

CEL CIS Briefing:

Summary of Stage 2, Children and Young People (Scotland) Bill

February 2014

The Children and Young People (Scotland) Bill completed Stage 2 of the legislative process on 21 January 2014. This document summarises the debates and activity that accompanied this important stage of the parliamentary process, highlighting the work of organisations who sought changes, and detailing some of the amendments put forward (both successful and unsuccessful). This document concentrates on the parts of the Bill related to looked after children and young people, but reference is made to other provisions where relevant.

Stage One Debate

The Stage 1 debate took place on 21 November 2013, where the general principles of the Bill were voted on. Members of the Scottish Parliament (MSP) voted 104 'For', 0 'Against', with 14 'Abstentions'. The Bill duly passed Stage 1.

Activity between Stages 1 and 2

The period between Stage 1 and 2 was a busy one for organisations seeking to improve the Bill's provisions. Numerous workshops and seminars were held by organisations such as Children in Scotland, Together and the Children's Policy Network (CPON). CPON hosted meetings seeking to develop amendments at Stage 2. Within the children's sector a range of draft amendments were issued, debated, altered and finalised. In an effort to win support for specific changes, meetings were held between MSPs, civil servants, parliamentary staff, Government political advisors and third sector organisations (or groups of organisations). MSPs from the Education and Culture Committee (which has oversight of the Bill on behalf of Parliament) were the primary target of the children's sector activity, as these individuals hold a vote on proposed amendments.

Three strands of activity merit further detail.

'Continuing Care' for Looked After Children

In the weeks preceding Stage 2, Who Cares? Scotland, Barnardo's and Aberlour were active in promoting changes to the 'looked after' provisions of the Bill (Parts 7-10), concentrating on MSPs, civil servants and Government political advisors. A group of care leavers (organised by Who Cares? Scotland) presented their case to various MSPs prior the Stage 1 debate, and were effective in putting forward their views and influencing changes throughout Stage 2. Various briefing papers (presenting the merits of specific changes) were produced and circulated, and there was ongoing discussion and deliberation between the relevant organisations. CELCIS itself played an active part in this process, facilitating a half-day roundtable on Part 8 of the Bill (Aftercare) which brought together staff from the Convention of Scottish Local Authorities (COSLA) and Scottish Government civil servants (from both the Policy and Bill Teams) with Who Cares Scotland? Barnardo's and Aberlour.

This meeting (and the discussions which followed) were critical to securing Government amendments to the Bill at Stage 2, providing decision makers with opportunities to consider the practical implications of changes. All organisations were focused on securing improvement to the Bill, and were willing to compromise in the interest, reaching agreement. As a result of this cooperation significant amendments to the 'looked after' parts of the Bill were introduced by the Government at Stage 2. These amendments were successful, and are discussed in full later.

2) Putting the Baby IN the Bath Water

A coalition of 40 relevant organisations and distinguished individuals came together in September 2013 to submit supplementary evidence to the Education Committee. The coalition was coordinated by WAVE Trust and was highly active in the run-up to (and throughout) Stage 2. The main aim was to improve the Bill's provisions around first 1,001 days of a child's life. This coalition is wide ranging, covering organisations as varied as Alcohol Focus Scotland), ASH Scotland. Six Royal Colleges, Scottish Directors of Public Health, Scottish Association of Social Workers and most of the children's organisations. Numerous individuals also participated, including: Professor Kathleen Marshall (former Children's Commissioner), John Carnochan, founder of the Violence Reduction Unit) and academics representing child and adolescent psychiatry, primary care and rural health, public health, education, social work and the early years.

In its submission to Parliament the coalition argued that the Bill did not provide a robust statutory foundation for the first 1,001 days of a child's life, and that there was a disconnect between the Bill's policy intentions and its provisions. The coalition made a case for greater attention to be paid to prevention, pointing to five areas for improvement:

- Professional training for those working with families and children from pre-birth to age two should give priority to developing effective, positive, relationship-based support;
- The need for public bodies to promote and prioritise effective policies and actions that result in positive/ secure attachment between very young children and their parents and / or care givers;
- The Bill should require more frequent assessments of the extent to which positive/ secure attachments and other dimensions of health development are (or are not) being achieved with all children (pre-birth to age two) in Scotland. This will create the evidence base that generates effective interventions benefiting children and young people
- Primary prevention should be integrated explicitly into the aims of children's services planning within the Bill;
- The health visiting profession should be reinvented and reinvigorated as an indispensable part of Scotland's early years workforce.

