_Delegated_Powers_Memorandum_2.pdf

7. Finally, the Bill amends existing legislation which 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 arrangements in the areas of children's hearings support arrangements and school closures.

DELEGATED POWERS PROVISIONS

8. The Committee considered each of the delegated powers in the Bill.

9. At its first consideration of the Bill, the Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers

Section 3(2) – Authorities to which section 2 (duties in relation to the UNCRC) applies

Section 4(4) – Interpretation of Part 1

Section 7(3) – Children's services planning: power to specify services which are to be included in or excluded from the definition of "children's service" or "related service"

Section 7(5) – Children's services planning: power to modify the definition of "other service provider"

Section 8(2) – Requirement to prepare children's services plan

Section 10(1)(b) – Children's services plan: process

Section 15(1) – Guidance in relation to children's services planning

Section 16(1) – Directions in relation to children's services planning

Section 17(2)(b) – Children's services planning: default powers of Scottish Ministers

Section 19(3)(b) – Named person service

Section 32(2)(b) – Content of a child's plan

Section 33(8) – Preparation of a child's plan

Section 35(5) – Responsible authority: special cases

Section 44(2) – Mandatory amount of early learning and childcare

Section 46(2) – Duty to consult and plan on delivery of early learning and childcare

Section 47(2) – Method of delivery of early learning and childcare

Section 50(2) – Corporate parents

Section 57(1) – Guidance on corporate parenting

Section 58(1) – Directions to corporate parents

Section 60(2)(e) – Provision of aftercare to young people

Section 60 - Consequential amendment to regulation-making power in the Regulation of Care (Scotland) Act 2001

Section 61(1) – Provision of counselling services to parents and others

Section 62(1) – Counselling services: further provision

Section 64(2) – Assistance in relation to kinship care orders

Section 65(2)(c) – Orders which are kinship care orders

Section 66(3) – Kinship care assistance: further provision

Section 68 – Scotland's Adoption Register

Inserting section 13B(2) into the Adoption and Children (Scotland) Act 2007 – Power of direction

Section 68 – Scotland's Adoption Register

Inserting section 13E(2) into the Adoption and Children (Scotland) Act 2007 – Power of direction

Section 71 – Appeal against detention of child in secure accommodation

Inserting section 44A(3) into the Criminal Procedure (Scotland) Act 1995

Section 74(6) – Assessment of wellbeing

Section 77(1)(b) – Subordinate legislation

Section 78(a) – Ancillary provision

10. At its meeting of 10 September the Committee agreed to write to Scottish Government officials to raise questions on the remaining delegated powers in the Bill. This correspondence is reproduced at Annexes A and B [these annexes are available in the full version of the report].

11. In light of the written responses received by the Committee, it agreed that it did not need to draw the Parliament's attention to the following delegated powers:

Section 13(1)(b)(ii) – Reporting on children's services plan

Section 17(6) – Children's services planning: default powers of Scottish Ministers

Section 30(2) – Interpretation of Part 4 (provision of named persons)

Section 32(2) – Content of a child's plan

Section 37(5) – Child's plan: management

Section 68 – Scotland's Adoption Register
Inserting section 13E(1) into the Adoption and Children (Scotland) Act 2007 – Power to make regulations

Section 78(b) – Ancillary provision

Section 79(2) - Commencement

12. The Committee's comments and, where appropriate, recommendations on the other delegated powers in the Bill are detailed below.

55. **Section 28(1) – Guidance in relation to named person service**

Power conferred on: **The Scottish Ministers**

Power exercisable by: **Guidance**

Parliamentary procedure: **None**

Section 29(1) – Directions in relation to named person service

Power conferred on: **The Scottish Ministers**

Power exercisable by: **Direction**

Parliamentary procedure: **None**

Provision
13. Sections 28(1) and 29(1) confer power on the Scottish Ministers to issue guidance and directions to service providers about the exercise of named person service functions under the Bill. Service providers are health boards, local authorities and the directing authorities of independent or grant-aided schools. The principal function of service providers is to make an identified individual (a named person) available in relation to every child or young person. That individual will have responsibilities in relation to the wellbeing of the child or young person.

Comment

14. The Committee asked the Scottish Government whether it considers that it would be appropriate to publish guidance or directions issued under these powers, in light of the potential impact of the named person service on children or young people and their families.

15. The Scottish Government responded that it does consider it appropriate and therefore intends to publish guidance and, if relevant, directions under the powers in sections 28(1) and 29(1) of the Bill.

16. The Committee welcomes the commitment to publication given by the Scottish Government. However, in addition to the intentions of the current administration as regards use of delegated powers, the Committee requires to consider how those powers might be exercised from time to time by future administrations. In that light, the Committee concludes that it would be appropriate for the Bill to impose a duty on the Scottish Ministers to publish guidance and directions under sections 28(1) and 29(1).

17. **The Committee therefore asks the Scottish Government to consider bringing forward amendments at Stage 2 to require publication of any guidance or directions issued by the Scottish Ministers under the powers contained in sections 28(1) and 29(1).**

18. **The Committee asks for further comment on this in the Scottish Government's response to this report.**

Section 39(1) – Guidance on child's plans

Power conferred on: **The Scottish Ministers**

Power exercisable by: **Guidance**

Parliamentary procedure: **None**

Section 40(1) – Directions in relation to child's plans

Power conferred on: **The Scottish Ministers**

Power exercisable by: **Direction**

Parliamentary procedure: **None**

Provisions

19. Section 39(1) enables the Scottish Ministers to issue guidance to any person in connection with that person's functions under Part 5 of the Bill, while section 40(1) enables Ministers to issue directions to local authorities, health boards and directing authorities.

20. Part 5 of the Bill provides for a child's plan to be created for every child with a wellbeing need which is considered to require targeted intervention. 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. A child's plan is to be prepared and managed by the responsible authority. Depending on circumstances, that authority will be a local authority, health board or the directing authority of an independent or grant-aided school.

Comments

21. The powers in sections 39(1) and 40(1) raise similar issues to those raised by sections 28(1) and 29(1), discussed above. The Committee accordingly asked the Scottish Government whether it considers that it would be appropriate to publish guidance or directions issued under these powers, in light of the potential impact of the exercise of functions relating to child's plans on children and their families.

22. The Scottish Government responded that it does consider it appropriate and therefore intends to publish guidance and, if relevant, directions under the powers in sections 39(1) and 40(1) of the Bill.

23. The Committee welcomes the commitment to publication given by the Scottish Government. However, as above, the Committee requires to consider how delegated powers might be exercised from time to time by future administrations. In that light, the Committee concludes that it would be appropriate for the Bill to impose a duty on the Scottish Ministers to publish guidance and directions under sections 39(1) and 40(1).

24. **The Committee therefore asks the Scottish Government to consider bringing forward amendments at Stage 2 to require publication of any guidance or directions issued by the Scottish Ministers under the powers contained in sections 39(1) and 40(1).**

25. **The Committee asks for further comment on this in the Scottish Government's response to this report.**

Section 43(2)(c)(ii) – Duty to secure provision of early learning and childcare

Power conferred on:	**The Scottish Ministers**
Power exercisable by:	**Order**
Parliamentary Procedure:	**Negative**

Provision

26. Section 43(2)(c)(ii) enables the Scottish Ministers by order to prescribe additional categories of children who are eligible for the mandatory amount of early learning and childcare. (Section 43 itself specifies one category of child eligible for such childcare, being a child aged 2 or over who is, or has been at any time since their 2nd birthday, looked after or subject to a kinship care order).

27. The Explanatory Notes to the Bill and the DPM state that it is likely that the power will be used to specify that 3 and 4 year olds will be eligible for early learning and childcare from the first term after their 3rd birthday in a similar way in which the current law does by virtue of the order made under section 1(1A) of the Education (Scotland) Act 1980 (which the Bill amends).

Comment

28. The Committee asked the Scottish Government to explain why it considers it appropriate that an order setting the eligibility criteria for early learning and childcare is subject to the negative procedure.

29. The Scottish Government explained that the power is part of a longer term ambition to increase and improve early learning and childcare for all children, and that there is pressure to increase the categories of eligible children in a number of directions. The power in its current form offers maximum flexibility to enable work towards that longer term ambition.

30. The Scottish Government stated that it agrees with the Committee that the setting of eligibility criteria for early learning and childcare is a matter of substance with a significant impact on children. However, in its view that does not necessarily mean that it is appropriate to make the power subject to the affirmative procedure. The Scottish Government considers that the circumstances are such in this case that the negative procedure is appropriate.

31. The reason the Scottish Government gives in support of that view is that the power will not modify the provision made about eligibility in the primary legislation. The Committee notes however that this is simply because a choice has been made not to include the eligibility criteria on the face of the Bill (other than in relation to children aged 2 or over who are, or have been, looked after or subject to a kinship care order). That in the Committee's view is not a good reason to avoid detailed Parliamentary scrutiny. In carrying out its scrutiny of delegated powers, the Committee considers the substance of the provision to be made, as well as whether it involves modification of primary legislation.

32. The Committee also notes that, in contrast, the power in section 44(2) of the Bill to modify the mandatory amount of early learning and childcare (i.e. the annual number of hours to be provided) is subject to the affirmative procedure, as is the power in section 47(2) to modify the way in which an education authority must deliver early learning and childcare. The initial mandatory amount of early learning and childcare, and the method of providing it, are set out on the face of the Bill in sections 44 and 47 respectively.

33. The Scottish Government explains that "the potential effect of [the powers in section s44(2) and 47(2)] could mean a significant change to the infrastructure and funding of early learning and childcare and therefore it is appropriate that those powers are afforded a more detailed level of scrutiny in the form of affirmative procedure". It appears to the Committee however that an increase in the numbers of children eligible for early learning and childcare by virtue of specifying additional categories of eligible children under the power in section 43(2)(c)(ii) could have a

similarly significant effect on education authority infrastructure and funding. Accordingly the explanation given does not appear to provide a strong basis for distinguishing between the various powers.

34. More generally, it is not clear to the Committee that amending the number of hours of early learning and childcare to which eligible children are entitled is any more significant than setting and amending the categories of children who may access that entitlement. The setting of eligibility criteria might be thought to be of equal, if not greater, significance.

35. The Committee concludes that specifying categories of children who are entitled to early learning and childcare is in the nature of a substantive matter which might be expected to attract the affirmative procedure. While the current policy intention is that the power will be used to specify 3 and 4 year olds, it may of course be used to make different provision in the future. The Scottish Government response refers to pressure to increase the categories of eligible children to include, for example, 2 year olds living in deprivation, 2 year olds who have a disability or additional support needs, or all 2 year olds. These appear to be significant matters which it is anticipated Parliament may wish the ability to debate in full.

36. **The Committee therefore asks the Scottish Government to consider in advance of Stage 2 of the Bill whether the significance of setting eligibility criteria by order under this power is such that the affirmative procedure is a more suitable level of Parliamentary scrutiny of the exercise of this power than the negative procedure.**

37. **The Committee asks for further comment on this in the Scottish Government's response to this report.**

Section 61(3) – Provision of counselling services to parents and others

Power conferred on: **The Scottish Ministers**

Power exercisable by: **Order**

Parliamentary Procedure: **Negative**

Provision

38. Section 61(3) enables the Scottish Ministers by order to specify the description of "eligible child" for the purposes of section 61(2). That section provides that the parents of, or persons with parental rights and responsibilities in relation to, an eligible child will be eligible for counselling services.

Comment

39. On considering the power, the Committee was content in principle with the exercise of the power by subordinate legislation. However, it sought further explanation of the choice of the negative procedure.

40. The Scottish Government explains that, in its view, changes to the description of "eligible child" are unlikely to be controversial and consequently it would not be

good use of Parliamentary time to initiate a debate on each occasion the power is used. It states that any change to eligibility would most likely be to extend eligibility rather than narrow it, therefore improving the provision of counselling services to parents and others and ensuring the Government continues to meet the needs of children and families in need.

41. The Scottish Government's response also explains that, given the nature of the counselling services provided in each area, no change to provision could be effected without substantial consultation and engagement with the service providers and users across each local authority area, which would be undertaken by the Scottish Government. The Committee notes however that there is no requirement on the face of the Bill for such consultation or engagement.

42. The Committee also notes that the Scottish Government's response overlooks the fact that the power enables the Scottish Ministers not merely to change or extend the eligibility criteria, but to set down the initial eligibility criteria. "Eligible child" is not defined on the face of the Bill, so the power, if used, will be used to specify the initial eligibility criteria. The Committee is prepared to accept that if changes to the criteria are unlikely to be controversial, then the initial setting of the eligibility criteria may also be uncontroversial. However it does not consider that the Government has fully explained why the matter is unlikely to be controversial.

43. Moreover, while the current policy intention is to use the power to set and then potentially extend eligibility, rather than narrow it, the Committee requires to consider the use to which the power could potentially be put in the future. While it accepts the Government's explanation (in paragraph 26 of Annex B) that the eligibility of the parents or carers of certain children for counselling services is not perhaps as fundamental as the provision of aftercare to formerly looked-after children (which is enabled by provision made in section 60(2) of the Bill), it is clearly a matter which may be of significance to the affected individuals. That suggests that the affirmative procedure may be appropriate for the exercise of the power in section 61(3). It is not the sort of power to make operational or technical provision which the Committee might normally expect to attract the negative procedure.

44. **The Committee therefore asks the Scottish Government to consider in advance of Stage 2 of the Bill whether the significance of setting eligibility criteria by order under this power is such that the affirmative procedure is a more suitable level of Parliamentary scrutiny of the exercise of this power than the negative procedure.**

45. **The Committee asks for further comment on this in the Scottish Government's response to this report.**

Section 64(4) – Assistance in relation to kinship care orders

Power conferred on: **The Scottish Ministers**

Power exercisable by: **Order**

Parliamentary Procedure: **Negative**

Provision
46. Section 64(4) enables the Scottish Ministers by order to specify the description of an "eligible child" for the purposes of the kinship care assistance provisions.

