

CELCIS Briefing:

Summary of Stage 1, Children and Young People (Scotland) Bill

December 2013

This briefing summarises the debates and developments over Stage 1 of the Children and Young People (Scotland) Bill. It is focused primarily on the 'looked after children' sections of the Bill, with reference to other parts where relevant. It includes a synopsis of the Education and Culture Committee's report and recommendations, the Scottish Government's responses and subsequent parliamentary debate.

Stage 1 Process

A call for evidence was issued by the Scottish Parliament's Education and Culture Committee (herein referred to as 'the Committee') on 8 May 2013. Over 180 written submissions were received by the Committee. (The CELCIS submission is available online). Seven oral evidence sessions were held by the Committee between May and October 2013.

The Committee received support from the Parliament's Local Government and Regeneration Committee, the Finance Committee and the Delegated Powers and Law Reform Committee. These three Committees heard focused evidence on specific sections of the Bill (and accompanying documents) and produced reports which were then submitted to the Education Committee. With the public evidence submitted and oral testimony, these helped to inform the Committee's Stage 1 Report, which was published on 14 November 2013. This was followed by a full debate in Parliament on 21 November 2013, where Members of the Scottish Parliament (MSPs) gave their consent to the Bill progressing to Stage 2.

Stage 1 Report from the Education and Culture Committee

At Stage 1 Parliament is concerned with a Bill's general principles (the 'purpose' or 'aims'). Only one member of the Committee dissented, specifically over the creation of a named person for every child and young person in Scotland; however, the Committee as a whole did agree that

more detail was needed to ensure the measures contained within the Bill worked in practice. The Committee recommended changes across all sections of the Bill.

The Policy and Financial Memoranda (which accompany the Bill) present this legislation as a fundamental reform of children's services, in line with the recommendations of the Christie Commission (2012). It also underlined the importance of early years, prevention and personalisation. The Committee endorsed the early intervention and prevention approach, but acknowledged the challenges associated with estimating how such a preventative approach will result in future savings. In its report on the Financial Memorandum, the Finance Committee highlighted concerns about many of the estimates and assumptions upon which the financial modelling was based.

The Children and Young People (Scotland) Bill comes after two recent parliamentary inquiries (led by the Education and Culture Committee) into looked after children. These were focused on 'educational attainment' and 'decision making on whether to take children into care', and took place in 2011 and 2012 respectively. The findings from these inquiries directly influenced the Committee's scrutiny of the Bill, and in their Stage 1 Report they took the opportunity of suggesting a number of changes to the 'looked after' parts (6 - 10). In the words of Stewart Maxwell MSP, the Committee Convener, these changes '*will contribute to the central aim of improving outcomes for children and young people*'.

Recommendations from the Education and Culture Committee

Part 6 (Early learning and childcare): The Bill places a duty on local authorities to increase the amount of funded early learning and childcare from 475 hours per year to 600 hours for all three and four year olds. It also extends this provision to the most vulnerable two year olds; those who were or who had been, at any time since turning two, 'looked after' by a local authority or subject to a kinship care order.

The Committee noted that early years intervention is generally regarded as being of crucial importance to a child's development and supported its proposed expansion. It also supported the general desirability of continuing to expand this to all two year olds as quickly as possible.

Part 7 (Corporate Parenting): The Bill places new duties on a range of organisations that are regarded as 'corporate parents' to looked after children, young people and care leavers. It sets out the responsibilities of corporate parents (S.52) and requires these organisations to develop regular plans (S.53) and submit reports on their activity (S. 55). At present only local authorities

have legal duties towards looked after children, and guidance sets out how their Community Planning Partners can act as corporate parents. The Bill legislates to provide Scottish Government with the authority to establish new duties on all corporate parents (as determined by Schedule 3 of the Bill). The Bill also legislates to ensure that corporate parenting is implemented consistently across Scotland, and to increase awareness of the concept.