The coalition noted that primary legislation was not the only way of advancing policy and practice, but given that the Bill is premised upon a belief that a statutory foundation is required for GIRFEC, children's rights, early learning and childcare and the care system, then this should apply equally to creating a strong statutory basis for prevention-oriented policies and practice. The central premise of the coalition's arguments was that what happens (or fails to happen) during the first 1,001 days of life has an enduring influence not only on the rest of each child's life, but also on the wellbeing of their families, schools, communities, economy and society. In all their work at Stages 1 and 2, the coalition, individually and collectively, sought to encourage the Scottish Parliament to address these missing elements in this Bill.

3) Information Sharing

The Bill's information sharing provisions had caused considerable concern across the children's sector. Cl@n childlaw, CELCIS, NSPCC Scotland and SCCYP circulated a briefing highlighting the fact that the Bill would significantly lower current information sharing thresholds. It also emphasised that confidentiality is of fundamental importance to children and young people, that they have a right to privacy and that 'consent' is of vital importance (whilst balancing child

protection issues). These issues were taken up directly with civil servants (from both Policy and Bill Teams), MSPs and Ministerial political advisors.

To address these concerns the Scottish Government hosted a meeting on 16 October 2013. This examined the balance between the need for confidentiality and the Bill's requirements on organisations to share information. As a result of this discussion Government amendments to Sections 26 and 27 of the Bill were drawn up and introduced into Parliament. The 'grounds for sharing' information were narrowed, and the Government tightened its coverage to duties of confidentiality only. Subsequent engagement with the sector has reinforced the fact that 'duties of confidentiality' may continue to cause confusion and concern amongst practitioners who feel they need to share information but are bound by such a duty. It is expected that these issues will be revisited at Stage 3.

Stage Two

Having agreed the Bill's general principles at Stage 1, Parliament then moves onto scrutinising the Bill's provisions at Stage 2. Following the Stage 1 debate the Bill is referred back to the lead Committee (the Education and Culture Committee) for detailed consideration. Any MSP can propose and speak to an amendment, but only MSPs on the relevant Committee can vote. Four Stage 2 sessions were held on the Children and Young People (Scotland) Bill, and it is worth noting that the Scottish National Party (SNP) exerted strong discipline throughout, blocking most of the opposition amendments. In every case the Minister provided explanations as to why the Government could not support them; for instance, she gave assurances that she would work with relevant MSPs at a later stage, or stated that the issue would be addressed in guidance or secondary legislation.

The sections below summarise a number of the relevant amendments, with a particular focus on those relating to looked after children:

Day One (17 December 2013)

Non-committee members (Siobhan McMahon LAB), Mary Fee (LAB) and Mark McDonald (SNP)) attended, spoke to and proposed their amendments.

Ms McMahon's amendments sought to improve the disability sections by citing the United Nations Convention on the Rights of Persons with Disabilities (UNCPRD) on the face of the Bill to give additional assurance that disabled people's views were being given due regard and consideration

in all aspects of policy development. She also focused on ensuring that transition issues were made explicit for disabled children in the same way that the Bill proposes for looked after children. Mary Fee focused on children affected by parental imprisonment and Mark Macdonald raised probing amendments on behalf of the Royal College of Speech and Language Therapists.

Unsuccessful amendments

- ✘ Liam Macdonald (SLD) sought to insert a 'due regard duty' on Scottish Ministers, instead of 'keep the requirements under consideration'. He also proposed strengthening the duty on Ministers to report on how they have complied with UNCRC. The Minister noted that the Government was happy to draw on the experience of others with reference to the due regard duty (i.e. Wales), but wanted an approach which 'reflects our constitutional arrangements, our distinct legal system and the range of other factors that make us unique'. She did not support a due regard duty on public bodies, nor one on children's rights impact assessments (CRIAs), stating that the Government is undertaking CRIAs 'in a non-legislative way';
- ✘ Mary Fee (LAB) proposed amendments relating to the wellbeing needs of children affected by parental imprisonment, by seeking to add the Scottish Prison Service to the list of 'other service providers.' The Minister felt the existing provisions provided appropriate coverage, and she said that the Government was keen not to single out particular groups and stressed the importance of universality;
- ✘ Liz Smith (CON) wished to tighten up Part 2 so that there was complete certainty regarding when it is right and proper for the Children's Commissioner to intervene in a case and prohibiting them from acting as a mediator when functioning under the new powers. The Minister stated that the Commissioner 'now confirmed that his view is consistent with our own on this' and saw no need to press the amendment. (Liz Smith plans to press this at Stage 3);
- ✘ An amendment to ensure the Bill contains a focus on child poverty was moved by Jayne Baxter (LAB), but not supported by the Committee;
- ✘ Liz Smith's amendments clarifying wellbeing and welfare were not supported.