Comment
47. On considering the power, the Committee was content in principle with the exercise of the power by subordinate legislation. However, it sought further explanation of the choice of the negative procedure.

48. As in relation to the power at section 61(2) discussed above (provision of counselling services for parents and carers of eligible children), the Scottish Government's view is that changes to the description of "eligible child" are unlikely to be controversial and consequently it would not be good use of Parliamentary time to initiate a debate on each occasion the power is used. It states again that any change to eligibility would most likely be to extend eligibility rather than narrow it, therefore ensuring the Scottish Government continues to meet the needs of children living in kinship arrangements.

49. Again, the Scottish Government's response also explains that no change to the eligibility description specified would be effected without substantial consultation and engagement with the service providers and users across each local authority area, which would be undertaken by the Scottish Government. The Committee notes however that there is no requirement on the face of the Bill for such consultation or engagement.

50. The Committee notes again that the Government response overlooks the fact that the power enables the Scottish Ministers not merely to change or extend the eligibility criteria, but to set down the initial eligibility criteria. The Committee is prepared to accept that if changes to the criteria are unlikely to be controversial, then the initial setting of the eligibility criteria may also be uncontroversial. However it does not consider that the Government has fully explained why it considers that the matter is unlikely to be controversial.

51. Moreover, while the current policy intention is to use the power to set and then potentially extend eligibility, rather than narrow it, the Committee requires to consider the use to which the power could potentially be put in the future, and the impact which eligibility, or lack of eligibility, for certain assistance would have on those affected. While it accepts the Scottish Government's explanation (in paragraph 28 of Annex B) that the eligibility of children, young people or their carers for kinship care assistance may not be as fundamental as the provision of aftercare to formerly looked-after children (which is enabled by provision made in section 60(2) of the Bill), it is clearly a matter of significance. Depending on how it is specified in an order

under section 64(2) of the Bill, kinship care assistance will potentially confer significant benefits on those entitled to it, and may include the provision of counselling, advice, financial support and access to council services.

52. The Committee is accordingly of the view that the issue of eligibility is a substantive matter which Parliament would expect to have the opportunity to debate. In its view, the Scottish Government has not explained why it considers eligibility for kinship care assistance to be of a technical, administrative or other non-controversial nature, such that the negative procedure might be appropriate. From the information available to the Committee, it appears to be a matter for which Parliament's approval should be required.

53. **The Committee therefore asks the Scottish Government to consider in advance of Stage 2 of the Bill whether the significance of setting eligibility criteria by order under this power is such that the affirmative procedure is a more suitable level of Parliamentary scrutiny of the exercise of this power than the negative procedure.**

54. **The Committee asks for further comment on this in the Scottish Government's response to this report.**

Section 68 – Scotland's Adoption Register

Inserting section 13A(1) into the Adoption and Children (Scotland) Act 2007

Power conferred on: **The Scottish Ministers**

Power exercisable by: **Arrangement**

Parliamentary procedure: **None**

Provision

55. Section 68 of the Bill inserts section 13A(1) into the Adoption and Children (Scotland) Act 2007. It requires the Scottish Ministers to make arrangements for the establishment and maintenance of Scotland's Adoption Register. Section 13B(1) provides that such arrangements may in particular authorise an organisation (a "registration organisation") to perform the Scottish Ministers' functions in respect of the Register, and provide for payments to be made to that organisation.

Comment

56. The Committee asked the Scottish Government why it is considered appropriate to authorise a registration organisation to perform the Scottish Ministers' functions in respect of the Register, and to provide for payments to be made to that organisation, by way of arrangements rather than in subordinate legislation.

57. The Scottish Government explained that there is an organisation which currently operates a non-statutory adoption register in Scotland and the Scottish Ministers may consider it appropriate to authorise this organisation to carry out their

functions in relation to the Register once the Bill is enacted, given that the organisation has the relevant skills and experience which may be required. For this reason, it is considered that it would be more appropriate to make the authorisation by arrangement as opposed to in subordinate legislation. The Scottish Government's response does not say, but the Committee presumes that this is considered to be a more appropriate way of delegating authority because the organisation is not a statutory body or other public authority. The Committee notes that it would nevertheless be possible for subordinate legislation to delegate functions to an organisation such as a charity or private company.

58. The Scottish Government adds that funding arrangements are already in place for this non-statutory register and that these may be used as a basis for the arrangements for the funding of the new register. It is not therefore considered appropriate to provide for payments to the registration organisation by way of subordinate legislation. Again, the Committee accepts this explanation but considers that it would have been possible to replicate the existing funding arrangements in subordinate legislation, if considered appropriate.

59. As regards publication of the arrangements once they have been made by the Scottish Ministers, the Scottish Government states it expects that the details will be made available on the website of Scotland's Adoption Register.

60. The Committee notes that it appears that the power in section 13A(1) as read with section 13B(1)(b) would enable arrangements to be made requiring payments to the registration organisation by third parties as well as by the Scottish Ministers. If an arrangement is to be capable of imposing liability to make payments on persons other than the Scottish Ministers, the Committee considers that the arrangements should be clear and accessible to those who may be affected.

61. More generally, the Committee notes that any arrangements made under the power will potentially authorise the registration organisation to perform all the Scottish Ministers' statutory functions relating to the Register (other than the function of making subordinate legislation). This will include the potentially significant functions of receiving information for inclusion in the Register, and disclosing information from it. The exercise of those functions has the potential to substantially affect those individuals concerned.

62. In the interests of transparency and accountability therefore, the Committee would have expected at the very least that a duty be imposed on the Scottish Ministers to publish details of the arrangements once made.

63. **The Committee accordingly draws the attention of the lead committee to the power in section 13A(1) as read with section 13B. This power proposes to enable the Scottish Ministers, by arrangements, to delegate their functions in respect of the Register (other than their function of making subordinate legislation) to a registration organisation. It also proposes to enable the Ministers, by arrangements, to provide for payments to be made to such an organisation, which may include payments by persons other than the Scottish**

Ministers. The Committee considers that any arrangements which impose liability for payment should be clear and accessible to those affected by them.

64. **The proposal is that this delegation of functions and the making of provision about payments to the organisation be achieved without the need for subordinate legislation or parliamentary procedure, and without any requirement for publication of the arrangements entered into.**

Section 68 – Scotland's Adoption Register

Inserting section 13A(2) into the Adoption and Children (Scotland) Act 2007

Power conferred on: **The Scottish Ministers**

Power exercisable by: **Regulations**

Parliamentary Procedure: **Affirmative**

Provision

65. As referred to above, section 68 inserts section 13A into the Adoption and Children (Scotland) Act 2007 (the 2007 Act), which requires the Scottish Ministers to make arrangements for the establishment and maintenance of a register to be known as Scotland's Adoption Register. Section 13A(2) provides that the Scottish Ministers may by regulations prescribe information or types of information to be included in the Register. Examples are given of the types of information which may be included. The power also enables the Scottish Ministers to provide for how information is to be retained in the Register, and to make such further provision in relation to the Register as they consider appropriate.

66. Section 13C expands the purposes for which regulations under section 13A(2) may be made. It enables provision to be made in connection with the supply of information for the Register from adoption agencies to the Scottish Ministers or to a registration organisation authorised on the Ministers' behalf. It also enables further provision to be made in connection with specified matters relating to the supply of such information.

67. Section 13D provides that regulations under section 13A(2) may also make provision about the disclosure of information from the Register. Information may be disclosed to adoption agencies or to other persons specified in the regulations, for certain specified purposes (including any purpose relating to adoption). The power also enables further provision to be made in connection with specified matters relating to the disclosure of such information.

Comment

68. The Committee asked the Scottish Government why the Bill does not define what information the Register is to contain or make provision about what it is to be

used for, and why the wide powers taken in section 13A(2) to make provision about the Register are not limited or defined in any way.

69. It also asked for further explanation regarding in what way it is currently anticipated the Register may alter and extend beyond containing information about children and adopters, as referred to in the DPM.

70. The Scottish Government submits that although the Bill does not define the information which the Register is to contain, it is clear from the types of information which may be included in the Register (as provided for in subparagraphs (i) to (v) of section 13A(2)(a)) that the information will all relate in some way to children who are considered suitable for adoption, or to prospective adoptive parents. The Committee notes however that the list of types of information referred to is an illustrative list of examples only, and that the power is wider than that and may be used to prescribe other information or types of information.

71. Moreover, the Committee considers that the Scottish Government has not explained what the Register is to be used for. It appears that the purpose of the Register is likely to be to facilitate adoption in some way, but this is not made clear on the face of the Bill. Were section 13A to define or make provision about the purpose or intended use of the Register, the Committee considers that that would go some way to limit the very broad powers in section 13A(2) to make regulations about the Register.

72. The Scottish Government also considers that paragraphs (a), (b) and (c) of section 13A(2) limit or restrict the power to a certain extent (see paragraphs 29 and 30 of Annex B). As stated above, paragraph (a) provides a non-exhaustive list of information which might require to be included in the Register. The Committee accepts that this provides a guide to the intended use of the power, but not a limitation or restriction on its use. Given that the policy intention is that the information to be provided will relate in some way to children who are considered suitable for adoption, or to prospective adoptive parents, the Committee considers that the power conferred by paragraph (a) should be restricted to that extent.

73. As regards paragraph (b), the Committee accepts that paragraph is limited to enabling provision to be made about how information is to be stored. The Committee disagrees however with the Scottish Government's view that it is clear from paragraph (c) that regulations will be restricted to making provision about "other administrative matters associated with the operation of the Register". Paragraph (c) confers a broad power to make such further provision in relation to the Register as the Scottish Ministers consider appropriate. If the intention in taking the power is, as stated, to enable provision to be made about administrative matters associated with the operation of the Register, then the Committee considers that the power has been drawn too widely. Its terms should be restricted to give effect to the more limited policy intention.

74. As regards the intention that the Register may alter and extend beyond containing information relating to children and adopters, as referred to in the DPM, the Scottish Government explains that there are no current plans for such an

extension (although the type of information required about children and adopters may be extended in future). The Committee welcomes this clarification regarding the current intention, but considers that the power in section 13A(2)(a) as currently drafted would allow information to be prescribed for inclusion in the register which goes beyond information concerning children suitable for adoption and potential adopters. It therefore repeats its conclusion above that the power should be restricted to the prescribing of information concerning children considered suitable for adoption and prospective adopters, if that is the policy intention.

75. The Committee also asked the Scottish Government to provide reasons for taking powers in section 13C to make provision about the supply of information to the Register, and in section 13D about the disclosure of information, in regulations under section 13A(2).

76. The Committee welcomes the explanation of these powers which the Scottish Government has provided. The reason given in relation to the power to make provision about the supply of information under section 13C is to enable the Scottish Ministers to prescribe the detailed processes for operating the Register. The Committee accepts that much of the information which may be prescribed under section 13C relates to operation of the Register. However it considers that prescribing the information which an adoption agency must disclose to the Scottish Ministers or to a registration organisation (section 13C(1)), and prescribing persons other than parents or carers whose consent may be required to the disclosure of information (section 13C(2)(a)(ii)) are substantive rather than operational matters. Nonetheless, it notes that the regulations will be subject to the affirmative procedure and considers that this confers a sufficient degree of scrutiny on the Parliament in relation to the more substantive matters.

77. The reason given in relation to the power to authorise disclosure of information under section 13D is that the power will be used to prescribe detailed information which it is not considered appropriate to make provision for in the Bill. In light of the fact that the purposes for which information may be disclosed under those regulations is, for the most part, set out on the face of the Bill, the Committee considers that explanation to be acceptable.

78. **The Committee therefore accepts in principle the power under section 13A(2), as supplemented by sections 13C and 13D, to make regulations in relation to Scotland's Adoption Register. It is also content with the choice of the affirmative procedure for those regulations. However, it asks the Scottish Government to consider bringing forward amendments to section 13A at Stage 2 to make provision about the purpose or intended use of the Register, in order to inform the broad power in section 13A(2) to make regulations about the Register and the information which it is to contain.**

79. **The Committee also asks the Scottish Government to consider bringing forward amendments at Stage 2 to restrict the terms of the power in section 13A(2)(a) to reflect the stated intention in taking the power, which is to enable information or types of information relating to children considered suitable for**

adoption, or to prospective adopters, to be prescribed for inclusion in the Register.

80. **The Committee also asks the Scottish Government to consider bringing forward amendments at Stage 2 to restrict the terms of the power in section 13A(2)(c) to reflect the stated intention in taking the power, which is to enable provision to be made about other administrative matters associated with the operation of the Register.**

81. **The Committee asks for further comment on these matters in the Scottish Government's response to this report.**

Section 74(3) – Assessment of wellbeing

Power conferred on: **The Scottish Ministers**

Power exercisable by: **Guidance**

Parliamentary procedure: **None**

Provision

82. Section 74(2) contains a list of indicators with reference to which a person required by the Bill to assess the wellbeing of a child or young person is to carry out such an assessment. Section 74(3) requires the Scottish Ministers to issue guidance on how those indicators are to be used to assess wellbeing.

Comment

83. Once again, this power to issue guidance raises similar issues to those discussed earlier in this report in relation to sections 28(1) and 29(1), and 39(1) and 40(1). The Committee asked the Scottish Government whether it considers that it would be appropriate to publish guidance on how the wellbeing indicators are to be used by those with functions under the Bill to assess the wellbeing of a child or young person.

84. The Scottish Government responded that it does consider guidance on wellbeing indicators an appropriate mechanism to set out further detail, therefore it is the intention for guidance to be published.

85. For the reasons discussed earlier in this report in relation to the powers in sections 28(1) and 29(1), and 39(1) and 40(1), the Committee concludes that it would be appropriate for the Bill to impose a duty on the Scottish Ministers to publish guidance issued under section 74(3).

86. **The Committee therefore asks the Scottish Government to consider bringing forward amendments at Stage 2 to require publication of any**

guidance issued by the Scottish Ministers under the power contained in section 74(3).