The Committee highlighted evidence by Who Cares? Scotland which stressed the need for public services to take responsibility as corporate parents; however, it emphasised that without detailed guidance the current ambiguity surrounding the role of corporate parents would continue. In its evidence CELCIS noted that whilst the aspiration may be admirable, collective responsibility for looked after children presents some challenges in a legal framework. Many looked after children will still have birth parents with parental rights and responsibilities, so there are questions around the interaction between birth parents and corporate parents.

Furthermore, parents, like corporate parents, may have different views on the 'best possible care and protection' for the child. There are also issues around who should provide a service and finance a service, for example, decisions between health and social care. These issues need to be resolved. CELCIS, however, supports the extension of corporate parenting to all public bodies and in principle agrees that public bodies have a collective responsibility for the welfare of looked after children.

The Committee also drew attention to the need for clarity in relation to the roles and responsibilities of adult services dealing with 16-25 year olds. Some members of the Committee queried whether all the organisations listed in Schedule 3 of the Bill should be considered 'corporate parents' (e.g. SCRA and SCCYP). The Committee asked the Scottish Government to explain why the list of organisations with corporate parenting duties had been drawn so widely and recommended that the Scottish Government specify the criteria for classification as a corporate parent and, in light thereof, review those bodies currently included.

Part 8 (Aftercare): At present local authorities are **under a duty** to provide 'advice, guidance and assistance' to any eligible care leaver up to age of 19 (unless the local authority is satisfied the young person does not need additional support). Local authorities also **have the power** to provide 'advice, guidance and assistance' to young people between the ages of 19 and 21 if they apply (and are assessed as being in need). The Children and Young People (Scotland) Bill proposes to **extend local authorities' power** to provide care leavers with aftercare support up to (and including) the age of 25.

The Committee noted that it had heard strong support for the Bill's provisions, but also for it to go further. They highlighted Who Cares? Scotland's proposal to give young care leavers a right to return to care placements up to the age of 26. The Fostering Network Scotland also wanted young people in Scotland to have the opportunity to stay with their foster carers until the age of 21 (as has been agreed in England). SCCYP felt the Bill should give young people who leave care aged 16-17 years and who subsequently become homeless, a right to be looked after and accommodated by the local authority. Others supported strengthening the Bill through extending the qualifying criteria for receiving aftercare.

The Committee noted that in response to the calls to strengthen Part 8, the Minister was clear that adequate support should be provided to young people as they make the transition from care to independence. She said she was interested in the view of Who Cares? Scotland about providing support to the age of 26 and wanted to ensure that the support we have in place is adequate and allows the young people in question to realise outcomes that are no different from their non-looked after peers. In addition, she was sympathetic to some of the evidence seeking an extension to the qualifying threshold.

The Committee pointed to its two recent inquiries, and noted that it is clear from these investigations that further work was required to improve outcomes for looked after children. It welcomed the positive comments from the Minister about her aim to ensure young care leavers receive the support they require. It felt that whilst the Bill will go some way to achieving this aim, we consider that the range of support for our most vulnerable young people could be further enhanced. The Committee invited the Government to respond to Who Cares? Scotland's suggestions that the Bill should include a right for care leavers to return to care up to the age of 26; allow young people who have spent time in care, but are not in care at school-leaving age, to be eligible for aftercare; and for a mechanism to be introduced enabling care leavers to appeal against decisions taken about the level of aftercare support they receive.

Part 9 (Counselling services): This part requires local authorities to provide counselling services to parents (or individuals with parental rights and responsibilities) of an eligible child. The Committee noted that there was minimal detail included in the Bill, and that the definitions of an eligible child, together with descriptions of the types of services to be included, are to be specified in regulations. The Committee therefore sought clarification from the Scottish Government about the intention of this part of the Bill. It noted the calls for further information on the measures to be provided and requested that the Scottish Government provide such information as early as possible. The Committee agreed with the recommendation of the

Delegated Powers and Law Reform Committee that, due to the significance of eligibility for these matters, the affirmative procedure should apply rather than the negative procedure.