All but one of the amendments put forward by MSPs (Liam McArthur (SLD) and Jayne Baxter (LAB)) on behalf of the 'Baby IN the Bathwater' coalition fell. These included:

- ✘ Ensuring specific reference to younger children was deemed 'unnecessary, as the existing definition covers services for children generally, including children who are under three';
- ✘ ensuring that children's services planning covers services for children with suspected as well as confirmed additional support for learning needs was deemed 'unnecessary, as the existing

definition at section 7(1)(a) covers that - and guidance will cover services for children with suspected as well as confirmed needs;

- ✘ Transition planning and consulting children and young people in children's services planning.

Successful Amendments

- ✓ The one successful amendment from the Coalition was proposed by Joan Macalpine (SNP), and will make explicit the Scottish Parliament's stated preference for 'preventative spending'. The effect would be to require local authorities and health boards to set out in preparing their children's services plans how the services will work towards securing the achievement of the aims of early intervention and preventative action over the period covered by the plans.
- ✓ A Government amendment to place an additional requirement on Ministers to prepare a plan that sets out how they intend to satisfy the duties included in S. 1(1) of the Bill. The Minister recognised the important role that children must play in developing that plan.

Day Two (7 January 2014)

The Committee again voted on party lines. Liam McArthur remarked that the Minister had refused to accept any opposition amendments, which was a pity given the cross party support for the Bill. The Minister replied by saying 'when we feel that the bill can be improved, we have worked with stakeholders to draft our own amendments. If we felt that an opposition amendment would improve the bill, we would support it, so I hope that we can (regardless of whether we have supported previous opposition amendments) continue to work together to ensure that the guidance and subsequent legislation will do what we all want the bill to achieve in making life better for all children across Scotland'.

Unsuccessful Amendments

- ✘ Liz Smith submitted amendments on the named person. Her concerns focused on resource implications and the impracticality of applying the named person approach in the later teenage years (16-18 age group). She proposed that a named person for 0-5 years, following on from the midwife, should be a qualified registered health visitor. The Minister felt this would restrict the named person for pre-school age children to registered midwives or registered nurses who are health visitors and that such inflexibility would not be in the child's best interests;

- ✘ Jayne Baxter moved an amendment to prevent the role of the named person being contracted out. The Minister felt this did not provide flexibility and did not support it;
- ✘ Jayne Baxter and Liam McArthur moved amendments which added 'to prevent harm' to the responsibilities of the named person. The Minister felt that prevention was explicit and would be reinforced in guidance;
- ✘ Liam McArthur (SLD) lodged amendments on behalf of the 'Baby IN the Bathwater' coalition, addressing concerns about vagueness of the language in the Bill. They would set out more explicitly, particularly in the context of young babies, the needs to be met, while ensuring that the Bill does not sanction a passive or reactive approach.
- ✘ A further amendment from Mr McArthur called for the relevant authority to develop a child's plan in every case in which a child's needs are not being met or are not fully met by existing support. The Minister was concerned that this might result in a move to statutory measures before full consideration had been given to support available in universal services and that it could also lead to increased bureaucracy;
- ✘ Liam McArthur's amendment on the views of the child with regard to a child's plan was not supported nor was one on involving parents in the development of the child's plan;
- ✘ Liz Smith's amendment to provide dispute resolution between the responsible authority and the child's parents regarding the requirement for a child's plan, and Liam McArthur's amendments on advocacy support also fell. The Minister stated that the Government was committed to a redress mechanism but did not want to add unnecessary processes to an already complex landscape. She felt that mechanisms were already in place, however, but acknowledged that GIRFEC and Part 5 did need a dispute mechanism. She stated that they may introduce an order making power and perhaps an enabling amendment at Stage 3.

Successful Amendments (all of which came from the Scottish Government)

- ✓ Remove the duty on secure care providers to continue to provide the named person service for children aged 18 or over;
- ✓ The named person will not apply in relation to a matter arising at a time when the child or young person is, as a member of any of the reserve forces, subject to service law. A Memorandum of Understanding will be agreed with the MOD;
- ✓ Place a duty on the Scottish Prison Service to provide a named person to young people from 16-18 whilst in prison;
- ✓ Information should be shared only if the likely benefit to the wellbeing of the child or young person arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so;