87. **The Committee asks for further comment on this in the Scottish Government's response to this report.**

Education and Culture Committee

26th Meeting, 2013 (Session 4), Tuesday, 8 October 2013

Children and Young People (Scotland) Bill

Supplementary Evidence Submissions

The following supplementary written submissions have been received—

Education and Culture Committee

Children and Young People (Scotland) Bill

Supplementary evidence on Part 7 & Part 8 of the Children and Young People (Scotland) Bill from Barnardo's Scotland, Who Cares? Scotland and Aberlour Childcare Trust

Barnardo's Scotland, Who Cares? Scotland and Aberlour Childcare Trust all highlighted in their oral evidence the potentially very positive impact of Part 7 and Part 8 of the Children and Young People (Scotland) Bill on outcomes for young people leaving the care system. We have therefore prepared this supplementary evidence on this part of the bill, to provide additional detail for the committee's consideration on the points we raised. We all welcome the Scottish Government proposal to increase from 21 to 26 the age limit for young people leaving care to have a right to be assessed for aftercare, and the proposal that corporate parents also have a responsibility to those who have been in care. However, we would like to see elements of what is currently proposed clarified, strengthened and improved.

1) Strengthening the current proposals

As well as the more transformative changes laid out below, there are a series of improvements that could be made to the current proposals in the bill to ensure that the proposed extension of eligibility for aftercare is available to all those that need it, and that the needs of care leavers are more effectively recognised. These include:

- Aftercare should be available to all care leavers who need it, regardless of care setting. At the moment financial support as a part of aftercare is normally limited to young people who have been looked after and accommodated. Given the particularly poor outcomes for children looked after at home, it should be made clear that all care leavers will be treated equally in the proposed assessment of need.

- A key issue for care leavers is the lack of continuity in the relationships they have developed in care when they leave care. Section 51 of the draft bill states that the responsibilities of corporate parenting cover those who have been in care, and section 52 sets out what these responsibilities are. There should be a new duty in section 52 to ensure relationships with care professionals built up when a child is in care are maintained when young people leave care, to ensure these relationships can be used to access support, guidance and services, as dictated by the young person, up to the age of 26.

- At the moment aftercare is available to young people if they are in care at school leaving age, which can be any point between 15 years 8 months and 16 years 3 months. This means a young person can leave care at 16 but still not be eligible for any aftercare, because they had not reached school leaving age when they left care. This should be simplified to ensure aftercare is available to all young people in care on their 16th (or 18th – see part 2) birthday. This should be mirrored in clause 51 (b) (ii) of part 7 in terms of the corporate parenting responsibilities.

- The eligibility criteria for aftercare need to be widened to also cover children who have spent several years in care, even if they are not in care at school leaving age

(or 16/18th birthday). At the moment one young person can be in care for the first 15 years and 6 months of their life, but have an entitlement to aftercare, while another young person can be in care for 3 months before school leaving age and be entitled, under the proposals in this bill, to a decade of aftercare support. Being in care for a number of years should lead to an entitlement to aftercare. As first step, if a child has spent at least two years in care by the age of 11, or has been in care for at least 13 weeks after that point, they should be eligible for assessment for aftercare. This should also be mirrored in clause 51 (b) (ii) of part 7 in terms of the corporate parenting responsibilities.

- There needs to be a disputes resolution process, with advocacy support, in cases where there is a difference between a local authority's assessment of the support it needs to give a young person and the young care leavers assessment of the support they need to receive. The framework for this process needs to be laid out on the face of the bill. This should be mirrored in clause 51 (b) (ii) of part 7 in terms of the corporate parenting responsibilities.

- The death of a young person receiving aftercare should trigger a significant case review, in the same way that it would for a child in care.

2) Raising the normal age of leaving care

At the moment aftercare eligibility starts at school leaving age i.e. immediately before or after the young person's 16th birthday. However section 75 of the draft bill states that 'child' means 'a person who has not yet attained the age of 18 years'. We believe that aftercare should start when young people stop being children, and the normal minimum age of leaving care should be 18. Changing the eligibility criteria, as described above, would play a major role in this, allowing for a longer term planning process for children in care. Young people who do choose to leave care before they turn 18 should be able to return directly to care if they wish. Statutory reporting and monitoring of this change would also be required, along with staff training and development, especially around transition and working effectively with older young people.

3) Transforming aftercare to continuing care

Section 51 of the bill makes it clear that corporate parents have a continuing responsibility to young care leavers under the age of 26. This is entirely appropriate, given that most young people now do not leave their parental home until their mid-twenties. Rather than a model of care for those under 16 (or 18) followed by a period of 'aftercare', we want to see a move to a system of 'formal care' for *children* under the age of 18, followed by a period of 'continuing care and support' for young *adults* who have been in care.

This would be part of a process of transforming aftercare into a much stronger form of continuing care, which combines the continuation of support and the continuation of the strong relationships that young people in care have come to rely on. We recognise that this transformation is an ambitious task, and will take years to deliver. However there are some key elements of the bill that could be amended, clarified and improved to help facilitate this transformation.

The name of part 8 and section 60 should be changed from describing 'aftercare' to better reflect a model of continuing care for young adult care leavers.

At the moment the proposed new section 5A of the 1995 Act set out in section 60 (2) (c) of the draft bill appears to give complete discretion to local authorities to determine what support they offer young care leavers who are deemed to have eligible needs. This needs to change, to avoid a postcode lottery of provision. We recognise that many local authorities are working very effectively to deliver support to formerly looked after young people, and provisions for minimum standards of aftercare in this bill would build on good work that is already being done, and encourage good practice to be taken up by all local authorities and other corporate parents.

Scottish Ministers should have the power to set minimum standards for the delivery of advice, guidance and support offered by local authorities to young adult care leavers. These standards should be about norms of support, based on a set of codified rights in areas such as accommodation, employment, education and health, rather than a model based around detailed needs assessments. A ‘reasonableness’ test would be the appropriate way to deal with situations where there were different expectations of support between the care leaver and the local authority..

In the drawing up of guidance around advice, guidance and support, Scottish Ministers should engage with young care leavers and the organisations they work with to help create a vision of what services provision should look like, in line with the vision of a move from aftercare to continuing care would like. Local authorities and other corporate parents should also work together to provide a dedicated continued care provision in relation to accommodation, employment, education and health services.

Education and Culture Committee

Children and Young People (Scotland) Bill

Royal College of Nursing

1. In advance of taking evidence from the Minister for Children and Young People and officials at your next Committee meeting, I'm writing to clarify some points regarding health visiting made during the Education and Culture Committee's considerations of the Children and Young People (Scotland) Bill, and the Finance Committee's considerations of the Financial Memorandum.

2. Firstly, I would like to build on a figure provided to the Finance Committee during their evidence session on 18 September 2013. Our Policy Advisor said that, based on the assumptions made by the Scottish Government regarding the number of additional health visitor hours required to deliver the Named Person function for aged 0 – 5, we have calculated that around 450 new health visitors would be required. The figure of 450 takes into account the need for annual leave, sickness etc, which equates to 22.5% - the standard figure used by the Scottish Government to calculate workforce numbers.

3. However, this does not mean we think that Scotland only requires an extra 450 health visitors. This figure is based purely on the Scottish Government's health visitor hours estimate for Named Person duties and does not take into account the fact there is already a shortage of health visitors in many parts of the country, and that many health visitors are already overburdened with existing duties and caseloads. Also, the health visitor workforce is ageing and there are insufficient numbers of health visitors in training to replace those who will be retiring in the next few years.

4. Secondly, there is nothing in the Financial Memorandum that sets out the cost for training nurses to become qualified health visitors, nor is it clear where funding for this would come from. This would be a significant cost which needs to be addressed by the Scottish Government, both in relation to the additional health visitors required to deliver Named Person duties, and in relation to the current more general shortage of health visitors.

5. Finally, I would like to reiterate our call for health visitors to be the Named Person for children aged 0 – 5 (following discharge from maternity services), and that this, together with a commitment to a universal health visiting service, should be made explicit in the Children and Young People (Scotland) Bill. This is the position of all of our health visiting campaign partners: Scotland's Commissioner for Children & Young People, Children in Scotland, Parenting across Scotland, Queen's Nursing Institute Scotland, Royal College of General Practitioners, Community Practitioners and Health Visitors Association/Unite, and the Centre for Confidence and Wellbeing.

Theresa Fyffe
Director

Education and Culture Committee

Children and Young People (Scotland) Bill

Information Commissioner's Office (Scotland)

1. Given the information sharing provisions of the Children and Young People's Bill ("the Bill"), and as regulator of the Data Protection Act 1998 ("the DPA"), the (UK) Information Commissioner's Office has been following the oral evidence sessions at Stage 1 of the Bill with interest. We were disappointed not to have been invited to give oral evidence to Committee as we would have been able to clarify many of the points raised by Members, witnesses and within written contributions. Instead, and to assist the Committee in the compilation of its Stage 1 report, I would like to take this opportunity to respond in writing to some of these matters.

Legislative Competency

2. A number of contributors have questioned the competency of information sharing aspects of the Bill on the grounds that (a) the proposals may infringe Article 8 rights and (b) data protection is a reserved matter. Compliance with human rights legislation should be considered within the Privacy Impact Assessment which is currently being updated by the Scottish Government but it would be appropriate to give it more detailed consideration with a Children's Rights Impact Assessment as advocated by many parties including SCCYP and the SHRC.

3. With regard to data protection, the Scotland Act 1998 reserves "*The subject-matter of (a) the Data Protection Act 1998, and (b) Council Directive 95/46/EC (protection of individuals with regard to the processing of personal data and on the free movement of such data)*" to Westminster. Whilst in our written evidence we have indicated where the Bill does not comply with the principles of the DPA and must be amended accordingly, the Bill does not in itself modify the DPA. In this regard, it is important to note that paragraph 133 of Schedule 2, Part 1 of The Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999, amended the DPA to specifically include processing necessary for functions conferred on any person by an Act of the Scottish Parliament as a condition for processing under Schedules 2 and 3 of the DPA. In other words, sharing information as required under the provisions of the Bill and in accordance with the data protection principles, is allowed under the DPA.

Section 27

4. Section 27 of the Bill states that "*The provision of information under this Part is not to be taken to breach any prohibition or restriction on the disclosure of information"* and in our written evidence to the Committee, we indicated that we felt this section was strictly unnecessary as legal protection would be given whenever lawful sharing was taking place under the provisions of the Bill in compliance with the data protection principles. At the same time, we recognised that it may provide some reassurance to those professionals engaged in information sharing.

5. In the light of Professor Norrie's comments regarding the wider implications of this section given in his oral evidence to the Committee on 3 September, we have given

this section further consideration and we support his view. As written, the section would override all statutory bars on the disclosure of information, many of which have been enacted in order to give children protection and it may also have implications for the independence of the judiciary where court orders prohibit disclosure. We would therefore urge that the content of this section is reconsidered.

Access to Information by Parents

6. In the oral evidence session held on 10 September, you raised a question regarding parents' right of access to information held by the named person. One of the most important rights accorded under the DPA is an individual's right to request copies of information held about them. In addition, section 66 of the DPA states that, in Scotland, persons under the age of 16 shall be taken to have the capacity to exercise DPA rights if they have a general understanding of what it means to exercise that right and that a person aged 12 or over should be presumed to have that capacity. Taken together, this means that there are a number of scenarios to consider in response to your question.

   *1) The parent requests copies of information held about **themselves** by the named person*

   Under this scenario, the parent should normally be supplied with the information. However, because that information may also reveal something about the child, consideration has to be given to the impact on the child if disclosure took place and any duties of confidentiality owed to the child.

   *2) The parent requests copies of information about **their child aged under 12***

   Under this scenario, it is necessary first to determine if the child has the capacity to understand its rights under the DPA. Where the child has that capacity, then scenario 3 applies. Where the child does not have capacity, the parent should normally be supplied with the information whilst taking into account any duties of confidence to the child or other consequences of disclosing the information.

   *3) The parent requests copies of information held by the named person about **their child aged 12 or over***
   Under this scenario, consent to disclose should be sought from the child. If the child does not have the capacity to understand its rights under the DPA, then scenario 2 applies.

7. The ICO has recently published a Subject Access Code of Practice which provides more detail about responding to Subject Access Requests and includes further guidance on the disclosure of third-party personal information. In addition, you should be aware that parents have separate rights of access to their child's educational records under The Pupils' Educational Records (Scotland) Regulations 2003 but these Regulations are outwith the jurisdiction of the ICO.

Information Sharing

8. In our written evidence, we stated that it is important to note that the provisions of the Bill should not be interpreted as meaning that all information should be shared between

the named person and agencies. We also note that several witnesses are concerned that such an interpretation may be held by some parties. We would therefore reiterate the need to have strong data-sharing protocols adopted by the relevant agencies and it may be appropriate to include a section within Part 4 of the Bill requiring such protocols to be prepared. These protocols should be supported by Regulation and/or guidance as appropriate.

9. Finally, some evidence has been submitted expressing concern over our guidance to practitioners which stated if professionals believe that there is a risk to children which may lead to harm then that information should be shared proportionately. In giving that advice, which has been welcomed in oral evidence by practitioners such as Martin Crewe (17 Sept) and Bill Alexander (24 Sept), we stressed the need to have procedures in place that clarify circumstances which may necessitate processing without consent. In relation to the Bill, we must reiterate the need to ensure that all information sharing takes place in accordance with the data protection principles (as we stated in our written evidence and others have implied, the Bill as currently drafted does not comply with these principles, particularly in relation to the relevancy of information being shared). Whilst guidance may assist practitioners in determining what is relevant, it is still necessary to amend the Bill to ensure its compliance with the DPA.

10. I trust that the above is of assistance to you but please do not hesitate to contact me if you require further clarification of those or any other issues raised during the passage of the Bill.