Part 10 (Support for kinship care): The Bill places a duty on local authorities to provide kinship care assistance to families that have obtained, or are in the process of obtaining, a 'kinship care order' for an eligible child. The Policy Memorandum states that the rationale for the legislative change is to encourage more individuals to become kinship carers for those children who do not require regular supervision or corporate parenting. The Financial Memorandum states that part of the purpose of the kinship care order and the accompanying measures is to reduce the unchecked growth in formal kinship care.

The Committee welcomed the measures to provide support for children in kinship care and the introduction of the kinship care order. It asked the Scottish Government to ensure that the detail of the orders and the support available is made clearer. The Committee agreed with the principle that children ought not to be classed as 'looked after' for any longer than necessary, and welcomed the aim to reduce the number of children in formal kinship care. The Committee did acknowledge concerns that 'looked after' status can be seen as a gateway to resources and support.

The Committee noted that it is crucial that local authority support provided under the Bill's 'kinship care order' reflects the needs of the child, rather than resources or legal status. It recognised concerns raised by some kinship carers about the potential level of support available under the kinship care order, and that much will depend on the detail of the regulations and how local authorities implement the provisions. It welcomed the Scottish Government's work in engaging with stakeholders, including local authorities and groups representing kinship carers, on the contents of the regulations, and asked the Government to reassure kinship carers about the level of support they can expect to receive under the new arrangements. It noted that the Scottish Government Financial Review of kinship care expects to report by the end of 2013 and called on the Government to ensure the findings can be easily integrated into the regulations being developed under the Bill. It also invited the Scottish Government to provide details of the action it is taking to ensure that payments under the kinship care order will be disregarded as income in terms of the benefits system.

Part 11 (Adoption register): The Bill will put Scotland's Adoption Register on a statutory footing and give the Scottish Ministers responsibility for making arrangements for establishing and maintaining the Register. It will require local authorities and registered adoption services to provide specified information for the Register so that there is a list of prospective adopters and

children in respect of whom no match has been found. The Policy Memorandum also states that this will increase the number of adoptions.

The Committee supported the aim of enabling more children – particularly those who are looked after – to be matched with suitable adoptive families without having to experience delays. It considered that the compulsory nature of the Register will mean the remainder of local authorities and adoption agencies will join the Register, thereby increasing the chances of a suitable match. The Committee also noted the concerns raised in evidence by the British Association for Adoption and Fostering (BAAF), and invited the Scottish Government to respond to these points.

Scottish Government Response to the Committee's Stage 1 Report

The Scottish Government published its response to the Committee report on 29 November 2013. In summary, their response to the (looked after related) questions and recommendations from the Committee were:

Part 6 (Early learning and childcare): 'The Scottish Government is aware that a number of organisations would like to see the Early Learning and Childcare provisions extended more widely to two year olds, particularly those living in poverty or disadvantage. The Government is clear that we want significant changes which are achievable, manageable and sustainable, and we will not compromise on quality in order to ensure we actually improve outcomes for our children, especially the most vulnerable two year olds. [...] The Committee heard on 17 September from COSLA, the National Day Nurseries Association (NDNA) and the University of Strathclyde that quality is paramount, particularly for the most vulnerable two year olds who need provision which is flexible and appropriate to their needs, and the importance of getting it right before rolling out provision and increasing numbers further.'

Part 7 (Corporate Parenting): 'The organisations listed in Schedule 3 as Corporate Parents include the wide range of public sector bodies that are in any way involved in delivering services, providing support or in making decisions about the lives of children and young people in care and their families. This list inevitably captures a broad list of organisations, some of which are involved in the day-to-day aspects of planning and delivering key services while some are less frontline. Much of what they are asking new Corporate Parents to do is within the range of activities and reporting obligations they have already. Many bodies already commit themselves to supporting children and young people in care and care leavers. As such, I am satisfied that the

organisations listed in Schedule 3 will be more than capable of meeting their responsibilities as Corporate Parents. The Scottish Government [will] keep the list under review and will consider changes if necessary.'

