

The Children and Young People (Scotland) Act 2014

Part 12 (Services in relation to children at risk of becoming looked after)

September 2014

This is the second in a series of briefings from CELCIS that explain specific parts of the [Children and Young People \(Scotland\) Act 2014](#) (2014 Act). Each briefing clearly sets out the rights of looked after children, care leavers and carers, and the new duties, powers and expectations placed on public bodies.

This series is designed to support organisations and practitioners involved in implementing the provisions of the 2014 Act, assisting them to fully realise the potential of this legislation to improve care experiences for children and young people. Please note that official guidance will be published by the Scottish Government in due course.

For commentary and analysis on the origins of the 2014 Act, the legislative process and accompanying debates, please see the Children and Young People (Scotland) Act 2014 section of the [CELCIS website](#).

Parts 12: Services in relation to children at risk of becoming looked after

This briefing examines changes introduced to family support services by the 2014 Act. This part of the Act was referred to as ‘Counselling Services’ in early versions of the Bill. The aim of Part 12 is to ensure that a range of ‘relevant services’ is available to children (and their families) at risk of becoming ‘looked after’ by a local authority. The types of services which must be made available by local authorities will be set out by Scottish Ministers in due course.

The structure of this briefing is as follows:

- Key Points about Part 12
- Eligibility
- Duties and powers of local authorities
- Powers of Scottish Ministers
- Frequently asked questions

Key Points

- Part 12, Services in relation to children at risk of becoming looked after, comes into force in August 2016.
- Part 12 is designed to ensure that appropriate and effective services are provided to the families or carers of children who are at risk of becoming 'looked after' by a local authority.
- The 2014 Act states that 'relevant services' must be provided to:
 - a) A child at risk of becoming looked after;
 - b) A 'qualifying person' in relation to a child at risk of becoming 'looked after';
 - c) A woman who is pregnant with a child who will be at risk of becoming 'looked after' once born;
 - d) A 'qualifying person' in relation to a woman who is pregnant with a child at risk of becoming 'looked after'.
- A 'qualifying person' in relation to a child at risk of becoming 'looked after' is a person related to the child, a person with any parental rights and responsibilities, or any individual with whom the child is, or has been, living.
- A 'qualifying person' in relation to an eligible pregnant woman includes the father of the child, the woman's husband or civil partner, an individual with whom the woman is living, and any other person a local authority decides will be a qualifying person to the child once they are born.
- The 2014 Act gives Scottish Ministers the power to determine (through secondary legislation) 'when' or 'how' a local authority is to consider a child eligible. Scottish Ministers also have the power to make provisions about 'when' and 'how' relevant services are to be provided to eligible children or qualifying persons.
- The 2014 Act defines a 'relevant service' as a service which comprises:
 - a) Providing information about a matter;
 - b) Providing advice or counselling about a matter;
 - c) Taking action to facilitate the addressing of a matter by a person.

Part 12: Services in relation to children at risk of becoming looked after, etc.

This Part of the 2014 Act comes into force in August 2016. The provisions in Section 68 describe the groups who will be eligible for ‘relevant services’, and what those services will be. Section 69 sets out Scottish Ministers’ powers to determine the type of, and manner in which, ‘relevant services’ are provided to eligible groups. Section 70 explains that the terms ‘parental responsibilities’ and ‘parental rights’ have the same meaning in Part 12 as they do in the Children (Scotland) Act 1995.

Section 68(2) defines a ‘relevant service’ as a service comprising (or made up of a combination of) the provision of information, advice or counselling, or action taken by someone to help address an issue.

The ‘relevant services’ which must be made available under Part 12 will be listed in secondary legislation. The documentation and debate accompanying the Act during its parliamentary stages suggests that ‘relevant services’ could include interventions such as family group conferencing, workshops (parenting, attachment, bereavement, etc.), counselling and life story work.