Ken Macdonald
Assistant Commissioner (Scotland & Northern Ireland)
Information Commissioner's Office

Education and Culture Committee

Children and Young People (Scotland) Bill

UNICEF UK

1. UNICEF UK was pleased to be invited by the Education and Culture Committee to give oral evidence on the Children and Young People (Scotland) Bill on 1 October. This paper provides supplementary written evidence following that session, in order to clarify and expand upon a number of points arising from Committee members. It builds upon and should be read in light of our written submission to the Committee dated July 2013.

2. The strongest formulation of children's rights and the most powerful force for implementation within a nation comes through the direct incorporation of the UN Convention on the Rights of the Child (UNCRC) into domestic law. The UN Committee on the Rights of the Child explicitly stated in its General Comment on the implementation of the UNCRC that it "welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments in some but not all States. Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice".[1] The UN Committee's preference for incorporation was reiterated in its concluding observations on the UK in both 2002 and 2008.

3. International comparative research undertaken by UNICEF UK in 2012 looked at different legal approaches to implementing the UNCRC.[2] We found a number of useful models from the countries we explored that provide a foundation for Scotland to build on. For instance, Norway added the UNCRC to its Human Rights Act in 2003 to sit alongside the European Convention on Human Rights – this was a critical point in the implementation of the CRC in Norway and prompted the further integration of children's rights principles across other legislation. In Belgium, while the UNCRC became part of their domestic law on ratification and sits above statute law, more recently a decision was taken to formally incorporate children's rights into the constitution and support this through a comprehensive process of child rights impact assessment. In Spain, although the 1978 constitution gave protection to children's rights and the ratification of the UNCRC in 1990 made it part of domestic law, an additional law in 1996 established legal rights for children in accordance with the UNCRC. This enshrined certain civil rights and the primacy of best interests in Spanish law. There are also examples in other countries of legislative approaches to implementing the UNCRC, with regional constitutions in German Länders enshrining child rights, a constitutional amendment in Ireland to incorporate Article 3 (best interests), the introduction of key features of the UNCRC into the South African Constitution and, nearer to home, the introduction of a duty on Welsh Ministers to give due regard to the UNCRC when exercising all of their functions.

4. One of the challenges often referred to in debates on giving legal expression to the UNCRC is the perceived difficulty of enshrining economic, social and cultural rights into law given their "aspirational" nature. However, these rights in the UNCRC are substantial

[1] UN Committee on the Rights of the Child (2003), *General Comment 5: General Measures of Implementation of the Convention on the Rights of the Child*

[2] http://www.unicef.org.uk/Documents/Publications/UNICEFUK_2012CRCimplentationreport.pdf

and well-articulated, governed by the principle of progressive realisation – an expectation that governments will implement these rights to the maximum extent of their available resources while ensuring a minimum standard is met for all children. Economic, social and cultural rights are also critical in addressing inequalities that disproportionately impact on children. The UN human rights system recognises all rights – whether civil and political, or economic, social and cultural – as universal, indivisible and interdependent. The UN Committee on Economic, Social and Cultural Rights is clear that certain rights are capable of immediate judicial protection (for example, non-discrimination, equal rights, and free and compulsory primary education provision), and it is our experience that others can be made so with sensible drafting. Judges already deal with resource and reasonableness principles on a daily basis in Scotland and the UK; in other countries, South African judges are already adjudicating on economic, social and cultural rights to prescribed limitations due to changes in the written constitution. And in practical drafting terms, the UK Child Poverty Act 2010 offers a good example of where such rights are already part of our legislative order.

5. UNICEF UK has welcomed the way in which Parliamentarians have engaged in the debate over incorporation during Stage 1 of the Bill, and we have been pleased to see the level of support for children's rights across all sectors in Scotland. Going forward, and with a view to achieving a sustained and meaningful change for every child, we would like to see a detailed roadmap from Scottish Government on the further implementation of the UNCRC – through both legal and non-legal measures. This could include, short of direct incorporation, progress on strengthening the proposed Ministerial duties (to require compatibility or, at the very least, due regard), the incorporation of the general principles of the UNCRC into Scots law for all children[3], duties on public authorities to implement the UNCRC to give children's rights real strength at the local level, and an explicit constitutional recognition of children's rights.

6. Returning to the Children and Young People Bill itself, it is essential that the proposed Ministerial duties and the GIRFEC child rights framework are underpinned by mechanisms that will support those making decisions affecting children to systematically consider (and therefore better implement) the UNCRC. We urge the Committee to consider how the experience in Wales of rolling out a mandatory child rights impact assessment process (CRIA)[4] and of creating an implementation scheme to drive the delivery of the due regard duty across Welsh Government can be usefully adapted to the Scottish context. Since the Rights of Children and Young Persons (Wales) Measure was passed in 2011, Welsh Government has reported increased engagement of children in shaping and developing both policy and legislation; more accessible information being produced for children, including on the Welsh Government Budget; specific changes to policy and legislation as a result of child rights impact assessment; and the beginnings of a cascading effect of the duty at local level through policy, guidance and cultural change. That this momentum has

[3] The general principles of the UNCRC - non-discrimination in the application of rights; the best interests of the child; the right to life, survival and development; and the right to express views and be heard – are substantive rights as well as overarching principles through which other rights should be interpreted.

[4] CRIA are in place in a range of countries - nationally, in Wales, Sweden, Norway and Belgium, and locally/regionally in Australia (Melbourne), Canada (New Brunswick – on all policies and legislation since early 2013), Ireland, and New Zealand. CRIA is also a tool recognised and used by the World Bank in its Child Focused Analyses related to its Poverty Strategy Impact Assessment, and the EU is now using a CRIA in relation to overseas development aid (supported by UNICEF).

continued apace for several years and shows little sign of slowing is as much the result of the strong legal framework and implementation scheme in place as the genuine political and public commitment to respecting and protecting children's rights.

7. In closing, we refer the Committee to legal opinions commissioned by UNICEF UK from Aidan O'Neill QC on the relationship between the UN Convention on the Rights of the Child and the Scotland Act 1998, and from James Wolffe QC on the relative merits of the rights provisions in Part 1 of the Children and Young People Bill. We also support the points made by Scotland's Commissioner for Children and Young People in his supplementary written evidence setting out the benefits of incorporation.

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Clerk to the Education and Culture Committee
Room T3.40
Scottish Parliament

7 October 2013

Dear Terry,

Thank you for the letter from the Education and Culture Committee on 2 October about the Children and Young people (Scotland) Bill. Responses to each of the questions are below:

Part 1 – Rights of children

What parts of the UNCRC could not be incorporated into Scots law because they are outwith devolved competence?

The Scottish Government considers that the following provisions of the UNCRC ('the Convention') fall within the category of provisions that are outwith devolved competence:-

(i) article 2 – equalities/equal opportunities
(ii) article 3 – insofar as the actions concerning children relate to reserved matters;
(iii) article 7 – insofar as relating to nationality;
(iv) article 8 – insofar as relating to nationality;
(v) article 10 – entry to/exit from a State;
(vi) article 11 - insofar as this provision relates to the establishment of bilateral or multilateral agreements;
(vii) article 17 – in part;
(viii) article 22 - insofar as concerned with the granting of refugee status. It would be competent to take certain measures in relation to individuals who are seeking asylum;
(ix) article 26 – social security;
(x) article 35 – insofar as this provision concerns the establishment of national, bilateral or multilateral measures;
(xi) article 38 – insofar as the issues concern membership of the armed forces.

The Scottish Government is of the view that the terms of the Convention do not readily translate into legal obligations that are directly enforceable in the domestic courts but recognises that insofar as within devolved competence it would be possible to pass legislation that gives effect to the principles outlined in the Convention.

The obligations imposed upon State Parties in terms of Part II of the Convention do not appear to the Scottish Government to be compatible with the legislative competence of the Scottish Parliament hence the limited definition of the term "the UNCRC requirements" which focuses on only Part I of the Convention, not Parts II or III.

Which parts of the UNCRC are not in Scots law but could be incorporated within devolved competence? For each part, why has the Scottish Government chosen not to incorporate?

Insofar as the provisions of the Convention relate to matters falling within the legislative competence of the Scottish Parliament, it is the Scottish Government's view that Scots law is compatible with the principles underlying the Convention. However, it must be remembered that domestic legislation does not, in our view, always necessarily represent the best way to further the Convention's principles and that is why our approach to implementation focuses not only on changes to the law where that is appropriate but also on changes in policy as well as improvements in frontline practice.

How will the reports produced under Part 1 of the Bill differ from the reports that the Scottish Government already provides as part of the UN committee process?

The reports prepared under Part 1 of the Bill will be prepared by Scottish Ministers and the authorities listed in Schedule 1 to the Bill. The report by Scottish Ministers will be submitted to the Scottish Parliament and will specify what steps the Scottish Ministers have taken to secure in Scotland better or further effect of "the UNCRC requirements". The report by other authorities will contain similar provisions. Scottish Ministers must also report on what they have done to promote public awareness and understanding of the rights of children. There is a requirement to report every 3 years. The Scottish Ministers, and in practice also the relevant authorities, will be answerable to the Scottish Parliament for the fulfilment of the duties specified in the report.

Article 44 of the UNCRC places an obligation on State parties, which in this case means the United Kingdom, to report to the Committee on the Rights of the Child, on the measures adopted in the relevant State to give effect to the rights recognised in the UNCRC, and the progress made on the enjoyment of these rights. Such a report is made to the UN Committee, not the Scottish Parliament, and concerns measures adopted in the United Kingdom, either by the UK Government or the relevant Devolved Administrations where appropriate. This report is therefore broader in scope, covering both devolved and reserved matters, than what is proposed in Part I of the Bill. Although Devolved Administrations contribute for their interests to the UK

report, and may seek to influence its content, it is the United Kingdom Government in its capacity as the State party that determines the final terms of the Report.

Part 2 – SCCYP

Whether the Scottish Government agrees that section 5(2) (regarding 7(5)) would allow the Commissioner to undertake a general complaints handling function in the manner described by Tam Baillie on 1 October, or whether it should be interpreted more narrowly?

The Scottish Government has consistently stated that the new powers being extended to the Children's Commissioner are not intended to replace or duplicate the function of any other organisation involved in responding to concerns raised by or on behalf of a child, whether at local or national level.

In terms of current practice, we know through our discussions with the Children's Commissioner that approximately 400 enquiries for support are made to his office each year, most of which are dealt with through the provision of information, guidance and signposting to the relevant complaints process. On occasion, the Commissioner may also support the child in raising their issue with a local service provider. It is then for the service provider to work with the child and their family to respond to the issue raised. Clearly, it is in the best interests of children if such issues can be resolved swiftly through relevant local complaints processes.

We accept that the proposed new power linked to individual investigations is likely to result in an increase in this type of enquiry and we agree it is important that this service continues to be delivered to those children and families who approach the Commissioner's office. We must also recognise the resource implications associated with an increase in enquiries.

I am aware that the Children's Commissioner has shared with the Committee his view that the Bill provides new powers to intervene in cases prior to local complaints processes being exhausted. In his evidence, Mr Baillie cited section 5(2)(c) of the Bill as being of relevance in this respect. The explanatory notes which accompany the Bill describe the purpose of section 5(2)(c) as follows:

Subsection 2(c) amends section 7 of the 2003 Act to provide for the Commissioner to resolve a matter which could properly form the basis of an individual investigation without the need for a formal investigation. Such a step might be taken by the Commissioner where it is felt that an issue can be addressed satisfactorily without having to exhaust the investigatory process.

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

With regards to the types of cases which might reasonably be covered by an individual investigation, we understand that this is still the subject of some consideration by the Commissioner and his office. However, we have been assured by the Commissioner and other complaints handling bodies that there are instances where the new power could usefully add value. Our own view, as stated in the Financial Memorandum, is that investigations will be relatively few and far between. They may consider aspects of practice in the public, private and third sector so long as this would not duplicate the functions of another body. Whilst difficult to predict in the abstract, we would suggest that there may be scope for the Commissioner to intervene in instances where, for example:

- A public authority is under no statutory obligation to take account of a child's views and has failed to do so when reaching a decision that will affect them. It may be reasonable for the Commissioner to highlight in such circumstances that, as a matter of best practice, the child's views should be heard and taken account of in all decisions affecting them. Such an investigation could set a useful precedent for future practice.
- A private company delivering services to the public (perhaps for profit) has failed to take account of a child's rights. One example may be a company involved in the delivery of public transport services.
- A third sector organisation which is delivering an independent, unregulated service to children or families in the community has failed to take account of a child's rights. A service could cover, for example, parenting and family support, advice and information services, substance misuse projects, advocacy and a wide range of other community based initiatives.

Ultimately it will be left to the Commissioner to determine the matters which require investigation. The Parliament will of course have oversight of investigations as part of their sponsorship responsibilities in respect of the Commissioner.

Whilst the financial estimates linked to these provisions may seem disproportionate to the number of investigations, it is important to remember that the outcome of such investigations could potentially influence broader practice and ultimately prevent other children from having their rights infringed in future.

Part 3 – Children's services planning

The Committee has received a petition (PE1440) calling for the Bill to place a duty on local authorities to provide sufficient and satisfying play opportunities for children of all ages and abilities. Could Part 3 of the Bill be used to take the provision of play opportunities into account?

'Play' is a key part of a child's wellbeing, and the Scottish Government would see it covered by the definition of wellbeing set out in the Bill. This includes reference to 'Active', 'Achieving' and 'Inclusive', all issues that involve 'play' and so remain at the heart of the Children and Young People (Scotland) Bill. Moreover, we would anticipate that the children's services planning duties, set out in Part 3 of the Bill, would encompass the contributions that Local Authorities, Health Boards and other relevant service providers can make to supporting play opportunities for children.

This will be addressed in the guidance associated with the planning duties, particularly in the description of the 'children's services' to be covered by the Bill.

Part 4 – Provision of named persons

In the course of its two previous inquiries, the Committee has heard considerable concerns about the ability of different public bodies to share information electronically. What plans does the Scottish Government have to improve electronic sharing of information across all those services relevant to GIRFEC?