Part 8 (Aftercare): 'The Scottish Government acknowledges the principle of "returning to care" as a positive step in improving outcomes for care leavers. However, careful consideration needs to be given to the implications of care leavers having a right to return to care up to the age of 26 before that could be put in place and we have maintained a regular and detailed dialogue with the sector to further consider. They agree that care and support should always be about preparing young people to live independently and the transition from care to independent living is one that must be fully supported according to the individual needs of each care leaver and at a time and pace that suits their individual needs. In the meantime, the Government is considering proposals including those mentioned above and will consider making any necessary changes to support the transition from care to independent living.'

'In relation to a mechanism for appeals, Regulations 16 to 20 of the Supporting Young People Leaving Care (Scotland) Regulations, 2003 set out existing rights of appeal for persons mentioned in Section 29(1) or (2) of the 1995 Act against decisions of the Local Authority either not to provide advice, guidance and assistance under Section 29(2) or in relation to the level or nature of advice, guidance and assistance to be provided under Section 29(1) or (2). A young person also has a right to make a complaint to the Local Authority about the service they have received or how an appeal has been handled. A complaint of this nature should currently be made under the Social Work (Scotland) Act 1968 or any other appropriate complaints procedure. Section 60 of the Bill amends Section 29(6) of the 1995 Act to ensure that Local Authorities need to establish procedures for considering representations (including complaints) by persons in Section 29(1) or (2) about the discharge of their functions under the provisions of subsection (1) up to and including their functions in new subsections (5A) and (5B) of Section 29. As such, the Government will, following the Bill's passage, be considering these existing appeal rights to assess whether any amendments need to be made to them by way of secondary legislation in consequence of the provision in Section 60 of the Bill.'

Part 9 - Counselling Services: 'The Counselling services provisions in Part 9 of the Bill will place a duty on Local Authorities to ensure that families in the early stages of distress who seek help are provided with appropriate forms of intervention. The order, which will be made under these Bill provisions, will make it clear that the eligibility test for the counselling services will be where a child is at risk of becoming looked after or where the child's wellbeing would be at risk of being impaired if the counselling services are not provided. Circumstances and appropriate

supports will vary from child to child, and may change over time. An order made under these Bill provisions will also specify the description of counselling services which Local Authorities are to make available to families where there is a child at risk of becoming looked after or where the child's wellbeing is at risk of being impaired, if the services are not provided. Such assistance is likely to include:

- Family therapy or support services
- Addiction therapy or support services
- Substance misuse therapy or support services
- Mental health counselling or support services
- Attachment/parenting/behavioural counselling or support services
- Bereavement and grief counselling or support services

This provision could cover a very wide and evolving range of services, which will require to be amended and updated over time. This would not be possible to do if the services were specified on the face of the Bill.'

Part 10 (Kinship Care): 'The Scottish Government has conducted comprehensive consultation and engagement with kinship carers and key stakeholders throughout the Bill process. This will continue as they develop secondary legislation under the Kinship Care Order Bill provisions to ensure that both kinship carers and the children in their care, where they are eligible, will be fully supported under a Kinship Care Order. The level of support or assistance which will be provided by local authorities will vary on a case-by-case basis, depending on the individual circumstances of the family and the child/children concerned. It is anticipated that support will include:

- A start-up grant (for example where the child moves to live with the family following a kinship care order being obtained);
- Transitional support for three years, where a child moves from formal kinship care arrangements (or from being looked after) to informal kinship care, where a qualifying person has obtained a kinship care order. This will ensure that families will not be any worse off financially or otherwise at the point of transition (e.g. a carer would seek financial support from the UK benefits system and the local authority would then provide a top-up allowance to the level received under the previous formal arrangements). After the three-year transitional period the level of support and or assistance provided will be dependent on the individual needs of the family; and

- Access to Early Learning and Childcare for all two year olds that are subject to a kinship care order (although this will not be dependent on individual family circumstances).

The Kinship Care Financial Review is being conducted independently of the Children and Young People (Scotland) Bill. The review aims to reduce the complexity and inconsistencies in the system of kinship allowances. We agree that any changes to the system of allowances should be complementary to the Kinship Care Order proposals and reflect past learning about how allowances interact with the benefits system. Any legislative change required as a result of the findings from the review group will be dealt with through secondary legislation.