- ✓ Makes the drafting of the guidance powers consistent in Parts 4 and 5 and achieve consistency with the guidance powers in Part 3;
- ✓ Place a duty to make explicit that Ministers can issue guidance on the interaction between the lead professional and the named person. The Bill does not contain provision on the lead professional as the Government 'is looking to public bodies to establish arrangements that best suit an individual child's needs'. This will be addressed in guidance, developed with stakeholders and will specify how the named person should work with the lead professional.
- ✓ Changes the list of appropriate bodies subject to a duty to assist and share information with the named person and ensure that those bodies comply with directions issued by Scottish Ministers in relation to the named person functions;
- ✓ Broaden the definition of targeted intervention to cover provision of services by a third party e.g. a third sector provider not contracted by the health board or local authority. Under the amendments, a relevant authority can arrange for a third sector organisation to provide such interventions;
- ✓ Ensure a consistent link between the named person and the creation, management and review of a child's plan where the named person does not work for the authority responsible for the plan;
- ✓ Extend the duty to provide assistance, advice and information;
- ✓ Ensure that only those professionally qualified can include a targeted intervention in a child's plan;

Day Three (January 14)

The Committee discussed the early learning and childcare provisions and those on looked after children (corporate parenting, continuing care, counselling, kinship care and adoption). MSPs voted on party lines, but the looked after provisions received unanimous cross party support.

Unsuccessful Amendments

- ✗ Liam McArthur's amendment to include specific reference to the aims of the early learning and childcare provisions fell. The Minister felt that having general text in the Bill would be unusual and have no practical effect;
- ✗ Liz Smith's amendment addressing the anomaly whereby children born between 1st September and 29 February receive fewer hours of nursery provision than those born in other months of the year. The Minister argued that there were capacity issues;
- ✗ Neil Bibby proposed increasing and guaranteeing the numbers of two-year-old children in Scotland eligible for early learning and childcare. He also proposed rights to day care for pre-

school children and out-of-school care for children up to 14. He wished to impose duties on local authorities to secure sufficient day care and out-of-school care to enable parents to work or study. The Minister felt that this would go down a route that has not worked in England and is being repealed;

- ✘ Other amendments sought to extend the 600 hours provision to two-year-olds who qualify for DLA and those with additional support needs. The Minister pointed to existing duties to provide appropriate educational support for disabled children before an entitlement to funded early learning and childcare would take effect. She added that statutory guidance will refer to the code of practice on additional support for learning under S.27 of the Education (Additional Support for Learning) (Scotland) Act 2004 and will clarify local authorities' obligations regarding disabled two-year-olds and those with additional-support-needs. It was therefore not necessary to amend the bill;
- ✘ Liam McArthur's amendments sought to emphasise the quality of childcare and to give Parliament a means of monitoring the progress of local authorities in delivering greater flexibility in early learning and childcare services. He thought it necessary to ensure data was collected on progress made, so Ministers and Parliament could identify barriers and decide whether further action was needed. The Minister felt this was disproportionate.
- ✘ To extend to all corporate parents the duty S.17 of CSA 1995 places on local authorities in respect of personal relations and contact between looked after children and their parents;
- ✘ To place a duty on corporate parents to consider whether contact between separated siblings is practicable and appropriate, consistent with the child's interests. The Minister felt it was too specific to apply to all corporate parents, nor appropriate or practical to require organisations that are not in the front line to promote and facilitate contact between children and young people and those with parental responsibilities for them and their siblings. In due course, Scottish Ministers may use order-making powers to adjust the list of corporate parenting duties and their application to particular corporate parents;
- ✘ Liam McArthur's amendment wanted the aftercare provisions to promote preventative spending and wanted a reference in the Bill to reflect this. He also asked the Minister to make a commitment to working with the 'Baby IN the Bath Water coalition' when preparing regulations and guidance. The Minister gave that commitment, but did not support his amendment. She said that the Scottish Government aims to ensure that all care leavers have access to the most appropriate support according to their needs. Local authorities are under a duty in S. 29(5) CSA 1995 to carry out an assessment of the needs of each care leaver to whom they have a duty under section 29(1) CSA and to assess the needs of all those who make an application to them for aftercare support under section 29(2) CSA, whether they are parents or prospective parents. Moreover, including pregnancy and parenthood in Part 8, could cause unnecessary confusion over who, within children's services, is responsible for the

child or care leaver. In addition, requiring throughcare and aftercare teams to take responsibility for babies and very young children could create unintended consequences around qualifications and training that is required;