The Scottish Government has encouraged and supported Local Authorities, Health Boards and other partners to form the Information Sharing Board. The Board's priorities include supporting the Children and Young People Bill and Getting it Right for Every Child.

The Board is funding local information sharing initiatives to help improve the sharing of information across services delivering GIRFEC. The budget is in excess of £1.5m in 2013-14 and £2m in 2014-15. It is also funding a project specifically to deal with sharing information across partnership boundaries.

National minimum data sets for a child's plan are currently being agreed to improve consistency in recording and storing information

Can you clarify whether, under section 19(3), a named person could be drawn from the voluntary and private sector on the basis that they provide a function on behalf of the health board or local authority?

Section 19(3) means that an individual can be identified to act as Named Person if they are an employee of a person who exercises any function on behalf of the service provider (i.e. Health Board, Local Authority or directing authority). That could include voluntary/private sector organisations who exercise such functions. This provision is necessary because, for example, in the Highland Council area, where the Named Person service is already operating, the Health Visitor service is now provided by the Local Authority, rather than the Health Board. Health Visitors are normally the Named Person in respect of pre-school children. But the duty to provide the Named Person service in respect of pre-school children lies with the Health Board, who remains the "service provider" for such children. As such, it is necessary to have a specific provision in the Bill which allows the Named Person to be someone other than a direct employee of the service provider. In addition, there are instances where private midwifes and nurses are contracted to provide health services and the provision is also required to cover this situation.

If so, how does this connect with section 26, which appears only to allow information to be provided to the service provider by a service provider or relevant authority – would this mean that if a named person was in a contracted-out service then there would be no duty to share information with them?

Section 26(7) of the Bill caters for such circumstances:

"References in this section to a service provider or a relevant authority include any person exercising a function on behalf of a service provider or relevant authority."

Section 26(7) aims to ensure that, where provision of the Named Person service is contracted out, the provisions related to information sharing which apply in respect of Local Authorities, Health Boards and directing authorities would also apply to contracted-out bodies exercising functions on their behalf.

One of the stated advantages of having a named person is that it would be much clearer who needs to be contacted where there is a concern about a child. How will that advantage be ensured if the named person changes during the school holidays?

When the Named Person is not contactable during the school holidays, the Local Authority will be required to make arrangements for the Named Person service to be provided. This means that there will always be a member of Education Services staff available to deal with any concerns from families or others.

For example, the process for handling concerns during school holidays in Highland is:

Where there are child protection concerns during the school holidays, the person with the concern should alert the Social Work department or the Police, who will then take action as appropriate.

Where new concerns for a child's wellbeing arise during the school holidays, these can be passed on to a member of staff in the Area Education Office who will note the concern, access the child's education record and consider whether immediate action is required. If no immediate action is required, the information relating to the wellbeing concern will be passed to the Named Person on their return.

For those children who have an Education single agency plan, a discussion will be held at the last review before the school holiday about how the plan will be continued after the holiday. Education plans will relate to concerns that exist in the Education setting, and there will not usually be a need for contact with the Named Person during the school holidays.

How is the named person an improvement on the current situation where a lack of continuity exists for families that have frequent home moves?

Section 23 of the Bill applies to the movement of children and young people. Section 23(2) places a duty on the outgoing service provider (i.e. the Health Board or Local Authority in the original area) to inform the incoming service provider (i.e. the new Health Board or Local Authority) with information that is relevant to enable the new Health Board or Local Authority to provide a service, including the Named Person service. Moving from one Local Authority to another and one Health Board to another would therefore initiate the appointment of a new Named Person. This would not require the parents' consent but they would be informed that they have a new Named Person, and how to contact them. Good practice would be that the

outgoing Named Person would discuss with the parents the information that they plan to share with the new Named Person. The effect of this provision will be that the new Named Person will be given relevant information about the child that will enable them to support the transition to the new area. Where a child has a Child's Plan, the plan will be shared with the new Named Person and Lead Professional, and will be reviewed following the move.

What is the rationale for providing for a named person for each child/young person after school-leaving age?

Most young people who have left school will have the skills and knowledge to express their views and reach decisions. Some, especially those with complex needs, will still require help and support. The Bill will ensure that appropriate arrangements are in place at Local Authority level for children who have left school before the age of 18. The role of the Named Person in these circumstances will be a point of contact for the young person; to provide information and advice; and where appropriate, link the young person into resources and support networks which currently exist for those young people who have left school but need further assistance.

In evidence to the Committee, Bill Alexander suggested that "the named person would support early interventions but as soon as more than one agency got involved the co-ordinating role would move to a lead professional". What would be the criteria for when a lead professional would be expected to take over responsibility from the named person?

Where concerns about a child or young person's wellbeing require to be addressed by co-ordinated intervention from more than one service or agency, then a Lead Professional can be identified to take on that co-ordinating role. The Named Person will either take on the role of Lead Professional themselves, or will agree with the partners involved in supporting the child / young person, who is most appropriate to take on the lead professional role to manage the multi-agency Child's Plan. The Lead Professional may be drawn from any of the services or agencies who are partners to the Child's Plan. The choice of Lead Professional will be dependent on the needs of the child and the interventions and outcomes identified within the child's plan.

Bill Alexander also stated that "if we are legislating for the child's plan why can we not legislate for the lead professional who prepares the more complex child's plans?" Why has the role of the lead professional not been included in the Bill?

The Named Person is located within the universal services of health and education and we can place a statutory responsibility on those bodies to make arrangements to provide a Named Person. The Lead Professional will the person who is best placed to address the more complex needs the child, and so can be drawn from any service; they will not necessarily be located within health or education. It is, therefore, difficult to place a duty on an individual body to make the arrangements for the Lead Professional.

The duty to cooperate and arrangements around the Child's Plan provides a statutory backing to sort out protocols across agencies in a Community Planning Partnership to ensure local arrangements are agreed. What is important is that public bodies agree the arrangements and make sure they work well. This is an area where guidance is more appropriate alongside legislation.

Part 5 – Child's plan

A targeted intervention is defined as an intervention provided by a relevant authority (section 31(4)). Does this mean that the child's plan will not be able to provide for support that is delivered by third sector organisations?

Third parties will be able to deliver targeted interventions where these are part of arrangements entered into with either the Local Authority, Health Board or directing authority (as it is technically that body that is 'providing' the targeted intervention, albeit through commissioned arrangements).

In relation to the child's plan, how will any disputes between families and professionals be resolved?

Disputes between professionals should be resolved locally whenever possible using existing Health Board and Local Authority dispute resolution procedures. Guidance will set out the need to have these in place and the requirement that they are visible and accessible to children and parents.

If disputes cannot be resolved locally, we want redress for children/young people and families to be accessible, clear and quick and are currently considering how best to achieve that. Using legislation is one of the ways that may be appropriate.

Part 6 – Early learning and childcare

It has been suggested, for example by Children in Scotland, that the commencement of three year olds entitlement for free childcare means, in practice, that a child can receive less than their full entitlement depending on their birthdate. Can you respond to these concerns and indicate whether the Scottish Government intends to take any action on the matter?

Current entitlement to pre-school education is set out in the Provision of School Education for Children under School Age (Prescribed Children) (Scotland) Order 2002 (SSI 2002/90). This Order prescribes the starting points for entitlement as the Autumn, Spring or Summer term following a child's third birthday until the end of the term immediately before they are first eligible to attend primary school. Children starting their first year of pre-school education will therefore receive one, two or three terms depending upon when their birthday falls. All children will receive 3 terms during their second year of pre-school education.

Those children born in January or February (who may only receive one term in their first year of pre-school education) will remain entitled to an extra year after their second year of pre-school education if their parents wish. Those children will

generally be starting primary school younger (around 4 1/2) than others without this extra year.

Those children born between September to December and who start their pre-school education in the Spring term following their third birthday will potentially receive two terms in their first year of pre-school education. Those children will be closer to 5 years in age at the time of starting school (4 ¾ to 4 years and 11 months) and it is unlikely that those children would want to be held back from starting primary school with an extra year of pre-school education following their second year of pre-school education.

The policy intention is to continue this entitlement through secondary legislation made under the Bill. Local Authorities can and do deliver beyond the minimum statutory hours and the minimum eligible children. Some Local Authorities already commence entitlement closer to the child's third birthday, e.g. from their third birthday; or, within a month of the child's third birthday. Even where a child receives their entitlement closer to their third birthday, there will be slight variations in the amount.

We would encourage Local Authorities to use this power to commence closer to the child's third birthday where they have the capacity to do so; or, where expansion or increased flexibility within the system allows. The immediate priority of this Bill is to build on the high quality system of early learning and childcare that we have; expand those hours and improve flexibility; and introduce an entitlement for our most vulnerable 2 year olds. This is a first step towards the development of a wider early learning and childcare system that meets the needs of **all** children, parents and families; and, provides a consistent learning journey through early learning and childcare, primary school and beyond.

Part 7 – Corporate parenting

Can the Scottish Government explain the interaction between the corporate parenting duties of the local authority under section 52 of the Bill with their duties to looked after children under the Children (Scotland) Act 1995 and the duty in section 73 of the Bill to promote the wellbeing of looked after children?

Section 73 of the Bill seeks to insert a new section 23A into the Children (Scotland) Act 1995 ("the 1995 Act") so that where a Local Authority is exercising a function under or by virtue of section 17 of the 1995 Act (in relation to looked after children) or section 22 of that Act (in relation to children in need) they must have regard to the general principle that those functions should be exercised in a way which is designed to safeguard, support and promote the children's wellbeing.

The Corporate Parenting duties set out in the Bill are wholly complementary to existing provisions in the 1995 Act and new section 23A to be inserted by the Bill. They strengthen the existing person-centred approach to address concerns quickly and effectively to improve the wellbeing of looked after children and formerly looked after young people. The provisions clarify the role and empower the wider public sector to provide looked after children and formerly looked after young people with support that closes the gap in outcomes between them and their non-looked after

peers. It further underpins the objective of having a single system of service planning and delivery across children's services. At the heart of this is the responsibility of all corporate parents to collaborate.

All measures setting out corporate parenting duties are consistent with the GIRFEC approach; with the child at the centre, encouraging streamlining and cooperation to eliminate unsatisfactory delays that can occur when services work in isolation from each other.

Schedule 4 sets out a wide range of public bodies that would become corporate parents. Why has the list of bodies been drawn so widely, and is there a risk that, as the Scottish Children's Reporter Association suggests, this could dilute the concept of corporate parenting and the role of local authorities in its delivery?

Schedule 3 sets out the list of corporate parents, which was purposely drawn widely from the public sector to encompass as many organisations as possible that have a key role in the decision making processes that affect our looked after children and formerly looked after young people. The policy preference is not to create different tiers of corporate parent but to unify the level of responsibility placed on these organisations - no matter what their role is - in collaborating to ensure the highest level of service planning and delivery is attained by all corporate parents and the third sector organisations who deliver services for them.

We have confidence in the organisations currently identified in schedule 3 to effectively discharge their responsibilities under the provisions in the Bill without compromising their core statutory functions. Section 52 states that these duties are to be exercised by corporate parents "in so far as consistent with the proper exercise of its other functions". We continue to engage with all organisations who have feedback to offer on the corporate parenting duties as the Bill progresses through Parliament.

Section 50(2) of the Bill allows the Scottish Ministers to, by order, modify schedule 3 to add, remove or vary the entries listed so that, for example, if it turns out that an organisation no longer has a legitimate role as a corporate parent then they can be removed from the schedule. We hope all Corporate Parents can be reassured in this regard.

Part 9 – Counselling services

The use of the term counselling has been said to refer to specific professional practices. Why has this term been used, and what is it taken to include?

'Counselling' means helping people to adjust or deal with personal problems, etc, by enabling them to discover for themselves the solution to the problems while receiving sympathetic attention from the counsellor. The Scottish Government does not consider that this is limited to counselling by those holding particular professional qualifications. The types of services that will be available will be set out in secondary legislation, following consultation with stakeholders and will make it clear the range of services that will be made available to families and the Scottish Government will

also publish guidance on the subject. The Scottish Government is of course happy to reflect on any concerns that there are services which should be capable of being included within Part 9 but which might not properly fall within the term 'counselling'.

Is it the Scottish Government's intention that the regulations under this Part of the Bill will restrict the eligibility to counselling services to situations where kinship care is a possibility?

No. The intention of counselling services is to ensure families in the early stages of distress who seek help are provided with appropriate forms of counselling. 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 coming into care. It is intended to act as an early and effective intervention to support parents and where appropriate, can promote the role of a kinship carer.

Part 10 – Support for kinship care

Can you respond to the concerns raised by kinship carer organisations in evidence to the Committee on 24 October that the provisions in the Bill will not adequately support kinship carers?

The kinship proposals within the Bill are intended to support **a specific group** of kinship carers who have, or go on to, obtain existing residence and parental responsibilities and rights orders, where the child is eligible. The Kinship Care Order provides an additional option in terms of securing permanence for children who can't live with their birth parents and for the first time, makes statutory provision in relation to support, thereby offering more support than is currently available in these circumstances.

The precise balance of new rights and needs-based support will be determined in secondary legislation following consultation with key stakeholders including Local Authorities and groups representing kinship carers of which the Scottish Kinship Care Alliance is one . We consulted on the following forms of assistance:

- Financial and practical support with the court petition;
- A start-up grant of £500;
- Transitional support where a kinship care order leads to a child ceasing to be looked after and financial, practical or in-kind support to meet the requirements of a section 11 Contact Order;
- Free Early Learning and Childcare provision for any 2 year old subject to a kinship care order.

Support for kinship carers of **looked after children** is being looked at separately through the Kinship Care Financial Review, which is looking at tailoring support and tackling inconsistencies in the provision of support across Scotland. Recommendations from this review are likely to be announced by the end of the year.

Much of the detail in Part 10 will be provided in regulations. Are you able to provide details of what would constitute an eligible child, and the type of assistance that will be prescribed under regulations? What are the Government's plans for consulting on the regulations?

