

# The Children & Young People (Scotland) Act 2014: Implications for residential care

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## Abstract

The Children and Young People (Scotland) Act 2014 contains several changes to how children and young people in Scotland will receive services. This has particular relevance for residential care and this paper will explore some of the issues for residential child care arising from the Act and its implementation. In this article the Act will be considered as a driver for residential childcare developing a focus beyond the residential service.

## Keywords

Residential childcare, legislation, Children and Young People (Scotland) Act 2014, corporate parenting

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## Key principles underpinning the Act

The Act is wide-ranging with a focus on planned integrated support for children, and on increasing the age range of young people that are entitled to services following a period of being looked after. It includes provision to:

- create duties for public bodies regarding their role as corporate parents;
- increase the duty on local authorities to provide aftercare support;
- introduce a right to remain in a care placement beyond 18;
- require the provision of a Named Person service to all children under 18;
- introduce the concept of wellbeing into legislation;
- require the creation of a Child's Plan which all services will work to when targeted intervention is required.

The list above is not exhaustive but illustrates the broad scope of this legislation. Only some of these provisions will impact directly on residential child care and in particular corporate parenting, aftercare provisions and the range of provisions related to the

Scottish Government's policy on integrated children's services - Getting It Right For Every Child, known as commonly as GIRFEC (Scottish Government, 2014).

### Corporate parenting

The Act introduces the concept of 'corporate parenting' into Scottish legislation for the first time, despite this being a concept that many professionals working with looked after children have recognised for some time (Scottish Government, 2015a). The report 'These are Our Bairns' (Scottish Government, 2013) identified this concept through the comparison of what most parents want for their children against the lives that children's services are happy to see looked after children and care leavers leading. Under the new Act, a range of public bodies have become 'corporate parents'. These include local authorities, health boards and the range of public services which young people are likely to be in contact with.

Corporate parenting duties apply in relation to children and young people who:

- are looked after regardless of placement type; or
- who are between 16 and 26 and were looked after at their 16th birthday.

This obviously includes all children in residential care, but also all care leavers beyond age 16 and other young people who leave residential care to go to other care settings or to be looked after at home.

The Act sets out a number of duties for corporate parents as to how they carry out their responsibilities when dealing with children and young people in the identified categories, which are:

- to be alert to matters which might adversely affect the wellbeing of children and young people covered by the duties;
- to assess the needs of those children and young people for services and support the corporate parent provides;
- to promote the interests of those children and young people;
- to seek to provide those children and young people with opportunities to participate in activities designed to promote their wellbeing;
- to take action to help those children and young people access those opportunities and to make use of services and support the corporate parent provides;
- to take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to children and young people.

There is also a duty on corporate parents to collaborate with each other when exercising their corporate parenting responsibilities.

None of this will be anything new to residential care services where these duties are carried out as part of everyday functions. However, the broad range of agencies that are covered by these duties is new and should have an impact on the way residential care sits within the range of services working with young people. This points to greater integrated and partnership approaches to allow the range of agencies to meet their duties.

Smith (2009) states that the evidence for integrated working producing better outcomes is not totally conclusive, but that the policy direction for some time has been based on a belief that better integrated working will produce better outcomes. The corporate parenting duties apply to such a range of agencies that integrated working will be necessary and this fits well with other aspects of the Act, such as the 'Named Person' and the 'Child's Plan' which will be discussed later in this article. It will be important for residential care services to work with other agencies to ensure that outcomes for young people can be delivered by the best positioned service or partnership of services.

Taylor (2006) shows that young people leaving residential care have increased likelihood of negative outcomes. These include poor academic qualifications, high levels of unemployment, significant periods of homelessness and overrepresentation in offender services and custody. It is clear that a range of public bodies having legislative corporate parenting duties is a positive step in attempting to improve this.

## Aftercare

The Children (Scotland) Act 1995 gave local authorities duties to provide aftercare to young people who were 'looked after' at school leaving age. The 2014 Act significantly extends on the provisions of the 1995 Act. The most significant change is that the age limit for the provision of aftercare is to be raised from 21 to 26<sup>th</sup> birthday.

While it was previously a duty for local authorities to provide aftercare from age 16 to 19, with powers to provide further services from 19 to 21 or beyond where young people are full-time students, the new Act changes this and strengthens the rights of young people to receive services beyond 19. Under the 2014 Act local authorities are required to assess the needs of all care leavers aged over 19 who request assistance. Where the assessment identifies eligible needs which cannot be met by any other means, local authorities have a duty to provide assistance that meets these needs. Residential services may be in a strong position to assist with service provision to this group but this will require a strong focus on assisting care leavers which has not always been present in residential care. A concept of an extended residential family will be required to be developed to include former residents with the current resident group as recipients of service.

## Continuing care

The most far reaching direct change that this Act brings for residential child care is continuing care. This duty affects young people aged between 16 and 21 when they cease to be looked after. In such cases, the local authority will have a duty to provide 'continuing care' for the young person, which means the same accommodation and other assistance as was being provided for the person immediately before they ceased to be

looked after. In practical terms this means that young people will have a right to remain in their placement once their looked after status ceases. This is in keeping with the ‘staying put’ agenda (Scottish Government, 2013) which has been considered good practice in Scotland since 2013. It was the intention of the Scottish Government in ‘staying put’ to create a transition from care settings that more resembles the experience of young people who are not looked after (Scottish Government, 2013). It remains to be seen if continuing care will achieve this and the key challenge will be around balancing continued support and familiar relationships with the need for young people to develop age appropriate skills.