- ✘ Jayne Baxter (LAB) called for Scottish Ministers to set out in secondary legislation their expectations of local authorities and asked whether the Government would consider setting out at Stage 3 specified rates of payment for the provision of financial support and require local authorities to pay at least that rate to qualifying persons. She also spoke to an amendment which would ensure that local authorities review the kinship care assistance provided. At the moment, local authorities review the assistance that is provided only if an eligible child's status changes. But there is no right for a qualifying person who has obtained a kinship care order to ask for such a review of support. The Minister felt that the amendments would not result in local authorities providing a uniform level of support to kinship carers, nor did she wish to be prescriptive about the type and level of support that is to be provided. She said that Ministers fully intend to make orders that specify descriptions of the kinship care assistance that local authorities must make available to those eligible for that assistance and this will include categories of assistance and provision. The intention is to issue guidance to local authorities on the kinship care assistance that they will be required to provide. This will be consulted on;
- ✘ Jayne Baxter also sought to add to the categories of person who can qualify for a kinship care order those with a pre-existing relationship to or connection with the child. By stipulating a pre-existing relationship, she said that this highlighted the importance of the child being accommodated with someone who understands their circumstances and background, is aware of their needs and is best placed to offer optimum care and support. The Minister said that Ministers will be able to specify by order other relationships to or connections with a child considered appropriate for eligibility for a kinship care order and will consult extensively before making such an order. Moreover, the sheriff will determine whether it is appropriate to grant under section 11(1) of the 1995 Act, a residence order or a guardianship order. That was felt to be a sufficient safeguard;
- ✘ The Minister addressed Liam McArthur's amendments around appeals and said that a procedure is already in place to allow appeals against local authority decisions: the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003. These will be amended as a result of S.60 of the Bill. A review of the complaints procedures, as provided for by S.5B of the Social Work (Scotland) Act 1968, is also under way. Regulation 16(2) of the 2003 regulations provides that: 'All complaints, representations or appeals not falling within paragraph (1) shall be dealt with in accordance with the procedure established under section 5B of the Social Work (Scotland) Act 1968'. She felt that the existing appeals procedures and

post-Bill review of the current regulations were sufficient to address the needs of care leavers in this regard.

Successful Amendments

- ✓ Clare Adamson's (SNP) amendment required authorities to consult every two years and to prepare and publish plans on early learning and childcare to ensure a picture of the availability and integration across the country. This would also require authorities to consult on all-day care and out-of-school care and would include parents and carers in the process. The Minister felt that her amendments broadened the scope of consultation and planning in the Bill, provided local authorities with a more 'comprehensive picture' and would encourage integrated and longer-term planning of and support for a range of provision. The amended Bill would strengthen the original plans on flexibility by allowing broader, more diverse and more locally-based needs and options.

Part 7: Corporate Parents

- ✓ The Scottish Court Service, the Scottish Further and Higher Education Funding Council and regional strategic bodies were removed from the list of corporate parents in Schedule 3. As administrative and funding bodies, they do not have a key role to play in direct decision making about children and young people and do not have a corporate parenting role;
- ✓ Scotland's Commissioner for Children and Young People and post-16 education bodies were retained as corporate parents, but exempted from the duty to comply with directions issued by Scottish Ministers in S.58;
- ✓ Scottish Ministers will be able to add a new body to the list of corporate parents in future, using the order-making power in S.52. An amendment now allows the order to modify S. 50, so an exemption from Ministerial direction can be applied to that body if appropriate;
- ✓ Other amendments give Ministers flexibility to adjust the list of corporate parenting duties in S. 52 and to modify their application to particular corporate parents by order. This will allow for flexibility when certain duties might be more appropriate to apply to specific corporate parents.

Part 8: Aftercare

The Minister spoke to the Scottish Government's commitment to measures to support care leavers over the next 10-12 years. She acknowledged the effort and commitment shown by Aberlour, Barnardo's, Who Cares? Scotland, CELCIS, local government and looked after young

people, who had worked to identify the most appropriate and realistic way forward in challenging financial circumstances, and stated: 'This significant package of amendments represents a uniquely Scottish solution to tackle some of the most pressing issues that some of our most vulnerable young people face. Not only is it a huge step forward for Scottish teenagers in care, it is ground-breaking in policy terms.'

- ✓ As a result of the amendments, starting in 2015, each new cohort of 16- year-olds in foster, kinship or residential care will have a right to stay in care until they are 21. This means that, over the coming years, as is the case with their non-looked-after peers, those not ready to leave home will be entitled to remain with their carers until the age of 21. The Minister also announced that the Government will also be putting measures in place to enable care leavers to return to care if they need that support. The amendments also provide that local authorities notify Scottish Ministers and the Care Inspectorate about the death of any care leaver in receipt of aftercare services, so that lessons are learned to ensure services are doing their utmost for young people who have been in care. The amendments also seek to clarify the eligibility of those care leavers entitled to corporate parenting and aftercare support and seek order-making powers to extend the support to further cohorts of formerly looked after children, through secondary legislation.