Engagement with stakeholders on secondary legislation for Parts 9 & 10 has already started. Kinship carers, kinship care groups and other key stakeholders such as Local Authorities and third sector organisations have an opportunity to feed into shaping this secondary legislation. The intention is that an eligible child will be one whose wellbeing would be at risk of being impaired – in particular where they are at risk of coming into care, if the kinship care assistance is not made available. We anticipate that assistance will include financial & practical support with court applications, start-up grants, transitional support for children coming out of a care setting and Early Learning and Childcare from the age of 2.

Will families who currently have a section 11 order automatically receive a kinship care order, or will they need to reapply?

Kinship carers that currently have a section 11(1) order, which gives them the right to have the child living with them & those who have a residence order, if they are a qualifying person (i.e. related to the child, a friend or acquaintance of a person related to the child or such other relationship as may be specified by order), will automatically have a Kinship Care Order. Assistance will then need to be sought from the Local Authority by the kinship carer and will be provided if the child is an eligible child.

Could you clarify what support would be available under the regulations to a kinship carer who already has a section 11 order?

Currently there is no specific statutory support for kinship carers with an existing section 11 order. However, kinship carers with existing residence orders and parental responsibilities and rights orders (section 11 orders) will automatically be deemed to have a Kinship Care Order and will be able to access support from their Local Authority as any other kinship carer who applies for a Kinship Care Order would.

Support available under the Kinship Care Order for those with existing section 11 orders will be set out in Secondary Legislation, consultation for which has already started. We anticipate that support will include access to help and support from social work services, who will be able to determine the best form of therapeutic intervention for the circumstances of the family, Early Learning and Childcare from the age of 2 and access to counselling services, if the child is an eligible child.

Can you clarify whether local authorities will be expected to continue to make payments under current discretionary routes (s.22 and s.50) and, if so, could this provide an ongoing financial allowance irrespective of any support provided under this Bill?

There is no specific expectation that local authorities will make payments to kinship carers under s22 or s50. The Kinship Care Order provides the carer with some or all

parental responsibilities and rights and will be recognised as any parent would be within the benefits system. Therefore, the kinship carer can claim the same benefits such as Child Benefit and Child Tax Credit as any parent would.

However, s22 and s50 place a duty on a Local Authority to safeguard, promote and maintain a child, regardless of legal status, within their area who is in need. Assistance from s22 and s50 can also include goods and services, as well as discretionary payments. Therefore, assistance may be provided through s22 and s50 to eligible children under a kinship care order irrespective of any other support being provided.

The Kinship Care Order does not alter formal carers' existing entitlements to allowances – these are subject of a separate review by the Scottish Government.

Will there be a requirement placed on local authorities to provide financial support for families with a kinship care order or will that be based on an assessment? If so, how will that assessment take place?

There will be a requirement on Local Authorities to make sure kinship care assistance is made available for kinship carers in their area if the child they are caring for is eligible. Secondary legislation will specify the description of the child that is eligible, it will specify when or how a Local Authority is to consider whether a child is eligible and it will specify the types of assistance that will be available.

It is anticipated that transitional support, including financial support, will be provided for a period 3 years to kinship carers when the child they care for ceases to be looked after and they move onto a kinship care order. After the 3 year transitional period, the kinship carer can continue to seek assistance under their kinship care order from the Local Authority if the child remains an eligible child.

Part 11 – Adoption register

What evidence is there for the need for an element of compulsion in the statutory adoption register?

Whilst the Scottish Government is pleased with the initial progress of the current non-statutory adoption register, we are clear that it must be designed and built to help find the maximum number of opportunities for every child for whom adoption is in their best interest. If a child cannot be matched locally, it is important to ensure that there is no unnecessary drift and delay in a child being potentially matched to adopters outside the Local Authority. This means every adoption agency must refer both children and approved adopters in a timely way.

We are aware from engagement with adoption agencies, BAAF and other stakeholders that some adoption agencies are reluctant to refer their prospective adopters to the Register (even though they cannot currently match them with any children locally). This was explicitly recognised by BAAF (in their Scotland's Adoption Register's submission) where they recognised that "there may be some benefits to mandatory referral in relation to the availability of adoptive families as a resource for all children waiting for a new family" and they acknowledged they were aware that

"some local authorities have not been keen to allow their waiting adopters to access opportunities afforded them through Register services preferring to hold on to them 'just in case' they need them for a local child". We envisage that the statutory requirement on adoption agencies to use the Register will address this issue and increase the Register's effectiveness.

Both England and Wales are also currently pursuing separate legislative routes for establishing their respective Adoption Registers in statute in recognition that this will help to increase their Registers' effectiveness.

I hope this response fully answers the questions from Committee. Please let me know if there is any further information required.

Yours sincerely,

Elisabeth Campbell
Bill Team Leader
Children and Young People (Scotland) Bill

Education and Culture Committee

26th Meeting, 2013 (Session 4), Tuesday, 8 October 2013

Scrutiny of the Draft Budget 2014-15

Supplementary Evidence Submissions

The following supplementary written submissions have been received—

Education and Culture Committee

Scrutiny of the Draft Budget 2014-15

Skills Development Scotland

The Committee asked what percentage of MAs had retained employment with their employers or had gone on to new employment.

Response:

MA Outcomes Survey 2012 – MA Destinations

An extensive programme of research relating to MAs was undertaken during 2012-13. This included an MA Outcomes Survey (published in January 2013). This was an independent telephone survey of 2,000 MAs in Scotland, who had left their MA around six months previously. The responses included some MAs who had completed their apprenticeship and some who had not.

The survey showed that 92% of MAs who completed their MA were in work around six months later. 70% of these were with the same employer, 20% with a different employer and 2% were self employed. The survey revealed that 86% of all MA leavers, including non achievers, were still in work six months after completing or leaving their MA.[1]

SDS intends to undertake further surveys of trainees and employers as part of overall planning of evaluation and research on MAs as set out in the SDS Customer Research and Evaluation Plan 2013-16.[2] SDS recognises the ongoing value in tracking MA outcomes and to this end, we are currently examining a data linkage project with the Scottish Government, which would aim to match our internal data on MA leavers with information from other public authorities, to provide a better overall picture of outcomes and destinations.

The Committee asked whether there would be any benefit in having a more formal process for keeping in contact with and tracking people who have not successfully completed the modern apprenticeship.

Response:

The completion rate for MAs compares favourably with other forms of learning. In 2012-13 77% of MAs completed their training.[3] When a MA leaves the programme and does not complete, this may be for a variety of reasons and is often not connected with the programme of learning. Common reasons for leaving the MA early, as identified from the MA Outcomes Survey, include an offer of better employment (19%), poor support/relationship with employer (13%), redundancy 15%. Trainees may also not complete due to personal or health reasons (including

[1] http://www.skillsdevelopmentscotland.co.uk/media/538953/ma_outcomes_report_-_29jan13_-_final__1_.pdf
[2] http://www.skillsdevelopmentscotland.co.uk/media/824363/evaluation_and_customer_research_plan_2013-16.pdf
[3] This is a correction to the 79% stated in the SDS submission to the Education & Culture Committee on the Scrutiny of the Draft Budget 2014-15.

prison), or perhaps to move on to a different direction of training or study. The SDS MA Survey (published February 2012) showed that nine out of every 10 apprentices knows who to contact for support with their MA[4]. SDS monitors MA achievement rates and works closely with providers to ensure MAs provide individuals with valuable experience and industry-recognised qualifications.

The MA Outcomes Survey found that in some circumstances there was nothing that would have encouraged an apprentice to complete. Some non-completers indicated that the factors which would have encouraged them to complete were more support from their supervisor/line manager/employer (13%), more support from the training provider (6%) and more time to complete the training (3%).

SDS also tracks what employers say about non completers. Our MA Employers Survey, published in March 2013, analysed the views of 2,500 employers who had an employee leave an MA in the last three years. The most frequent reason given for non-completion by employers was that MAs had a poor attitude or were not interested (29%). A further 16% said that MAs had left to move into a new industry or take up a different career. Employers also stated that some MAs left for reasons not connected with the MA training such as personal or health reasons (10%), or to take up a better job elsewhere (9%). 70% of employers felt that there was nothing they could have done to prevent apprentices from failing to complete their MA.

There are a number of processes and policies in place to support completion and follow-up as follows:

1. Promoting Completion: The MA funding model is based on outcome based payments and Learning Providers will not receive a final payment if an MA does not complete. It is therefore in the Learning Providers' interest to support the trainee to achieve their qualification. As all MAs are employees it is also in the employer's interest to ensure they do not lose any investment already made in the individual.

2. Role of the Learning Provider: The Learning Provider has a direct relationship with the apprentice's employer as well as the MA; the Learning Provider is required to be in contact with the MA on a regular basis and is responsible for mentoring and supporting the young person whilst in training, often liaising between the MA and their employer where required (for example if it is believed the employer might not be providing the MA with enough support to complete their MA). This approach aims to ensure that MAs go on to complete their qualification.

3. Tracking – redundancy support: Should an MA be made redundant, SDS has a robust PACE process in place to support the MA to compete their qualification. SDS will either be informed of the redundancy by the employer or by the Learning Provider. A letter will be sent to the individual and followed up with a series of phone calls to link them back into career support services. Local Learning Providers will also be contacted to source another employer for the individual. Information will be provided to employers on recruitment incentives to take on the

[4] http://www.skillsdevelopmentscotland.co.uk/media/102069/ma_survey_results_final_170212.pdf

MA, such as Adopt an Apprentice[5], which would increase the chances of the individual finding another employer and allow the individual to complete their training.

4. Tracking – support services: Where an MA under the age of 18 does not complete their training, he/she would be picked up by SDS in reports going through the 16+ Learning Choices Data Hub. Those under 18 are in SDS's target group for case management and SDS makes use of both its own data through its Customer Training System (Learning Providers input an MA leaving code i.e. other employment, study, health reasons) and up to date partner data (from colleges in this case) on these individuals to track those who do not complete their training. The individual will then be supported into a new training or employment opportunity, as per the Scottish Government's Opportunities for All commitment. These young people will be actively contacted by an SDS Work Coach to offer support in identifying a fresh opportunity and then tracked to ensure that they remain in that opportunity.

Those aged 19-24 who may have decided to leave their MA employer will be case managed by the Department of Work and Pensions (DWP) if they wish to register for job seeker benefits. DWP will assist them in finding alternative work and direct them to SDS services should they require additional career guidance.

The Committee asked for figures showing the number of modern apprenticeships that are in the public sector, the private sector and the third and voluntary sector.

SDS holds a wide range of statistical information about those MAs which are publicly funded at both the local and national level however as SDS does not fund all public sector MAs we are unable to provide a full capture of public sector activity. However the SDS MA Employer Survey shows that just over half (55%) of employers were single-site businesses and a further 28% were a branch of a multiple-site employer. The vast majority of employers surveyed (87%) were private sector, profit-seeking businesses.

[5] http://www.ourskillsforce.co.uk/recruit/adopt-an-apprentice/

Education and Culture Committee

26th Meeting, 2013 (Session 4), Tuesday, 8 October 2013

Subordinate Legislation

Introduction

1. This paper seeks to inform members' consideration of the following negative instruments, all of which are annexed to this paper—

    - Angus College (Transfer and Closure) (Scotland) Order 2013 SSI 2013/267 – *pp. 3*
    - Banff and Buchan College of Further Education (Transfer and Closure) (Scotland) Order 2013 SSI 2013/268 – *pp. 9*
    - Cumbernauld College (Transfer and Closure) (Scotland) Order 2013 SSI 2013/269 – *pp. 15*
    - John Wheatley College and Stow College (Transfer and Closure) (Scotland) Order 2013 SSI 2013/270 – *pp. 21*

Background

2. These instruments were laid on 17 September 2013, and the Education and Culture Committee was designated as lead committee.

3. The Delegated Powers and Law Reform Committee considered the instruments at its meeting on 24 September 2013 and had no points to bring to the attention of the Committee.

4. The Orders are subject to negative procedure.

Policy objectives

5. The instruments were made in exercise of the powers conferred by sections 3(1)(c), 25(1), (1A), (2) and (5), and 60(3) of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act").

6. The policy objective is that the colleges listed in each instrument should be unified within a single institution.

Procedure in committee

7. Under negative procedure, an instrument comes into force on the date specified on it (the "coming into force date") unless a motion to annul it is agreed to by the Parliament (within the 40-day period). Any MSP (whether a member of the lead committee or not) may lodge a motion recommending annulment of an SSI at any time during the 40-day period, including after the lead committee has considered the instrument. No motion to annul any of the four instruments has been lodged.

Action

8. Unless a motion to annul any of the instruments is lodged, the Committee need only consider the instruments, and indicate whether it is content not to make any recommendations on them.

9. **The Committee is invited to consider whether it is content with the instruments.**

Fiona Sinclair
Committee Assistant
3 October 2013

SCOTTISH STATUTORY INSTRUMENTS

2013 No. 267

EDUCATION

The Angus College (Transfer and Closure) (Scotland) Order 2013

Made - - - -	*12th September 2013*
Laid before the Scottish Parliament	*17th September 2013*
Coming into force - -	*1st November 2013*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 3(1)(c), 25(1), (1A), (2) and (5) and 60(3) of the Further and Higher Education (Scotland) Act 1992(**a**) and of all other powers enabling them to do so.

In accordance with section 5(1) of that Act, they have consulted the education authority for the area in which Angus College is situated and any other person appearing to them to be affected by the proposal.

In accordance with section 25(7) of that Act, the Board of Management of Dundee College has consented to the transfer and vesting of property, rights, liabilities and obligations provided for in this Order.

Citation and commencement

1. This Order may be cited as the Angus College (Transfer and Closure) (Scotland) Order 2013 and comes into force on 1st November 2013.