Research tells us that young people moving on from residential care are the most vulnerable young people in the care system (Dixon, 2008). The challenge coming from the new Act is to use the continuing care period to create a situation where young people can remain in their care placement, in an age appropriate manner. In the statement from the Care Inspectorate in Staying Put Scotland (Scottish Government, 2013) it is made clear that achieving the objectives of ‘staying put’ will require innovative practices that can be supported by the regulatory framework rather than be prevented by it. The new legislation breaks down the perceived barrier between child and adult placement by including young adults in residential care placements initially designed for children. As the process of helping young people achieve independent living requires to be one of gradual progression (Stein & Wade, 2000), continuing care will be successful if it allows this progression of age appropriate development rather than a period of standing still in a care setting geared for younger children. Smith (2009) regards residential care as requiring to instil in young people a sense of past and future, recognising their past experiences and supporting the transitions to come. This will be a key task for residential care in making continuing care work.

### **The Named Person and the Child’s Plan**

Probably the most publicised aspect of the Act has been the move to introduce the ‘Named Person’ into legislation. A named person service will be provided for all children by the health board, the local authority or independent education providers depending on age and school attended. The named person will advise and support the young person and assist them to access services when needed. Other public bodies will have a duty to assist the named person and share information with them.

Where there is a need for additional support, the Act and draft guidance (Scottish Government, 2015) outline how agencies should work together to create a Child’s Plan. This will be used where children and young people need high levels of service or require services from a range of different agencies.<sup>1</sup>

Children in residential care will by their very nature require a Child’s Plan. Due to the complexity of their situation the guidance indicates that they will have a lead professional to coordinate the plan. This lead professional role is essentially the role of the child’s

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<sup>1</sup> Note: CELCIS provides the inform series of briefings explaining different parts of the Act. Go to Knowledge Bank on the menu bar at the CELCIS website [www.celcis.org](http://www.celcis.org) and use the search facility to search on ‘Inform’.

social worker. The Named Person will also have a significant role and for most young people in residential care due to their age this will be a teacher in a promoted post in the school that they attend. The relative roles of the Lead Professional and the Named Person have yet to be fully developed. This is complicated by the fact that only the Named Person is defined in legislation while traditionally the Lead Professional role with looked after children has been central to their planning. Given the issues that children in residential care face around educational attainment, the Named Person role within the education service should be a positive step. It is expected that this will require further development as the roles become clearer following implementation in August 2016.

## Wellbeing

The concept of wellbeing will be at the core of the Child's Plan. The Act introduces a statutory definition of wellbeing to assist in achieving consistency across services. 'Wellbeing' is defined in the Act using the SHANARRI indicators (safe, healthy, achieving, nurtured, active, respected, responsible and included) which have been used in the GIRFEC policy for some years (Scottish Government, 2014). There is an obligation on all public bodies under the 2014 Act to take account of those indicators when assessing the wellbeing of a child. The need for a Child's Plan will be based on assessed wellbeing needs which require a 'targeted intervention'. This is intervention which is required because the child's need cannot be met from the universal services. All children in residential care will be receiving a targeted intervention.

The role of residential staff in promoting wellbeing is crucial to the implementation of this legislation. Residential care in the past has been seen as isolating children from the outside world (Smith, 2009) and working in ways that are risk averse (Connelly and Milligan, 2012) which has led to safety being the primary consideration. As being safe is only one of many indicators within this legislation it will require broad partnerships to work with young people and a willingness to take managed risks to promote development across the range of outcome indicators.

## The Act and the residential care culture

The provisions of the 2014 Act were described by Scotland's Commissioner for Children and Young People as a real chance to make a lasting difference to the lives of children and young people in Scotland (Scotland's Commissioner for Children and Young People, 2013). When the provisions of the Act are considered together they indicate a direction in children's services that develops themes already seen in the GIRFEC policy agenda. The need for agencies to work together to deliver on the requirements for a single plan for each child, focused on the broad range of SHANARRI wellbeing indicators, recognises and puts into law the approaches that children's services have been working on.

The introduction of continuing care and the extended responsibilities for aftercare will impact on residential services and their work to prepare young people for when they leave care. Smith (2009) highlights the important role residential workers have as transition workers and this will require to be developed if the aftercare and continuing care provisions are to be appropriately implemented.

When considering structure and culture in residential child care Bullock (2008) shows a link between certain cultural factors in residential care and positive outcomes for children. Some of these factors are:

- residential care has a strategic role in the wider children's services;
- residential care is viewed as meeting some of the needs of young people along with other services;
- there is a clear plan for each child based on their needs and linked to a range of services most likely to meet them.

If residential care operates within such a culture as part of a broader children's service, this will meet the requirements of the 2014 Act and will make a real difference for children and young people in residential care. Residential services that work in an integrated way with other services to help young people develop into young adults with continued support, will be required if residential care in Scotland is to meet the challenges of the new legislation.

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