

Consultation on a proposal for a Children and Young People Bill

ADSW response

General points

ADSW welcomes the principles and intentions of the bill. We have attempted to answer the questions set out in the consultation paper as fully as possible, but would like to highlight some additional points.

Impact of other legislation

The Scottish Government has set out a busy legislative programme for this session with 15 bills. Many of these cross over with each other and we have some concerns, which we would like to highlight here about unintended consequences and impact of other legislation. In particular we would like to make sure that the Scottish Government are aware of the interconnected issues between this Bill with the Health and Social Care Integration Bill and the Self-Directed Support Bill.

Integration of health and social care: because this bill intends to integrate adult care, we need to make sure that the important links between adult services and children's services are not broken or disrupted. Many children require care and support because of the impact that the adults in their lives have on them. Mental health, addiction, criminal justice and other community care services need to be linked with children's services to ensure that issues are not missed and children are not forgotten.

Self-directed support: this bill will have direct and indirect consequences for children. We need to think about planning for services if children for example in a special school wish to have a direct payment to pay for their therapy programme as there will be impacts on economies of scale to maintain services to other children. We need to think about the impact of a child living in a house where an adult employs a personal assistant. There are no plans in the SDS bill to require personal assistance to be registered and vetted and this could put children (and adults) at risk if the personal assistant is unsuitable to be around children.

Children in need provisions

We need to make sure that the legislation has an impact on all children. Children in need, particularly those with disabilities are in danger of being overlooked in this legislation. We should take the opportunity to place the provision that apply to children in need on an equal footing to those that apply to other children. For example, extending support to age 25, although this would have significant funding implications that would have to be met.

Universal services

This legislation should lead the way in making sure that all services see all children as their responsibility. Many of the resources in social work, which is a targeted service could be better targeted if universal services also took responsibility for children which may have, up until now been seen as the responsibility of social work.

CONSULTATION QUESTIONS

1. A SCOTLAND FOR EVERY CHILD

More effective rights for children and young people

1. Do you feel that the legislative proposals will provide for improved transparency and scrutiny of the steps being taken by Scottish Ministers and relevant public bodies to ensure the progressive realisation of children's rights?

The proposals set out in the Bill will enable greater transparency and scrutiny by setting out clear duties on public bodies to uphold the rights of children and young people in line with the UNCRC.

In addition we would like to see:

- more focus on children with disabilities and the duty of all agencies, including universal providers to make arrangements for their inclusion.
- a move to increase the age of Criminal Responsibility from 8 years

2. On which public bodies should a duty to report on implementing children's rights be applied?

The need to safeguard children's rights should be the responsibility of all public bodies. Non public bodies also have a responsibility to ensure that children's rights are not compromised.

We also need to ensure that the principle of providers being responsible for the inclusion of children with disabilities is emphasised.

3. Do you agree that the extension of the Children's Commissioner's role will result in more effective support for those children and young people who wish to address violations of their rights?

We believe that this is a positive move if it is used as an external appeals process when other routes have not proved satisfactory for the child or young person. We would like to stress that the extension of the Commissioner's role should be a positive one and not seen as adversarial.

There are many routes currently available to children and young people who feel their rights have been violated. Extended the Commissioner's role should not muddle this landscape further but should be used as an opportunity to make things easier and clearer for children and young people.

In additions:

- The age of a young person with a right to appeal to the Children's Commissioner should be 18 in general and up to 25 for children and young people who have been Looked After, aligning with the proposals set out in the Bill.
- There should be a direct link between what children and young people asked of the role of the Commissioner in A Right Blether and what is included in the Bill.
- The resolution of any issue through this route should be swift.

A new focus on wellbeing

4. Do you agree with the definition of the wellbeing of a child - or young person - based on the SHANARRI Wellbeing Indicators, as set out in the consultation document?

The introduction of a clear definition of wellbeing that builds on the SHANARRI Wellbeing Indicators is welcomed. It is essential that any definition contained in the Bill is unambiguous to avoid public sector bodies entering into debate around the perception of any given definition. To this effect, the proposed full definition set out across each of the SHINARRI Wellbeing Indicators should be included.