Interpretation

2. In this Order—

"the 1992 Act" means the Further and Higher Education (Scotland) Act 1992;

"Angus" means the institution named Angus College being a college of further education prescribed under section 11(1) of the 1992 Act(**b**);

"the Angus Board" means the Board of Management of Angus College established as a body corporate by section 11(2) of the 1992 Act;

(**a**) 1992 c.37. Section 3(1) was amended by the Further and Higher Education (Scotland) Act 2005 (asp 6) ("the 2005 Act"), section 32 and schedule 3, paragraph 6(1)(a). Section 25 was amended by section 29(1) of the 2005 Act and by S.S.I. 2006/216. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(**b**) Angus College is prescribed by S.I. 1992/1597. The name of Angus College was changed from "Angus College of Further Education" by S.I. 1993/1891.

"Dundee" means the institution named Dundee College being a college of further education prescribed under section 11(1) of the 1992 Act(**a**);

"the Dundee Board" means the Board of Management of Dundee College established as a body corporate by section 11(2) of the 1992 Act, which is a charity entered in the Scottish Charity Register, charity number SC021188; and

"enactment" has the meaning given in schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010(**b**).

Transfer of property, rights, liabilities and obligations

3.—(1) All property, rights, liabilities and obligations of the Angus Board are transferred to and vested in the Dundee Board.

(2) Any reference to Angus or the Angus Board in any instrument is to be construed as a reference to either Dundee or the Dundee Board as may be appropriate.

(3) Any action or proceeding by or against the Angus Board pending or current, immediately before this Order comes into force, may be continued by or against the Dundee Board.

(4) For the purposes of this article, "instrument" does not include enactment.

Property provided with grant aid

4. Where the Grant-aided Colleges (Scotland) Grant Regulations 1989(**c**) applied to the Angus Board in respect of any land or buildings immediately before they were transferred by this Order, those Regulations apply to the Dundee Board in respect of such land and buildings.

Transfer of staff

5.—(1) All employees of the Angus Board are transferred to the Dundee Board and the contract of employment of each such employee has effect as if originally made between each such employee and the Dundee Board.

(2) In particular—

(a) all the rights, powers, duties and liabilities of the Angus Board under or in connection with a contract to which paragraph (1) applies are, by virtue of this paragraph, transferred to the Dundee Board; and

(b) anything done before the transfer referred to in paragraph (1) by or in relation to the Angus Board in respect of that contract or the employee is deemed, on and after that transfer, to have been done by or in relation to the Dundee Board.

(3) Paragraphs (1) and (2) are without prejudice to any right of an employee to terminate their contract of employment if the terms and conditions of employment are changed substantially to the detriment of that employee, but such change is not to be taken to have occurred by reason only of the fact that the employer under that employee's contract of employment is changed by virtue of this article.

(4) Paragraphs (1) and (2) apply to a person who has entered into a contract of employment with the Angus Board, which is to come into effect after the coming into force of this article and who would, if the contract had come into effect before that date, have been an employee to whom those paragraphs would have applied.

(**a**) Dundee College is prescribed by S.I. 1992/1597. The name of Dundee College was changed from "Dundee College of Further Education" by S.I. 1993/1891.
(**b**) 2010 asp 10.
(**c**) S.I. 1989/433, amended by S.I. 1993/489.

Closure of institution

6. Angus is closed and the Angus Board is wound up and dissolved.

MICHAEL RUSSELL
A member of the Scottish Government

St Andrew's House,
Edinburgh
12th September 2013

EXPLANATORY NOTE

(This note is not part of the Order)

On 1st November 2013 Angus College will cease to exist.

This Order transfers the whole property, rights, liabilities and obligations of the Board of Management of Angus College to the Board of Management of Dundee College (article 3). It makes consequential provisions regarding property provided with the aid of a grant (article 4). It provides for the staff of Angus College to transfer to employment with Dundee College without a break in their employment (article 5). It provides for Angus College to be closed and its Board of Management wound up and dissolved (article 6).

POLICY NOTE

THE ANGUS COLLEGE (TRANSFER AND CLOSURE) (SCOTLAND) ORDER 2013

SSI 2013/267

The above instrument was made in exercise of the powers conferred by sections 3(1)(c), 25(1), (1A), (2) and (5), and 60(3) of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"). The instrument is subject to negative resolution procedure.

Policy objectives

The policy objective is that the two colleges listed below should be unified within a single institution:

- Angus College; and
- Dundee College.

This will take effect on 1 November 2013. On that date, the whole property, rights, liabilities and obligations of the governing body of Angus College will be transferred to and vested in the governing body of Dundee College. The employees of the governing body of Angus College will also transfer to the governing body of Dundee College on that date. Angus College will close and the governing body will be wound up and dissolved on that date.

This is one in a series of actions across Scotland which will see colleges unified to create 13 college regions.

Consultation

In order to comply with the requirements of section 5(1) of the 1992 Act, Scottish Ministers have consulted the education authority for the area in which Angus College is situated. In compliance with the requirement to consult any other person affected by the closure, Scottish Ministers have also consulted a wide range of national and local stakeholders in advance of this instrument being made.

Consent

In accordance with section 25(7) of the 1992 Act, the governing body of Dundee College has consented to the transfer to it of the property, rights, liabilities and obligations of the governing body of Angus College.

Equality Impact Assessment

An Equality Impact Assessment has been undertaken by the Scottish Government. Scottish Ministers have asked Colleges and the Scottish Funding Council (SFC) to pay close attention to any issues around transport in relation to curriculum planning, in so far as this may affect students and staff. More generally, following the transfer, the host college will be subject to the scrutiny of both the SFC, who will undertake post-merger evaluation, and Education

Scotland and will be held accountable for the delivery of all outcomes, including issues relating to equality. A summary will be published in due course on the Scottish Government website.

Financial Effects

The Cabinet Secretary for Education and Lifelong Learning confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial or regulatory impact on the Scottish Government, local government or on business.

Scottish Government
Employability, Skills and Lifelong Learning Directorate
September 2013

SCOTTISH STATUTORY INSTRUMENTS

2013 No. 268

EDUCATION

The Banff and Buchan College of Further Education (Transfer and Closure) (Scotland) Order 2013

Made - - - -	*12th September 2013*
Laid before the Scottish Parliament	*17th September 2013*
Coming into force - -	*1st November 2013*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 3(1)(c), 25(1), (1A), (2) and (5) and 60(3) of the Further and Higher Education (Scotland) Act 1992(**a**) and of all other powers enabling them to do so.

In accordance with section 5(1) of that Act, they have consulted the education authority for the area in which Banff and Buchan College of Further Education is situated and any other person appearing to them to be affected by the proposal.

In accordance with section 25(7) of that Act, the Board of Management of Aberdeen College has consented to the transfer and vesting of property, rights, liabilities and obligations provided for in this Order.

Citation and commencement

1. This Order may be cited as the Banff and Buchan College of Further Education (Transfer and Closure) (Scotland) Order 2013 and comes into force on 1st November 2013.

Interpretation

2. In this Order—

"the 1992 Act" means the Further and Higher Education (Scotland) Act 1992;

"Aberdeen" means the institution named Aberdeen College being a college of further education prescribed under section 11(1) of the 1992 Act(**b**); and

"the Aberdeen Board" means the Board of Management of Aberdeen College established as a body corporate by section 11(2) of the 1992 Act, which is a charity entered in the Scottish Charity Register, charity number SC021174;

(**a**) 1992 c.37. Section 3(1) was amended by the Further and Higher Education (Scotland) Act 2005 (asp 6) ("the 2005 Act"), section 32 and schedule 3, paragraph 6(1)(a). Section 25 was amended by section 29(1) of the 2005 Act and by S.S.I. 2006/216. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(**b**) Aberdeen College is prescribed by S.I. 1992/1597. The name of Aberdeen College was changed from "Aberdeen College of Further Education" by S.I. 1993/1891.

"Banff and Buchan" means the institution named Banff and Buchan College of Further Education being a college of further education prescribed under section 11(1) of the 1992 Act(**a**);

"the Banff and Buchan Board" means the Board of Management of Banff and Buchan College of Further Education established as a body corporate by section 11(2) of the 1992 Act; and

"enactment" has the meaning given in schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010(**b**).

Transfer of property, rights, liabilities and obligations

3.—(1) All property, rights, liabilities and obligations of the Banff and Buchan Board are transferred to and vested in the Aberdeen Board.

(2) Any reference to Banff and Buchan or the Banff and Buchan Board in any instrument is to be construed as a reference to either Aberdeen or the Aberdeen Board as may be appropriate.

(3) Any action or proceeding by or against the Banff and Buchan Board pending or current, immediately before this Order comes into force, may be continued by or against the Aberdeen Board.

(4) For the purposes of this article, "instrument" does not include enactment.

Property provided with grand aid

4. Where the Grant-aided Colleges (Scotland) Grant Regulations 1989(**c**) applied to the Banff and Buchan Board in respect of any land or buildings immediately before they were transferred by this Order, those Regulations apply to the Aberdeen Board in respect of such land and buildings.

Transfer of staff

5.—(1) All employees of the Banff and Buchan Board are transferred to the Aberdeen Board and the contract of employment of each such employee has effect as if originally made between each such employee and the Aberdeen Board.

(2) In particular—

(a) all the rights, powers, duties and liabilities of the Banff and Buchan Board under or in connection with a contract to which paragraph (1) applies are, by virtue of this paragraph, transferred to the Aberdeen Board; and

(b) anything done before the transfer referred to in paragraph (1) by or in relation to Banff and Buchan Board in respect of that contract or the employee is deemed, on and after that transfer, to have been done by or in relation to the Aberdeen Board.

(3) Paragraphs (1) and (2) are without prejudice to any right of an employee to terminate their contract of employment if the terms and conditions of employment are changed substantially to the detriment of that employee, but such change is not to be taken to have occurred by reason only of the fact that the employer under that employee's contract of employment is changed by virtue of this article.

(4) Paragraphs (1) and (2) apply to a person who has entered into a contract of employment with the Banff and Buchan Board, which is to come into effect after the coming into force of this article and who would, if the contract had come into effect before that date, have been an employee to whom those paragraphs would have applied.

(**a**) Banff and Buchan College of Further Education is prescribed by S.I. 1992/1597.
(**b**) 2010 asp 10.
(**c**) S.I. 1989/433, amended by S.I. 1993/489.

Closure of institution

6. Banff and Buchan is closed and the Banff and Buchan Board is wound up and dissolved.

MICHAEL RUSSELL
A member of the Scottish Government

St Andrew's House,
Edinburgh
12th September 2013

EXPLANATORY NOTE

(This note is not part of the Order)

On 1st November 2013 Banff and Buchan College of Further Education will cease to exist.

This Order transfers the whole property, rights, liabilities and obligations of the Board of Management of Banff and Buchan College of Further Education to the Board of Management of Aberdeen College (article 3). It makes consequential provisions regarding property provided with the aid of a grant (article 4). It provides for the staff of Banff and Buchan College of Further Education to transfer to employment with Aberdeen College without a break in their employment (article 5). It provides for Banff and Buchan College of Further Education to be closed and its Board of Management wound up and dissolved (article 6).

POLICY NOTE

THE BANFF & BUCHAN COLLEGE OF FURTHER EDUCATION (TRANSFER AND CLOSURE) (SCOTLAND) ORDER 2013

SSI 2013/268

The above instrument was made in exercise of the powers conferred by sections 3(1)(c), 25(1), (1A), (2) and (5), and 60(3) of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"). The instrument is subject to negative resolution procedure.

Policy objectives

The policy objective is that the two colleges listed below should be unified within a single institution:

- Banff & Buchan College of Further Education; and
- Aberdeen College.

This will take effect on 1 November 2013. On that date, the whole property, rights, liabilities and obligations of the governing body of Banff & Buchan College of Further Education will be transferred to and vested in the governing body of Aberdeen College. The employees of the governing body of Banff & Buchan College of Further Education will also transfer to the governing body of Aberdeen College on that date. Banff & Buchan College of Further Education will close and the governing body will be wound up and dissolved on that date.

This is one in a series of actions across Scotland which will see colleges unified to create 13 college regions.

Consultation

In order to comply with the requirements of section 5(1) of the 1992 Act, Scottish Ministers have consulted the education authority for the area in which Banff & Buchan College of Further Education is situated. In compliance with the requirement to consult any other person affected by the closure, Scottish Ministers have also consulted a wide range of national and local stakeholders in advance of this instrument being made.

Consent

In accordance with section 25(7) of the 1992 Act, the governing body of Aberdeen College has consented to the transfer to it of the property, rights, liabilities and obligations of the governing body of Banff & Buchan College of Further Education.

Equality Impact Assessment

An Equality Impact Assessment has been undertaken by the Scottish Government. Scottish Ministers have asked Colleges and the Scottish Funding Council (SFC) to pay close attention to any issues around transport in relation to curriculum planning, in so far as this may affect students and staff. More generally, following the transfer, the host college will be subject to

the scrutiny of both the SFC, who will undertake post-merger evaluation, and Education Scotland and will be held accountable for the delivery of all outcomes, including issues relating to equality. A summary will be published in due course on the Scottish Government website.

Financial Effects

The Cabinet Secretary for Education and Lifelong Learning confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial or regulatory impact on the Scottish Government, local government or on business.

Scottish Government
Employability, Skills and Lifelong Learning Directorate
September 2013

SCOTTISH STATUTORY INSTRUMENTS

2013 No. 269

EDUCATION

The Cumbernauld College (Transfer and Closure) (Scotland) Order 2013

Made - - - -	*12th September 2013*
Laid before the Scottish Parliament	*17th September 2013*
Coming into force - -	*1st November 2013*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 3(1)(c), 25(1), (1A), (2) and (5) and 60(3) of the Further and Higher Education (Scotland) Act 1992(**a**) and of all other powers enabling them to do so.

In accordance with section 5(1) of that Act, they have consulted the education authority for the area in which Cumbernauld College is situated and any other person appearing to them to be affected by the proposal.

In accordance with section 25(7) of that Act, the Board of Management of Motherwell College has consented to the transfer and vesting of property, rights, liabilities and obligations provided for in this Order.