The Minister set out what the amendments seek to achieve:

- Clarify who is eligible for corporate parenting support by replacing references to being over school age or ceasing to be of school age with references to 'at least the age of 16' and 'on the person's 16th birthday';
- A new order-making power, subject to affirmative procedure, for Scottish Ministers to specify descriptions of young people who were, but are no longer, looked after by a local authority, with the intention of extending the categories of young people who would be eligible for support;
- Remove the reference to persons being 'over school age' and convey eligibility for assessment for aftercare support to anyone who leaves care aged 16 or above - to ensure that those who might enter care at a later age e.g.15 and leave care at 16 will be eligible;
- It will also align corporate parenting eligibility in S. 51 with S.60, on aftercare;
- Order-making powers for Ministers to specify additional descriptions of those who were but are no longer looked after by a local authority, who will then be eligible for aftercare support. Secondary legislation will be introduced to extend the measures to additional cohorts of young people and will be done by affirmative procedure allowing Parliament time for debate. The Minister referred to the expert group which will work out details of any

additional cohorts of those eligible for corporate parenting and aftercare support and emphasised the commitment to widen the groups of eligible young people.

The Minister acknowledged the need to immediately extend entitlement to stay in care to those who are 16-yrs-old and wish to stay in their placement. A new Section 26A will be inserted into the CSA 1995 Act to specify who is eligible for continuing care. It defines continuing care, sets out when the duty would not apply and when it might cease. The effect will be that any child who is in care at 16 years old and then ceases to be looked after will have the right to stay in their kinship care, foster care or residential placement, subject to certain exceptions. Order-making powers will allow Ministers to modify the new Section 26A to vary the situations in which the duty to provide continuing care either does not apply or ceases to apply. There are also order-making powers to specify the upper age limit of eligible persons and the period of time for which the local authority's duty to provide care lasts. These powers will mean the continuing care entitlement can be rolled out to additional cohorts of young people in a measured way over the coming years.

- ✓ Notification of deaths of those to whom the local authority was providing aftercare support: This replicates a provision for the notifications of deaths of looked-after children in Regulation 6 of the Looked After Children (Scotland) Regulations 2009. The Government will also revise the existing 2007 Guidance to Child Protection Committees to include the death of a young person receiving aftercare in the suggested criteria for Child Protection Committees to consider when deciding whether to conduct a significant case review.

Part 9: Counselling Services

- ✓ Colin Beattie, SNP, proposed that the term 'relevant services' replace 'counselling services' throughout Part 9. The Minister accepted the need to change the term and supported Mr Beattie's amendment, preferring it to Liam McArthur's which would have replaced 'counselling services' with 'early intervention'.
- ✓ Government amendments placed the eligibility test for 'counselling services'¹ in the text of the Bill, making it clear that authorities are to provide services which will help to prevent a child from becoming looked after. Further detail of the type of services will be in secondary legislation which they will consult on. This will ensure that, where the child is at risk of becoming looked after, local authorities will be required to provide to eligible children and their families, services that are not restricted to those that involve counselling or counsellors. The circumstances will vary as will the type of service that they require which

¹ To be known as 'relevant services'

may evolve over time. The provision will be wide enough to ensure that local authorities can provide a wide range of services and address varying circumstances;

- ✓ Amendments also ensure that an eligible child and a qualifying person in relation to such a child are eligible for relevant services under Part 9. This makes it clear that support can be provided to members of the child's family or to the child, not just their parent or a person with parental rights and responsibilities, to avoid the risk of the child becoming looked after. In response to concerns about a lack of detail, the term 'eligible child' is defined in the Bill rather than in an order. A child will be eligible if they are at risk of becoming looked after if relevant services are not provided. The risk need not be imminent, as the support is intended to involve early intervention to offset or reduce the risk of the child becoming looked after. Local authorities will judge, on a case-by-case basis, whether a child meets that test and Ministers will issue guidance to assist local authorities making that assessment. There is also an order-making power to allow further provision to be made on how the test is to be applied, and it will be possible to amend the eligibility test by order;
- ✓ A Government amendment ensures that an eligible pregnant woman and qualifying persons in relation to the woman, e.g. the father of her child, a person to whom she is married or with whom she is in a civil partnership, someone to whom she is related or with whom she is living, or a person whom the local authority considers will, when she gives birth, become a qualifying person in relation to the child, are eligible for services. A pregnant woman will be considered eligible if a local authority considers that she will give birth to a child who will be eligible. This latter amendment was a direct response to the request from the coalition 'Putting the Baby IN the Bath Water'. The Government agreed that expectant parents would be a good target for an early intervention approach.

Reaction from the Baby IN the Bathwater coalition indicated that these amendments constituted a major improvement upon the draft which would have simply required that counselling services be available to parents of looked after children. Moving it back to include the antenatal period and broadening the definitions of what will be provided to whom is entirely in keeping with the coalition's collective recommendations.