The power for Scottish Ministers to supplement the definition through Guidance is welcomed. It is essential that training on wellbeing is embedded within the Core Competencies and national GIRFEC training materials should be made available to make best use of resources.

5. Do you agree that a wider understanding of a child or young person's wellbeing should underpin our proposals?

The notion of wellbeing more accurately reflects the positive development of a child than current terminology. We do not however believe that legislation is required to achieve this.

Children and young people will have to be educated on what wellbeing means to encourage them to seek support if they feel that their wellbeing is not being promoted or supported.

Better service planning and delivery

6. Do you agree that a duty be placed on public bodies to work together to jointly design, plan and deliver their policies and services to ensure that they are focussed on improving children's wellbeing?

Despite policy direction in this way, not all relevant public bodies see the needs of all children as their responsibility. Placing a duty on public bodies to work in this way will not only ensure that they do recognise their responsibility, it will also be more important to do so in an environment of increasingly limited resources and high level accountability through the Community Planning Partnerships.

7. Which bodies should be covered by the duties on joint design, planning and delivery of services for children and young people?

The service set out in Annex B is considered a comprehensive list of public bodies critical to the delivery and quality assurance of children's services. The focus should move towards a collective duty on public bodies to report on how joint planning, delivery and review of services improve the wellbeing of children and young people in the area. An amendment to Section 20 of the Children (Scotland) Act 1995 is considered necessary to ensure consistency.

8. How might such a duty relate to the broader Community Planning framework within which key service providers are expected to work together?

The current arrangements are that local authorities and their partners report progress within Single Outcome Agreements. The ambitions for children and young people are set out within the national framework: our young people will be successful learners, confident individuals, effective contributors and responsible citizens; our children have the best start in life; to have improved the life chances for children and families at risk. The CPP should sign off the ICSP in each locality with the Action Plan measured against the National Framework for Outcomes and reporting to the CPP ensured on an annual basis. Key local priorities for areas can continue to be identified and reported within the SOA National and Local outcome framework. This ensures local areas bring together all planning for children locally and report on key priority within SOA.

Improved reporting on outcomes

9. Do you agree that we should put in place reporting arrangements making a direct link for the public between local services and outcomes for children and young people?

Yes with provisions - There must be a balance between a national framework for reporting arrangements and flexibility to report on local need. This could be achieved by provide a National Framework: Scotland for Children which allows local areas to choose from a suite of indicators to report on local priorities. This will reduce the level of duplication of development work across areas whilst allowing for local flexibility. A national working group to develop a National Outcome Framework should be established.

10. Do you think that these reporting arrangements should be based on the SHANARRI Wellbeing Indicators as set out in this consultation paper?

Yes with provisions - The SHANARRI indicators should be linked to the National Reporting Framework and aligned to the national outcomes within the SOA. However, to ensure the ambition for reduced bureaucracy and local flexibility, local CPP should be able to identify key priorities for children's services informed by local strategic assessments to be reported within the SOA.

We also need to ensure that the SHANARRI indicators are taken within the national policy context: for example the safety of children can arguably be maximised through alternative family placements, but policy and legislation currently seeks to maintain children within their own families as a general principle.

11. On what public bodies should the duty for reporting on outcomes be placed?

Duties on reporting on outcomes should be placed on all public bodies involved with children and the mechanism through which it should be reported should be the community planning partnership.

2. A SCOTLAND FOR EACH CHILD

Improving access to high quality, flexible and integrated early learning childcare

12. Do you agree that the Scottish Government should increase the number of hours of funded early learning and childcare?

The increase of funded early learning and childcare places from 400 to 600 is welcomed. Flexibility in the delivery of hours is essential to enable families to make best use of hours across the week/month to support education, training and employment opportunities. Better integration between early learning and childcare is welcomed.

We do need details on how this will be funded.

13. Do you agree that the Scottish Government should increase the flexibility of delivery of early learning and childcare?

The proposal for increased flexibility of early learning and child care provision is welcome, but there is a need to ensure that this is based on the best interests of children. Long periods of substitute child care to enable parents to work may not always be in the interests of children, particularly if this involves a series of different carers. It would be helpful to clarify the policy intention of this provision – that is whether it relates to supporting parents in employment or giving children the best possible start, or a mixture of the two. It is helpful that the flexibility extends to early learning and child care because the needs of children will vary.