Eligibility

Eligibility for ‘relevant services’ will be determined by whether a child is ‘at risk of becoming looked after’, or of ‘such other description’ as a Scottish Minister may specify (through secondary legislation). It will be up to individual local authorities to decide whether a specific child is at risk of becoming looked after (Section 68(3)) but the Scottish Ministers have powers to make provision in secondary legislation about ‘when’ or ‘how’ the local authority is to consider whether a child is at risk of becoming ‘looked after’ (Section 69 (1)(b)). Local authorities must make ‘relevant services’ available to every eligible child residing within its boundaries (Section 68(1a)).

Local authorities must also make ‘relevant services’ available to a ‘qualifying person in relation to an eligible child’ (Section 68(1b)). A ‘qualifying person’ is an individual who is related to the child (e.g. a birth parent), someone who has parental rights or responsibilities in relation to the child (e.g. an adoptive parent or kinship carer), or someone with whom the child is, or has been, living (e.g. an informal kinship care arrangement) (Section 68(4)).

‘Relevant services’ must also be provided to a woman who is pregnant with a child who will be at risk of becoming ‘looked after’ once born (Section 68(1c)), as well as a ‘qualifying person in relation to such a woman’ (Section 68(1d)). Such ‘qualifying persons’ include: the father of the unborn (‘at risk’) child; a person who is married to, or in a civil partnership with, the pregnant woman; a person with whom the pregnant woman lives; and, any individual whom the local authority considers to be a qualifying person in relation to the child (Section 68(6)).

Section 68(7) of Part 12 makes clear that the term ‘related to’ (used to determine whether an individual is a qualifying person in respect of a child or pregnant woman) should include persons related through marriage or civil partnership, and brothers and sisters who share only one biological parent (Section 68(7)).

Duties and powers of local authorities

Part 12 places a duty on local authorities to make available ‘relevant services’ to all eligible children and other ‘qualifying persons’ living in their area (Section 68(1)). The exact wording of the legislation, ‘must make arrangement to secure that relevant services [...] are made available’, suggests that local authorities can either provide these services directly, in collaboration with other public agencies, or purchase them from private and third sector organisations.

Local authorities will determine whether a child is ‘at risk of becoming looked after’ (Section 68(3)), and whether an individual can be considered a ‘qualifying person’ in respect of an eligible pregnant woman (Section 68(6d)).

Local authorities are under a duty to comply with any future regulations published by Scottish Ministers (Section 69).

Powers of Scottish Ministers

Scottish Ministers have the power to specify, through regulations, what ‘relevant services’ must be provided by local authorities (Section 68(1)).

Section 69 gives Scottish Ministers the power to specify, through regulations, when and how a local authority makes decisions in respect of the provision of ‘relevant services’. Scottish Ministers may, by order, set out:

- a) When or how ‘relevant services’ must be provided to eligible children and other ‘qualifying persons’.
- b) When or how a local authority is to consider whether a child is ‘eligible’. In other words, the Scottish Government could specify the criteria on which to assess whether a child is ‘at risk of becoming looked after’. The Scottish Government can also set new categories of eligibility (Section 68(3b)).
- c) ‘When’ or ‘how’ a local authority is to review whether a child continues to be within these categories.
- d) Any matters relating to the provision of a ‘relevant service’ specified by Scottish Ministers (under Section 68(1)). This refers to matters such as when ‘relevant services’ are provided subject to conditions (such as payment), and the consequences of these conditions not being met.

Frequently Asked Questions

Q. Apart from children the local authority considers to be at risk of becoming ‘looked after’, the Act allows for Ministers to specify other groups of children who may qualify. Which children could that cover?

A. Scottish Ministers are not planning to extend eligibility to other groups of children at this time (summer 2014), but flexibility is needed in the legislation should there be a need to do so in the future.

Q. Local authorities will judge, on a case-by-case basis, whether a child is eligible. Will guidance be issued to help them with this process?