Part 10: Support for Kinship Carers

- ✓ Kinship care orders subsist only until the eligible child reaches the age of 16 and those persons specified in sections 64(3)(a) to 64(3)(c) are entitled to kinship care assistance only until the child attains the age of 16;
- ✓ A child who was subject to a kinship care order prior to the age of 16 is still eligible to receive assistance until they are 18;

- ✓ Removes the exclusion on a guardian from being a qualifying person and therefore from being eligible to receive kinship care assistance under S. 64. The Government listened to the views of stakeholders on the issue and agreed that the status of guardians is not sufficiently different from that of kinship carers to justify their exclusion from being eligible for kinship care assistance. Their intention is not to discourage people from applying for a guardianship order where that would be in the interests of the child;
- ✓ Guardians, whether court appointed or appointed by parents, (e.g. in a will), and the children who are being cared for are not at a disadvantage compared with kinship carers and children who are in kinship care;
- ✓ The Bill provides that kinship care assistance can be provided to categories of people where there is an eligible child, as set out in section 64(3), and that the description of an eligible child will be specified by order, under section 64(4). As noted previously, 'eligible child' will now be IN the bill, rather than in an order. The test will be whether a child is at risk of becoming looked after if kinship care assistance is not provided.
- ✓ A civil partner of a person who is related to an eligible child can be a qualifying person for a kinship care order;
- ✓ A definition of 'parent' will be inserted into S.67 so that the term, when used in Part 10 has the same meaning as in Part 1 of the CSA 1995.

Part 11: Scotland's Adoption Register

These Scottish Government amendments arose from the Delegated Powers and Law Reform Committee's Stage 1 report, in which it asked the Government to consider lodging stage 2 amendments to a proposed new section 13A of the Adoption and Children (Scotland) Act 2007, as inserted by S. 68 of the bill, to 'make provision about the purpose or intended use of the Register, in order to inform the broad power in section 13A(2) to make regulations about the Register and the information which it is to contain.'

That Committee was also concerned that arrangements that authorise the Scottish Ministers' function in respect of Scotland's adoption register to be carried out by a registration organisation and which provide for payments to be made to such an organisation should be clear and accessible to those affected by them. It recommended that provisions should be included in the Bill to require Ministers to publish details of any organisation that they have authorised to carry out their functions in respect of the register and details of payments to be made to that organisation other than those by the Scottish Ministers. An amendment will require Scottish Ministers to publish any arrangements that they make to authorise an organisation to perform their functions in respect of the register. It will also be clear that any arrangements that the

Scottish Ministers make to authorise a registration organisation to run the adoption register may include provision for payments to be made by the Scottish ministers to that organisation. There will be a new provision for regulations to prescribe the fees to be paid or other payments to be made by adoption agencies in relation to the register, which means that any payment made or fee paid by persons other than the Scottish Ministers will be set out in subordinate legislation. Other amendments will bring all the provisions about payments and fees in respect of the register together in one section for clarity.

Further amendments address concerns raised by BAAF at Stage 1 regarding the requirement in the Bill for parental consent when information is provided about a child for Scotland's adoption register. The amendments will:

- ✓ remove from the Bill the requirement for adoption agencies to obtain consent before disclosing certain information for the register and
- ✓ allow regulations to specify circumstances in which adoption agencies are not to provide information for the register e.g. when consent might be an issue.

Any circumstances in which information is not to be put on the register, e.g. when consent might be an issue, should be set out in regulations. These will be subject to the affirmative parliamentary procedure, ensuring that it receives the appropriate level of scrutiny. The Government intend to work with key stakeholders, including BAAF, when developing the regulations, to ensure that Scotland's adoption register can operate effectively and without unnecessary delays in finding permanent homes for some of our most vulnerable children.

Day Four (January 21)

This was the last day of Stage 2 and the final sections of the Bill were discussed. The Cabinet Secretary, Mike Russell, commented on amendments proposed by MSPs and to ones proposed by the Scottish Government. Aileen Campbell, Minister for Children and Young People, then took over and spoke to amendments on the rest of the draft Bill. Other MSPs attended the meeting and spoke to their amendments, but did not vote.

Unsuccessful amendments

Liam McArthur noted that the Additional Support for Learning legislation contained some deficiencies with regard to primary prevention. He noted that although the Act covers children and young people from birth, its implementation had not benefitted children younger than 3 (as