14. Do you think local authorities should all be required to offer the same range of options? What do you think those options should be?

No - There may be an opportunity to set a minimum standard of service, but the model of delivery must be allowed to be determined locally.

15. How do you think the issue of cross-boundary placements should be managed, including whether this might be through primary or secondary legislation or guidance?

The issue of cross-boundary placements are currently coordinated between local authority areas where there is a high level of commuting parents. However, priority allocation is currently on those people living within the authorities boundaries. The Scottish Government should issue Guidance but there is no need for primary or secondary legislation.

16. Do you agree with the additional priority for 2 - year olds who are 'looked after'? What might need to be delivered differently to meet the needs of those children?

It would be helpful to have more information on the policy intention here. It may be that there is flexibility to offer this support to those who are assessed as requiring it, not just those who are looked after and two years old. Although this is a vulnerable group, a more personalised way of meeting their needs would be a more effective early intervention action.

The Named Person

17. Do you agree with the proposal to provide a point of contact for children, young people and families through a universal approach to the Named Person role?

The role of named person is already carried out in an informal way by health visitors and teachers etc. It would be disproportionate to over bureaucratize this and apply the role as set out in the consultation document. The majority of children in Scotland have able parents who love their children and ensure their needs are met and for these children a formal system is not required. It would be preferable if a named person could be formally identified for those children who are assessed as needing such a person. The proposed approach does not seem to involve an assessment of need and does not target resources proportionately.

18. Are the responsibilities of the Named Person the right ones? Are there any additional responsibilities that should be placed on the Named Person?

See above

19. Do you agree with the proposed allocation of responsibilities for ensuring that there is a Named Person for a child at different stages in their lives set out in the consultation paper?

Se above

20. Do you think that the arrangements for certain groups of school-aged children as set out in the consultation paper are the right ones? What, if any, other arrangements should be made? Have any groups been missed out?

Yes

The Child's Plan

21. Do you think a single planning approach as described in the consultation paper will help improve outcomes for children?

We need to ensure that the outcome of getting the best services to meet the needs of the child can be achieved through this. We do not want to compromise the value of the plan in order to have just one, but we do want all the people and agencies involved in a child's life focussed and aware of the work they are all doing.

The greatest current challenge to developing a single child's plan is the ASL Act and it's requirement for a stand-alone Coordinated Support Plan. This will need to be resolved by the Bill in order for the single plan to happen.

22. How do you think that children, young people and their families could be effectively involved in the development of the Child's Plan?

Their involvement is crucial and there are many examples of good practice from local authorities across the country in involving users and cares well.

Right to support for looked-after children

23. Do you agree that care-leavers should be able to request assistance from their local authority up to and including the age of 25 (instead of 21 as now)?

We support the proposal to enable care leavers to request assistance up to the age of 25. There is however a complex overlap between legislation pertaining to children and legislation pertaining to adults. This is potentially confusing for young people and for providers in terms of defining responsibilities. Whilst the proposal is welcome its effect is uncertain. The responsibilities of the local authority in responding to requests for assistance from young people up to the age of 25 who have been looked after previously need to be clarified. It may be also that there is a greater priority in improving the supports available for young people aged 16-21. We have concerns that the outcomes for this younger cohort of care leavers are particularly poor and it may be that resources should be targeted on achieving better outcomes for them by local authorities and partner agencies. The additional responsibilities placed on local authorities by this proposal will have resource implications. These need to be quantified. It is unclear how local authorities would meet these additional responsibilities without additional resources.

Corporate Parenting

24. Do you agree that it would be helpful to define Corporate Parenting, and to clarify the public bodies to which this definition applies? If not, why not?