The Scottish Government has pursued the UK Government to financially support kinship carers through the UK welfare system and to recognise them for their parenting role. In pursuit of this we have had on-going dialogue with the Department for Work and Pensions and HM Revenue and Customs for some time with the result of securing concessions 'benefit disregards' for kinship carers. It is, however, necessary that our secondary legislation is defined before UK Government departments can confirm how they will treat any entitlements. In designing the Kinship Care Order, they have considered past learning on this policy area and will ensure they continue to work closely with the UK Government.

Part 11 (Adoption Register): The Scottish Government is clear that the National Adoption Register 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 to ensure that the Register can operate as effectively as possible.

Stage 1 Debate

The Children and Young People (Scotland) Bill was debated at Stage 1 on 21 November 2013. Commencing with the Ministerial response to the Committee's report, the debate then moves to the Committee Convenor and then contributions from other MSPs (including the Cabinet Secretary for Education and Lifelong Learning's final comments). A summary of the (relevant 'looked after') comments is provided below:

Stewart Maxwell (West Scotland) (SNP) (Convener of the Education and Culture Committee): He stated that the Committee's previous inquiries had highlighted that young care leavers are particularly vulnerable, and that '*we must do all that we can to ensure that they receive adequate and appropriate support so that they can enjoy exactly the same outcomes in life that many of us take for granted.*' He recognised that the transition from being in care to independent living can often be an extremely difficult time in a young person's life.

Jayne Baxter (Mid Scotland and Fife) (Lab): Called for a clearer understanding of how the bill fits in with other legislation and the Scottish Government's child poverty strategy. Was keen for the Government to address the concerns of kinship carers. Noted that Labour would consider lodging an amendment at Stage 2 to provide greater clarity around what the kinship care order will mean for carers.

Liz Smith (Mid Scotland and Fife) (Con): Made the point that wellbeing is a good thing, but exceedingly difficult to define (notwithstanding the SHANARRI indicators). Her view was that the bill too often conflated 'wellbeing' with 'welfare'.

Kezia Dugdale (Lothian) (Lab): Stated that nothing has angered her more than the experiences and life stories of looked-after children. Preparing for the debate, Kezia had read the 2007 report *Looked After Children and Young People: We Can and Must Do Better*. She noted that this was 'a fantastic report, brimming with statistics and action points to make things better'. However she was struck by just how little has changed in the six years since the report was published. Who Cares? Scotland had told her that 17 different reports had been written on looked after children since the dawn of the Scottish Parliament; one care leaver had told her that 'each one somehow reads like an apology'.

She said she was not interested in a blame game of how we got here, but was looking to the bill as a huge opportunity that must not be missed. She committed to lodging amendments at Stage 2, in conjunction with Barnardo's, Aberlour and Who Cares? Scotland, but stated that legislation alone is not enough: 'We need a cultural shift in the public's attitude towards looked-after children'. The public are - Kezia argued - largely ignorant about care leavers. Too many people think that these are bad kids worthy of little sympathy, rather than being fundamentally good kids who have had more experience of violence than affection, or more experience of physical contact defined by restraint rather than by love. She called on the Parliament to put those children at the front and centre of our public discourse.

Kezia argued that care leavers should be seen as a liberation issue. They have a right to more support into their adult life exactly because of where they have come from and who they are. She recognised that society's attitudes to looked after children cannot be changed overnight, but hoped that by the end of the Bill's passage (we) would have a clear vision of our ambition for care leavers and a clear route map for how to get there.

She spoke for her colleagues when she said 'We are willing to work with the Government to improve the life chances of looked after children. The Minister can count on that not just throughout the bill process, but throughout this parliamentary session'. She said (we) need to talk more about looked after children and challenged the media to do the same.

George Adam (Paisley) (SNP): He spoke of his time as a councillor in Renfrewshire, working with one of the local housing associations to provide housing and support to vulnerable young people. However, the Council had found that within two or so years of giving a young person the keys to their new home, the housing provider was trying to evict them from it. He suggested that we have to find a way of looking after these young people, there are other ways of doing that than through legislation and that (we) can, for example, work with other partners and organisations to offer support.