Citation and commencement

1. This Order may be cited as the Cumbernauld College (Transfer and Closure) (Scotland) Order 2013 and comes into force on 1st November 2013.

Interpretation

2. In this Order—

"the 1992 Act" means the Further and Higher Education (Scotland) Act 1992;

"Cumbernauld" means the institution named Cumbernauld College being a college of further education prescribed under section 11(1) of the 1992 Act(**b**);

"the Cumbernauld Board" means the Board of Management of Cumbernauld College established as a body corporate by section 11(2) of the 1992 Act;

"enactment" has the meaning given in schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010(**c**);

(**a**) 1992 c.37. Section 3(1) was amended by the Further and Higher Education (Scotland) Act 2005 (asp 6) ("the 2005 Act"), section 32 and schedule 3, paragraph 6(1)(a). Section 25 was amended by section 29(1) of the 2005 Act and by S.S.I. 2006/216. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
(**b**) Cumbernauld College is prescribed by S.I. 1992/1597.
(**c**) 2010 asp 10.

"Motherwell" means the institution named Motherwell College being a college of further education prescribed under section 11(1) of the 1992 Act(**a**); and

"the Motherwell Board" means the Board of Management of Motherwell College established as a body corporate by section 11(2) of the 1992 Act, which is a charity entered in the Scottish Charity Register, charity number SC021206.

Transfer of property, rights, liabilities and obligations

3.—(1) All property, rights, liabilities and obligations of the Cumbernauld Board are transferred to and vested in the Motherwell Board.

(2) Any reference to Cumbernauld or the Cumbernauld Board in any instrument is to be construed as a reference to either Motherwell or the Motherwell Board as may be appropriate.

(3) Any action or proceeding by or against the Cumbernauld Board pending or current, immediately before this Order comes into force, may be continued by or against the Motherwell Board.

(4) For the purposes of this article, "instrument" does not include enactment.

Property provided with grant aid

4. Where the Grant-aided Colleges (Scotland) Grant Regulations 1989(**b**) applied to the Cumbernauld Board in respect of any land or buildings immediately before they were transferred by this Order, those Regulations apply to the Motherwell Board in respect of such land and buildings.

Transfer of staff

5.—(1) All employees of the Cumbernauld Board are transferred to the Motherwell Board and the contract of employment of each such employee has effect as if originally made between each such employee and the Motherwell Board.

(2) In particular—

(a) all the rights, powers, duties and liabilities of the Cumbernauld Board under or in connection with a contract to which paragraph (1) applies are, by virtue of this paragraph, transferred to the Motherwell Board; and

(b) anything done before the transfer referred to in paragraph (1) by or in relation to the Cumbernauld Board in respect of that contract or the employee is deemed, on and after that transfer, to have been done by or in relation to the Motherwell Board.

(3) Paragraphs (1) and (2) are without prejudice to any right of an employee to terminate their contract of employment if the terms and conditions of employment are changed substantially to the detriment of that employee, but such change is not to be taken to have occurred by reason only of the fact that the employer under that employee's contract of employment is changed by virtue of this article.

(4) Paragraphs (1) and (2) apply to a person who has entered into a contract of employment with the Cumbernauld Board, which is to come into effect after the coming into force of this article and who would, if the contract had come into effect before that date, have been an employee to whom those paragraphs would have applied.

(**a**) Motherwell College is prescribed by S.I. 1992/1597.
(**b**) S.I. 1989/433, amended by S.I. 1993/489.

Closure of institution

6. Cumbernauld is closed and the Cumbernauld Board is wound up and dissolved.

MICHAEL RUSSELL
A member of the Scottish Government

St Andrew's House,
Edinburgh
12th September 2013

EXPLANATORY NOTE

(This note is not part of the Order)

On 1st November 2013 Cumbernauld College will cease to exist.

This Order transfers the whole property, rights, liabilities and obligations of the Board of Management of Cumbernauld College to the Board of Management of Motherwell College (article 3). It makes consequential provisions regarding property provided with the aid of a grant (article 4). It provides for the staff of Cumbernauld College to transfer to employment with Motherwell College without a break in their employment (article 5). It provides for Cumbernauld College to be closed and its Board of Management wound up and dissolved (article 6).

POLICY NOTE

THE CUMBERNAULD COLLEGE (TRANSFER AND CLOSURE) (SCOTLAND) ORDER 2013

SSI 2013/269

The above instrument was made in exercise of the powers conferred by sections 3(1)(c), 25(1), (1A), (2) and (5), and 60(3) of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"). The instrument is subject to negative resolution procedure.

Policy objectives

The policy objective is that the two colleges listed below should be unified within a single institution:

- Cumbernauld College; and
- Motherwell College.

This will take effect on 1 November 2013. On that date, the whole property, rights, liabilities and obligations of the governing body of Cumbernauld College will be transferred to and vested in the governing body of Motherwell College. The employees of the governing body of Cumbernauld College will also transfer to the governing body of Motherwell College on that date. Cumbernauld College will close and the governing body will be wound up and dissolved on that date.

This is one in a series of actions across Scotland which will see colleges unified to create 13 college regions.

Consultation

In order to comply with the requirements of section 5(1) of the 1992 Act, Scottish Ministers have consulted the education authority for the area in which Cumbernauld College is situated. In compliance with the requirement to consult any other person affected by the closure, Scottish Ministers have also consulted a wide range of national and local stakeholders in advance of this instrument being made.

Consent

In accordance with section 25(7) of the 1992 Act, the governing body of Motherwell College has consented to the transfer to it of the property, rights, liabilities and obligations of the governing body of Cumbernauld College.

Equality Impact Assessment

An Equality Impact Assessment has been undertaken by the Scottish Government. Scottish Ministers have asked Colleges and the Scottish Funding Council (SFC) to pay close attention to any issues around transport in relation to curriculum planning, in so far as this may affect students and staff. More generally, following the transfer, the host college will be subject to

the scrutiny of both the SFC, who will undertake post-merger evaluation, and Education Scotland and will be held accountable for the delivery of all outcomes, including issues relating to equality. A summary will be published in due course on the Scottish Government website.

Financial Effects

The Cabinet Secretary for Education and Lifelong Learning confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial or regulatory impact on the Scottish Government, local government or on business.

Scottish Government
Employability, Skills and Lifelong Learning Directorate
September 2013

SCOTTISH STATUTORY INSTRUMENTS

2013 No. 270

EDUCATION

The John Wheatley College and Stow College (Transfer and Closure) (Scotland) Order 2013

Made - - - -	*12th September 2013*
Laid before the Scottish Parliament	*17th September 2013*
Coming into force - -	*1st November 2013*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 3(1)(c), 25(1), (1A), (2) and (5) and 60(3) of the Further and Higher Education (Scotland) Act 1992(**a**) and of all other powers enabling them to do so.

In accordance with section 5(1) of that Act, they have consulted the education authority for the area in which each of John Wheatley College and Stow College is situated and any other person appearing to them to be affected by the proposal.

In accordance with section 25(7) of that Act, the Board of Management of North Glasgow College has consented to the transfer and vesting of property, rights, liabilities and obligations provided for in this Order.

Citation and commencement

1. This Order may be cited as the John Wheatley College and Stow College (Transfer and Closure) (Scotland) Order 2013 and comes into force on 1st November 2013.

Interpretation

2. In this Order—

"the 1992 Act" means the Further and Higher Education (Scotland) Act 1992;

"enactment" has the meaning given in schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010(**b**);

(**a**) 1992 c.37. Section 3(1) was amended by the Further and Higher Education (Scotland) Act 2005 (asp 6) ("the 2005 Act"), section 32 and schedule 3, paragraph 6(1)(a). Section 25 was amended by section 29(1) of the 2005 Act and by S.S.I. 2006/216. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(**b**) 2010 asp 10.

"John Wheatley" means the institution named John Wheatley College being a college of further education prescribed under section 11(1) of the 1992 Act(**a**);

"the John Wheatley Board" means the Board of Management of John Wheatley College established as a body corporate by section 11(2) of the 1992 Act;

"North Glasgow" means the institution named North Glasgow College being a college of further education prescribed under section 11(1) of the 1992 Act(**b**);

"the North Glasgow Board" means the Board of Management of North Glasgow College established as a body corporate by section 11(2) of the 1992 Act, which is a charity entered in the Scottish Charity Register, charity number SC021207;

"Stow" means the institution named Stow College being a college of further education prescribed under section 11(1) of the 1992 Act(**c**); and

"the Stow Board" means the Board of Management of Stow College established as a body corporate by section 11(2) of the 1992 Act.

Transfer of property, rights, liabilities and obligations

3.—(1) All property, rights, liabilities and obligations of each of the John Wheatley Board and the Stow Board are transferred to and vested in the North Glasgow Board.

(2) Any reference to John Wheatley, the John Wheatley Board, Stow or the Stow Board in any instrument is to be construed as a reference to either North Glasgow or the North Glasgow Board as may be appropriate.

(3) Any action or proceeding by or against the John Wheatley Board or the Stow Board pending or current, immediately before this Order comes into force, may be continued by or against the North Glasgow Board.

(4) For the purposes of this article, "instrument" does not include enactment.

Property provided with grant aid

4. Where the Grant-aided Colleges (Scotland) Grant Regulations 1989(**d**) applied to either of the John Wheatley Board or the Stow Board in respect of any land or buildings immediately before they were transferred by this Order, those Regulations apply to the North Glasgow Board in respect of such land and buildings.

Transfer of staff

5.—(1) All employees of each of the John Wheatley Board and the Stow Board are transferred to the North Glasgow Board and the contract of employment of each such employee has effect as if originally made between each such employee and the North Glasgow Board.

(2) In particular—

(a) all the rights, powers, duties and liabilities of each of the John Wheatley Board and the Stow Board under or in connection with a contract to which paragraph (1) applies are, by virtue of this paragraph, transferred to the North Glasgow Board; and

(b) anything done before the transfer referred to in paragraph (1) by or in relation to each of the John Wheatley Board and the Stow Board in respect of that contract or the employee is deemed, on and after that transfer, to have been done by or in relation to the North Glasgow Board.

(3) Paragraphs (1) and (2) are without prejudice to any right of an employee to terminate their contract of employment if the terms and conditions of employment are changed substantially to

(**a**) John Wheatley College is prescribed by S.I. 1992/1597.
(**b**) North Glasgow College is prescribed by S.I. 1992/1597.
(**c**) Stow College is prescribed by S.I. 1992/1597.
(**d**) S.I. 1989/433, amended by S.I. 1993/489.

the detriment of that employee, but such change is not to be taken to have occurred by reason only of the fact that the employer under that employee's contract of employment is changed by virtue of this article.

(4) Paragraphs (1) and (2) apply to a person who has entered into a contract of employment with either of the John Wheatley Board or the Stow Board, which is to come into effect after the coming into force of this article and who would, if the contract had come into effect before that date, have been an employee to whom those paragraphs would have applied.

Closure of institutions

6. John Wheatley and Stow are closed and each of the John Wheatley Board and the Stow Board is wound up and dissolved.

MICHAEL RUSSELL
A member of the Scottish Government

St Andrew's House,
Edinburgh
12th September 2013

EXPLANATORY NOTE

(This note is not part of the Order)

On 1st November 2013 John Wheatley College and Stow College will both cease to exist.

This Order transfers the whole property, rights, liabilities and obligations of the Boards of Management of each of John Wheatley College and Stow College to the Board of Management of North Glasgow College (article 3). It makes consequential provisions regarding property provided with the aid of a grant (article 4). It provides for the staff of John Wheatley College and Stow College to transfer to employment with North Glasgow College without a break in their employment (article 5). It provides for John Wheatley College and Stow College to be closed and their Boards of Management wound up and dissolved (article 6).

POLICY NOTE

THE JOHN WHEATLEY COLLEGE AND STOW COLLEGE (TRANSFER AND CLOSURE) (SCOTLAND) ORDER 2013

SSI 2013/270

The above instrument was made in exercise of the powers conferred by sections 3(1)(c), 25(1), (1A), (2) and (5), and 60(3) of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"). The instrument is subject to negative resolution procedure.

Policy objectives

The policy objective is that the three colleges listed below should be unified within a single institution:

- John Wheatley College;
- North Glasgow College; and
- Stow College.

This will take effect on 1 November 2013. On that date, the whole property, rights, liabilities and obligations of the governing bodies of John Wheatley College and Stow College will be transferred to and vested in the governing body of North Glasgow College. The employees of the governing bodies of John Wheatley College and Stow College will also transfer to the governing body of North Glasgow College on that date. John Wheatley College and Stow College will close and the governing bodies will be wound up and dissolved on that date.

This is one in a series of actions across Scotland which will see colleges unified to create 13 college regions.

Consultation

In order to comply with the requirements of section 5(1) of the 1992 Act, Scottish Ministers have consulted the education authority for the areas in which John Wheatley College and Stow College are situated. In compliance with the requirement to consult any other person affected by the closure, Scottish Ministers have also consulted a wide range of national and local stakeholders in advance of this instrument being made.

Consent

In accordance with section 25(7) of the 1992 Act, the governing body of North Glasgow College has consented to the transfer to it of the property, rights, liabilities and obligations of the governing bodies of John Wheatley College and Stow College.

Equality Impact Assessment

An Equality Impact Assessment has been undertaken by the Scottish Government. Scottish Ministers have asked Colleges and the Scottish Funding Council (SFC) to pay close attention to any issues around transport in relation to curriculum planning, in so far as this may affect

students and staff. More generally, following the transfer, the host college will be subject to the scrutiny of both the SFC, who will undertake post-merger evaluation, and Education Scotland and will be held accountable for the delivery of all outcomes, including issues relating to equality. A summary will be published in due course on the Scottish Government website.

Financial Effects

The Cabinet Secretary for Education and Lifelong Learning confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial or regulatory impact on the Scottish Government, local government or on business.

Scottish Government
Employability, Skills and Lifelong Learning Directorate
September 2013