We agree it would be helpful to have a clearer definition of corporate parenting. It may be fuller

guidance about what is involved in corporate parenting would be helpful. As a general principle we believe children and young people require "real" parent figures rather than corporate parents wherever this is possible. Parental figures, be they birth parents adoptive parents foster carers or residential providers need to feel empowered to act on an individual basis to advocate and secure the needs of children as fully as possible. The corporate parenting role is a more general one in terms of local authorities and partners being satisfied that services are being provided as effectively as possible for looked after children. The notion of corporate parenting in relation to children looked after at home would benefit from further clarification. Such children have parents and their views about the local authority acting as corporate parents in addition to this need to be considered.

25. We believe that a definition of Corporate Parenting should refer to the collective responsibility of all public bodies to provide the best possible care and protection for looked-after children and to act in the same way as a birth parent would. Do you agree with this definition?

Yes with examples provided– and should outline a complaints process for children and young people to challenge public bodies. This should be through agency complaint and appeal processes in the first instance with a secondary appeal to the Children's Commissioner on the basis that a young person feel their rights have been violated.

Kinship care

26. Do you agree that a new order for kinship carers is a helpful additional option to provide children with a long-term, stable care environment without having to become looked after?

A legal mechanism which enables kinship carers to secure children within their care without the need for the child to become a "looked-after" child is to be welcomed. Practice would suggest that family members are often reluctant to pursue existing legal options due to the complexity of family loyalties. Therefore it is unclear how readily such an order would be utilised. (It should be noted that Part 1 of the Children's (Scotland) Act 1995 does have provision to allow support kinship carers at present.

Existing practice among social work agencies and SCRA often fails to make best use of existing legislation to "divert" children away from formal processes i.e. Children's Hearing etc. Existing legislation does allow for children to be secured within the care of kinship carers, although does not spell out how decisions in relation to the child's upbringing are resolved and this new order may allow for this. It is unclear whether this will include decisions in relation to contact with birth parents and how this will be regulated.

The suggestion that local authorities assist with the financial implications of making such an order is contradictory to the need to fully assess kinship carers to assess the suitability of such an arrangement ie ensuring a child is not within a situation of risk.

Councils provides advice and guidance to all kinship carers irrespective as to whether this arrangement is formal or informal. Our experience is that the majority of kinship carers do not want extensive support - often knowing how to access support is sufficient. Our experience would therefore appear to contradict the view that "kinship carers need better access to support, particularly from local authorities".

We continue to be of the view that the financial support for kinship care placements should be provided by the Benefits Agency - this would provide for a standardisation of allowance. In the likelihood that the status quo will continue then there will need to be significant additional funding to provide for the widening of the expected services.

27. Can you think of ways to enhance the order, or anything that might prevent it from working effectively?

It is unclear from the guidance why foster carers have been included in being able to apply for this order. This blurs the distinction between foster carers and kinship carers.

The Scottish Government should recognise that the fact that the new order if used as an alternative to care orders i.e. applied to a group of children who don't need to be in local authority care and who may not need social work support, then the consequence may be that social work end up financially supporting a cohort of children and their "kinship" carers for whom we have no professional locus. This would push social work into being an income maintenance agency which is the role of the benefits system and for which we have no resource.

Adoption and permanence

28. Do you agree that local authorities should be required to match adoptive children and families through Scotland's Adoption Register?

Councils are committed to using the register to ensure there is a national central point where data on adoption figures are collated. Given that the use of the Register is only beginning to be utilised there would in our view be value in analysing the extent to which the Register is used and in what areas of need. This will also better inform the need for compulsion.

Using the register for every child could in many instances slow down the matching process not speed it up as is intended i.e. a child could be quickly matched to a local resource without the need to go through the Register or indeed where adopters are assessed on a child specific basis. It could also result in higher numbers of children being placed far from their local area failing to recognise the importance of children being placed in their locality. Our experience would also suggest that the practical difficulties in placing children far from their placement place considerable burdens on all involved. While we are revisiting how we support families this has also been a factor in couple of recent disruptions. It also means the adopters are further away from those who know the child best ie foster carers, social workers etc. While this may be specific to these matches nonetheless it is important to acknowledge the strain on adopters, foster carers and children of matching children where distance is a factor.

Placing children far from their home could also have implications for adoptees when/if they want to trace their birth family.

There will continue to be need for some children for whom the search for an adoptive family will continue to be extended beyond the local area or where due to the complexity of need or ethnicity will require as wide and as quick a search as possible. In these instance the use of the Register will hopefully prove its value.