Liam McArthur (Orkney Islands) (LD): Regarding Part 8 (Aftercare) he associated himself with Kezia Dugdale's comments. The Bill represents a real step in the right direction in aftercare up to the age of 26. However, more should be done on aftercare, building on the good provisions in the Bill to deliver what Aberlour Child Care Trust, Who Cares? Scotland and Barnardo's have talked about: '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'.

Bob Doris (Glasgow) (SNP): Kinship carers step in and take on a caring role for children when mum and dad are unwilling or unable to do so. If kinship carers were not there to pick up the pieces, the life chances and life outcomes for such children would be far worse. That would also cost Scotland's councils a small fortune, as they would instead need to use foster carers or residential care for those vulnerable children.

He paid tribute to former Children's Minister Adam Ingram for advancing the cause of kinship care under the 2007 SNP Government and noted that putting a kinship care outcome into the Scottish Government's concordat with councils had been vital. He noted that the aspiration (to provide equal allowances to both kinship and foster carers) was not fully met, but that the

promise had made a real difference. Mr Doris agreed with the evidence provided by the Child Poverty Action Group (CPAG), which had told the Committee: 'The initial agreement, which was to pay kinship carers of looked-after children at a rate equivalent to that for foster carers, has not become a reality, but all local authorities have shifted to a position where they are making payments of some sort to kinship carers of looked-after children'. He said that whilst a few local authorities are making payments at some level to kinship carers of non-looked-after children, that is not enough.

Mr Doris drew attention to the postcode lottery in the way local authorities deal with kinship care. Mentioned the need for consistency in social work assessments of kinship carers across the country. Kinship carers in Glasgow believe that they are already going through an assessment process similar to that for foster carers, they are asked for some deeply personal information and access to their personal medical records. He called for better guidance, better training and more consistency in social work assessments.

He noted that kinship care orders will still provide support, but that the level of direct social work involvement will necessarily be less than if the child was deemed to be formally looked after. He asked about the projected saving in social work time and if this signalled a reduction in direct cash support to kinship carers. He called for clarity and reassurances from the Minister.

He also asked for some certainty that the Bill does not put up any barriers to providing financial support to kinship carers and asked the Minister to confirm that the Bill contains nothing that would instruct councils to pay less, or hinder them from paying more.

Joan McAlpine (South Scotland) (SNP): Spoke of the number of new looked after referrals falling, but said that Scotland still had a higher proportion of looked after children than other parts of the UK. Highlighted Government estimates that between 10,000 and 20,000 children live with drug-abusing parents, and that between 36,000 and 51,000 children in Scotland live with parents who have alcohol problems; 'there is a crisis that we need to tackle'.

Gavin Brown (Lothian) (Con): After reading the financial memorandum, Mr Brown did not think that that it was realistic or credible. After reading the evidence submitted to the Finance Committee by various councils and others, it became even less credible, and when the Committee took oral evidence from various councils, it became still less credible. He quoted Scottish Borders Council, which said that it believes that additional funding to support the Named Person needs to be available for more than one fiscal year and further noted that the Highland Pathfinder – on which the Government rests almost everything - 'showed it took

several years to implement the cultural changes required within and across organisations in order to implement GIRFEC'. (Scottish Borders believes funding needs to be available over three consecutive years starting in 2014/15 to ensure the successful establishment of the Named Person role.)

Michael Russell, Cabinet Secretary for Education and Lifelong Learning: Noted that the whole purpose of the Bill is to improve children's lives and everything we do or say about it should be judged in that way. He acknowledged the points made about the need to do more for looked after children, which was an opinion he shared.

'The bill can help to bring about change, but it can also do what Kezia Dugdale wants it to do, which is to raise the profile of looked after children—once and for all—in a way that makes us understand our responsibilities; makes society understand the issue; and ensures that we can make progress in a way that none of us has succeeded in doing until now'.