evidenced in progress reports). He further noted that Scotland does well in identifying physical conditions, but many additional support for learning needs cover conditions such as communication difficulties, autism and foetal alcohol syndrome. He also stated that the ASL Act is an Education Act and not written for under school children and this undermines primary prevention and support. The gap in ASL assessment and provision needs to be closed and the Bill should specifically include duty of prevention in first ,1001 days of life. He asked for a commitment to close this gap. One of his amendments called for a named person for an under aged school child to be able to request an assessment (as well as parents). Joan McAlpine supported his comments, but felt that what he was trying to achieve was covered in the Bill. Stewart Maxwell noted that a wider point was being made and that, along with all the amendments from the coalition, it required further discussion. The Minister thanked Mr McArthur and the coalition, noting that she supported primary and early intervention, but that the amendments were unnecessary. Section 24 requires service providers to publish information about the named person and families are made aware of the most appropriate contacts. She also mentioned duties on service providers and authorities and a similar duty in S. 38, in respect of a child's plan. She also pointed out that the Additional Support for Learning Implementation Group was currently addressing prevention and early intervention and were revising the statutory code of practice. This will include a focus on prevention and the Government will consult widely on this. Moreover, local authorities and health boards will have to report on outcomes, and statutory guidance on this will be developed.

Successful amendments

- ✓ The Bill will amend the Schools (Consultation) (Scotland) Act 2010 by making changes to the procedure to call-in by Scottish Ministers of such proposals. There were further Government amendments on changes to the call in procedure, to take Ministers out of the frame, and on the composition and proceedings of school closure review panels. Liz Smith MSP (CON) proposed an amendment to place a 5 year moratorium on school closures (following an earlier proposal by the education authority). This was treated sympathetically by the Cabinet Secretary who asked her to bring a further amendment at Stage 3. She withdrew her amendment on the basis that there would be discussion prior to Stage 3, as promised by the Cabinet Secretary.

The Minister introduced Children's Hearings amendments to the Bill. These covered:

- ✓ Exceptions to the duty to prepare reports. This would remove the duty on safeguarders to produce reports at exceptionally short notice;

- ✓ Giving power to a pre-hearing panel to undeer a relevant person (if the relevant person did not have a significant relationship with a child). An 'undeer person' can appeal and legal aid will be available for such an appeal;
- ✓ If the grounds hearing considers that the nature of the child's circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order (ICSO) be made, the grounds hearing may make an ICSO in relation to the child;
- ✓ Simplifying basis on which timeframes can be calculated with regard to ICSOs which will keep ICSO decisions in the hands of the tribunal, preventing sheriffs to becoming involved unduly early and helps with administration of the hearing;
- ✓ Technical amendments on the maximum period of a child protection order;
- ✓ Amendments to Section 90 of the 2011 Act. The chair must ask whether the person accepts each of the supporting facts. If the person does not, the grounds are accepted only if the grounds hearing considers that the person has accepted sufficient of the supporting facts to support the conclusion that the ground applies in relation to the child, and it is appropriate to proceed in relation to the ground on the basis of only those supporting facts accepted by the child and each relevant person. Where a ground is accepted, the grounds hearing must amend the statement of grounds to delete any supporting facts in relation to the ground which are not accepted by the child and each relevant person;
- ✓ Appealing against a detention of child in secure accommodation: a child placed in secure following the making of an order by the Sheriff Criminal Procedures Scotland Act 1995. This now can be made jointly by the child and relevant person or by two relevant persons. The Criminal Procedure (Scotland) Act 1995 is amended.

In respect to legal aid:

- ✓ There will be a new section to the Legal Aid (Scotland) Act, extending the availability of legal aid. Scottish Ministers are to have the power to modify circumstances in which children's legal aid is to be made available. The Legal Aid (Scotland) Act 1986 is amended and will be able to apply to more people if appropriate in court proceedings. The title of Section 28L becomes Power of Scottish Ministers to extend or restrict types of proceedings before children's hearings in which children's legal aid to be available;
- ✓ If regulations are made making children's legal aid available to a child, these must include provision requiring the Board to be satisfied that conditions are met. These are: it must be in the best interests of the child; it is reasonable in the particular circumstances of the case that the child should receive children's legal aid; after consideration of the disposable income and disposable capital of the child, the expenses of the case cannot be met without

undue hardship to the child, and if the proceedings are an appeal to the Sheriff Principal or the Court of Session under Part 15 of the 2011 Act, that the child has substantial grounds for making or responding to the appeal.

Issues relating to child performances:

- ✓ A further amendment repeals S. 38 of the Children and Young Persons Act 1963 (licences for performances by children under 14 not to be granted except for certain dramatic or musical performances). The Minister noted that UK Government legislation currently before the House of Lords will remove restrictions which limit the type of performances children can appear in. Scotland could be placed at a significant disadvantage as a result (for young people and for the creative industries) if the 1963 provision is not repealed. The Minister noted that the wellbeing of the child was paramount, but that the rule was arbitrary and unnecessary; other circumstances were important, not just the child's age. Because of the changes taking place in England, there was limited scope for consultation - views had been sought from Barnardo's, COSLA and the Scottish Youth Theatre, who all supported the under-14 rule.