Adoption will continue to offer many children the best possible opportunity for a positive outcome. There will however be some children for whom this aspiration will not be achieved.

Better foster care

29. Do you agree that fixing maximum limits for fostering placements would result in better care for children in foster care? Why?

Yes - A limit on the number of children placed in foster carers reinforces the important role foster carers have in providing therapeutic care to children. Caring for high numbers of children impact on foster carers ability to meet the diverse range of need that children present limiting their availability to the children. Foster households who care for high numbers of children often have higher numbers of placement breakdowns, there also issues of safe care which need to be managed and considered. In practice each local authority Fostering Panel should be ensuring that carers are not assessed nor 'authorised' beyond their capabilities.

However there is a danger in that this proposal does not acknowledge the complexities of matching children with placements. Examples might include the need for children to have respite and the potential of carers to provide this over and above their usual number of placements.

30. Do you agree foster carers should be required to attain minimum qualifications in care?

Traditionally most foster carers have not experienced education/training beyond school - possibly a changing picture. Setting minimum qualifications could adversely impact on the recruitment of foster carers, although it would act to enhance the standing of foster carers. Setting a clear pathway of learning and development post approval would allow carers to not only "learn" on the job but more readily apply learning to their role. Parallels could be made to staff within residential child care settings who benefit from training and learning specific to their role and remit. Local authorities generally have in place a system of skill level for carers with children being matched accordingly.

There is a need for foster carers to demonstrate ongoing CPD - this could be both skills based but also academic based learning. It is their commitment to fostering and their role as foster carers that can often outweigh any qualification. Some of our best foster carers don't have formal qualifications and no interest in achieving such but do have an interest in understanding children and their needs and how best they can provide therapeutic care.

31. Would a foster care register, as described, help improve the matching by a local authority (or foster agency)? Could it be used for other purposes to enhance foster care?

The remit and role of a fostering register would need to be further clarified. If it is to alert LA's to possible placements then this could be of value but could also result in children being placed further away from home making planning and rehabilitation harder to achieve. Who would operate this, how would such a system be financed - would this add to the cost - how would the register be kept up to date etc. The need to minimise bureaucracy/processes would be of value.

There would be value in a register which holds in one place people/foster carers deemed unfit to foster but don't meet the threshold to be placed on the PVG listed scheme.

32. Do you think minimum fostering allowances should be determined and set by the Scottish Government? What is the best way to determine what rate to pay foster carers for their role – for example, qualifications of the carer, the type of 'service' they provide, the age of child?

Having a nationally set fostering allowance to cover the cost of caring for a child would ensure consistency. This would replicate the system elsewhere in the UK.

There does need to be a differentiation between the cost of caring for the child and the fee element

provided to foster carers by agencies. The consultation document seems to blur these two types of payment. It would be helpful to have a clearer idea of the cost of caring for a child in foster care in Scotland.

Assessing Impact

33. In relation to the Equality Impact Assessment, please tell us about any potential impacts, either positive or negative; you feel the legislative proposals in this consultation document may have on any particular groups of people?

The Scottish Governments draft EHRIA is considered full and comprehensive.

34. In relation to the Equality Impact Assessment, please tell us what potential there may be within these legislative proposals to advance equality of opportunity between different groups and to foster good relations between different groups?

The Scottish Government should amend national guidance on EHRIA to include children and young people as a specific group to be considered; policy makers in the public sector should consider how any proposed legislation, strategy, policy or plan impact on the wellbeing of children and young people in their area, specifically on the most vulnerable young people.

35. In relation to the Business and Regulatory Impact Assessment, please tell us about any potential economic or regulatory impacts, either positive or negative; you feel the legislative proposals in this consultation document may have, particularly on businesses?

The Scottish Government should consider the specific role of businesses and how legislation will impact on wider legal frameworks e.g. to promote inclusion for Care Leavers is the job Market.

Thank you for responding to this consultation.

Please ensure you return the respondent information form along with your response.

The closing date for this consultation is 25 September 2012. Please return to childrenslegislation@scotland.gsi.gov.uk

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