A. Yes. Ministers have to make provision in secondary legislation about ‘when’ or ‘how’ the local authority is to consider whether a child is at risk of becoming ‘looked after’ (Section 69 (1b)). The Scottish Government will develop this secondary legislation and accompanying guidance in consultation with key stakeholders.

Q. There is a reference to ‘conditions of payment’ in Part 12 of the Act. What does this refer to? Do you foresee circumstances in which a payment may be involved?

A. With all new legislation there may be unintended consequences, particularly where there is potential crossover with other legislation. This clause is included to provide Scottish Ministers with the flexibility to respond to certain eventualities. There are no plans to specify (in regulations or guidance) that charges are levied on users of ‘relevant services’.

Q. I am confused by the provisions about eligible pregnant women. Who counts as a ‘qualifying person’ in respect of such a woman?

A. Firstly, a pregnant woman is only eligible for ‘relevant services’ if the unborn child is at risk of becoming ‘looked after’ by the local authority on their birth. If that condition is met, the pregnant woman is herself eligible for ‘relevant services’. However, the Act also dictates that ‘relevant services’ must be available to key individuals in the woman’s or child’s lives. This includes the father of the child, anyone to whom the pregnant woman is married or in a civil partnership with, and anyone with whom they are living. But potential support networks for mother and child go beyond this, so Part 12 also allows for ‘relevant services’ to be made available to relations and other individuals whom the local authority thinks might help prevent the child from becoming ‘looked after’.

The Government agreed with suggestions made at Stage 2 of the parliamentary process that expectant mothers would be a good focus for an early intervention approach. It also agreed that it made sense to cover individuals involved in securing the woman and child’s wellbeing, as well as those with an important connection to the child. The Bill was therefore amended to reflect this, introducing the provisions around pregnant women.

Q. Who will provide these ‘relevant services’? What is the role of the third sector?

A. The local authority has a duty to make arrangements to ensure ‘relevant services’ are available to all eligible children, eligible pregnant women and ‘qualifying persons’. In some instances the council will be able to provide these services directly, but in others ‘relevant services’ may have to be procured from other parts of the public sector, or purchased from external organisations. The Scottish Government expects that the third sector will play an important role in delivering ‘relevant services’.

Q. Will guidance be issued on the type of services which must be provided?

A. Particular ‘relevant services’ will be specified in secondary legislation, which will be accompanied by guidance. Both of these will be developed in consultation with key stakeholders.

Q. What about parental and individual consent? If families are not consenting or engaging, would that be an indication that compulsory measures need to be taken to protect the child?

A. This Part of the 2014 Act does not make it compulsory for individuals to engage with services. These provisions are for families who are willing to engage with the issues which put the child at risk of becoming ‘looked after’. The type of ‘relevant services’ envisaged by the Act focus on family support, designed to ensure children can remain safe and nurtured within their birth (and extended) families. It is not expected that ‘relevant services’ will involve any kind of intensive treatment requiring consent. The provision of such services is set out in other legislation.

Some of the individuals and families eligible for ‘relevant services’ under Part 12 will already be known to social services. Although by no means the only factor taken into consideration, a lack of willingness to engage with services being made available to support families with children at risk of being ‘looked after’ will be an indicator that more formal measures of intervention may be necessary to safeguard the child.

Q. With regard to Ministers specifying other groups of children, might this include trafficked or asylum seeking children?

A. Scottish Ministers have powers to determine, through secondary legislation, ‘when’ or ‘how’ local authorities are to consider whether a child is at risk of becoming ‘looked after’ (Section 69 (1b)). This secondary legislation will be accompanied by guidance.

Q. Will individuals have a right to appeal a decision that they are not a ‘qualifying person’?

A. Individuals will be able to use existing local authority complaints and appeal procedures. Further details about eligibility to ‘relevant services’ under Part 12 will be set out in secondary legislation and accompanying guidance.

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